Case Summaries

Prepared by the  
North Carolina Office of the Juvenile Defender

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**Notes About the Case Base**

1. Most of the cases below were decided since 2000, a few months after the new Juvenile Code came into effect on July 1, 1999. However, some were decided prior to the new Code, so please compare to the current statutes if needed.
2. A case may be listed under more than one topic due to its decision affecting more than one area of the law.
3. Unpublished decisions, where listed, are notated as such.
4. In most instances, there is a link to the opinion, so please review the full case when considering its impact on the specific facts or law in your case.
5. In some instances, case names have been redacted for confidentiality purposes, and counsel should use the official case name when citing them.

# ADJUDICATION

Rules concerning the filing of adjudicatory orders.

## In the matter of D.B., 2016 N.C. App. Lexis 271 (unpublished opinion)

Rule(s): Trial court may deny a motion for continuance when counsel is not seeking to obtain additional evidence or assessments.

Pursuant to a plea agreement, the juvenile admitted to resisting a public officer and was adjudicated delinquent in Alamance County. The juvenile was on probation at the time of adjudication. The case was transferred to Orange County for disposition and set for hearing on 2 December 2014. Additional petitions were filed in November 2014 alleging Felony Breaking and Entering. Due to the juvenile’s adjudication in Alamance County, the court counselor filed a motion for review, which was set for hearing on the same day. The juvenile failed to appear for the dispositional and motion for review hearings. Consequently, the court entered an order for secure custody. At a detention hearing on 15 January 2015, the court ordered the juvenile to remain in secure custody until 20 January 2015. The juvenile’s attorney moved to schedule the hearing on a different date arguing that s/he would not have time to plan potential alternatives to commitment at a Youth Development Center (YDC,) which the Department of Juvenile Justice intended to recommend. The court denied the motion. At the dispositional hearing on 20 January 15, the juvenile’s attorney asked for a continuance to further develop the plan. The court denied the continuance, and stated, “Unfortunately, because of the number of points, I don’t think we can do that. I am going to give him commitment.” The same day, the court entered a disposition order finding 12 delinquency history points and four prior adjudications. The following day the court filed an amended dispositional order finding 11 delinquency history points and the same four prior adjudications.

On appeal, the juvenile first argued that the trial court erred by denying his motion to continue the dispositional hearing. The Court has held that a juvenile’s motion to continue is properly denied when it is made to “obtain cumulative documentation.” In re D.A.S., 183 N.C. App. 107, 111, 643 S.E.2d 660, 663 (2007). A court may deny such a motion for continuance when a “[j]uvenile [is] not seeking to obtain additional evidence reports, or assessments of the type specified in N.C.G.S. § 7B-2406.” In re C.L., 217 N.C. App. 109, 117, 719 S.E.2d 132, 137 (2011). In the present case, the Court determined that the juvenile did not claim that he had access to additional evidence or had any other basis for seeking a disposition that differed from the one that the trial court ultimately adopted. Further, the Court found that the trial court followed N.C.G.S. § 7B-2406 by considering the “best interests” of the juvenile. Therefore, the Court held that the trial court did not abuse its discretion by denying the motion to continue.

Next, the juvenile asserted that the State did not carry its burden in proving he had four or more prior adjudications on his record. N.C.G.S § 7B-2507(f) states that the State “shall” prove the adjudications by any of the following methods: “(1) Stipulation of the parties. (2) An original or copy of the court record of the prior adjudication. (3) A copy of records maintained by the Department of Public Safety or by the Division. (4) Any other method found by the court to be reliable.” The Court noted that the court counselor’s predisposition report included the four adjudications listed in the trial court’s order. The record revealed that the trial court’s original disposition order and first amended order indicated that the trial court considered the predisposition report and the risk and needs assessment. Further, the Court determined that a 4 February 2014 order appears in the settled record, and it contains a delinquency history level worksheet that the juvenile stipulated to, listing six prior adjudications, four of which are the adjudications at issue. The Court found that the juvenile did not object to the predisposition report or the court counselor’s summary of the facts therein. Subsequently, the Court held that based on the record, transcript, and the trial court’s order that the State carried its burden and proved four prior adjudications through the court counselor and the written documentation before the trial court and the Level 3 disposition was supported by the evidence.

Lastly, the juvenile argued that the trial court imposed a Level 3 disposition under the erroneous belief that it was required to commit the juvenile to a youth development center. The Court stated that there was no dispute that the juvenile had a “high” delinquency history level since he had 11 points, well beyond the minimum threshold of 4 points. The statutes allow the trial court to impose a Level 3 disposition for his minor offense under N.C.G.S. § 7B-2508(g). Here, the trial court’s order found the juvenile committed a class 2 misdemeanor while on probation, had a high level of delinquency history points and had prior adjudications for two felonies and five misdemeanors. All of which indicated the trial court considered the statutory factors in N.C.G.S. § 7B-2501(c), and imposed a Level 3 disposition to best serve juvenile and the public.

Accordingly, the Court affirmed the trial court order. http://appellate.nccourts.org/opinions/?c=2&pdf=33648

## In the matter of M.A.P., 2016 N.C. App. COA16-279 (unpublished opinion)

Rule(s):

(1) Notice of appeal may be entered any time from the oral rendition of the order until 10 days after entry of the written order.

(2) The court lacks subject matter jurisdiction to adjudicate a juvenile for an offense that is not a lesser included offense of the offense charged in the petition. On March 10, 2015, a 13-year-old boy was confronted by a crowd of twenty other students on his way home from school. He was goaded into a fight with the 12-yearold juvenile by other students who threatened to jump him if he did not engage in the fight with the other boy. After trading some combative words, the 13-year-old boy threw the first punch and the two boys began to fight briefly before stopping. After the two ceased their fight, another student attacked the older boy, hitting him in the face until he attempted to retreat across the street. The other student chased the boy and knocked him down, joined by other students who surrounded him and began kicking him in the back and the head. The boy was able to identify two students out of the crowd that assaulted him and indicated that the juvenile was not among the crowd that attacked him after their initial fight. Following the incident, he was diagnosed with “a severe concussion” and had scrapes and bruises on his back, knees, elbows, arms and neck, in addition to several bumps on the back of his head. The juvenile was charged with committing an assault inflicting serious injury. The juvenile made a motion to dismiss on the basis of insufficient evidence to prove assault inflicting serious injury. The trial court granted the juvenile’s motion with regard to assault inflicting serious injury, but entered an adjudication for the offense of simple affray.

The juvenile filed a written notice of appeal three months prior to the trial court entering written orders. N.C. Gen. Stat. 7B-2602 states that notice of appeal should be given in open court at the time of the hearing or in writing 10 days after entry of the order. Consistent with previous case law, the court determined that written notice of appeal could be filed at any time between the oral rendition of the order and 10 days after the written order was entered. The court concluded that the juvenile’s notice was proper and the court had jurisdiction to hear the appeal.

The trial court’s orders were vacated because the trial court lacked subject matter jurisdiction to adjudicate the juvenile delinquent based on the offense of simple affray, which is not a lesser included offense of assault inflicting serious injury. Prior case law clearly states that defendants must be given proper notice of the charges against them to prepare their defense and prevent double jeopardy in order to sustain a conviction. If the offense is not a lesser included offense, the trial court lacks subject matter jurisdiction. The elements of the offense of simple affray are distinct from the elements of the offense of assault inflicting serious injury and a petition was not filed charging the juvenile with the offense of simple affray. Therefore, the juvenile could not be adjudicated delinquent based on the offense of simple affray.

## In the matter of K.M.M., 2015 N.C. App. LEXIS 572

Rule(s): Adjudication orders are not required to delineate each element of an offense.

The juvenile was adjudicated delinquent for committing misdemeanor larceny and placed on nine months of probation. On appeal the juvenile first asserted that the trial court erred by denying his motion to dismiss, arguing that there was insufficient evidence that he was the perpetrator of the larceny. The Court disagreed finding that the State’s presented substantial evidence that satisfied the elements of larceny set forth in N.C.G.S. § 14-72(a) (2013). The victim & a witness identified the juvenile; the arresting officers testified that the juvenile had time-stamped receipts from the store where the alleged larceny occurred.

Next, the juvenile argued that the trial court erred by failing to make sufficient findings of fact to support his delinquency adjudication. N.C.G.S. § 7B-2411 (2013) states that “if the court finds that the allegations in the petition have been proved [beyond a reasonable doubt] as provided in G.S. 7B-2409, the court shall so state in a written order of adjudication, which shall include, but not be limited to, the date of the offense, the misdemeanor or felony classification of the offense, and the date of the adjudication.” Further, in In re J.V.J., the Court stated that the statute “does not require the trial court to delineate each element of an offense and state in writing the evidence which satisfies each element” and at a minimum, N.C.G.S § 7B-2411 requires a court to state in a written order that “the allegations in the petition have been proved beyond a reasonable.

In the present case, the trial court found that the allegations had been proved beyond a reasonable doubt and stated so in its written adjudication order. Therefore, the trial court made sufficient findings of fact to support the juvenile’s adjudication of delinquency for misdemeanor larceny.

Accordingly, the trial court’s order was affirmed.

https://appellate.nccourts.org/opinions/?c=2&pdf=32436

## In the matter of C.E.N., 2015 N.C. App. LEXIS 391 (unpublished opinion)

Rule(s):

(1) Notice of appeal must specifically designate each judgment or order from which appeal is taken.

(2) Using incorrect criminal terminology from the bench does not invalidate an adjudication.

The juvenile was charged with committing common law robbery.

Adjudicatory and disposition hearings were held on July 3, 2014. On July 9, 2014 the trial court filed an adjudication order finding the juvenile delinquent and a Level 1 disposition order was entered on the same day. On July 14, 2014 the juvenile gave written notice of appeal from the adjudication order only.

Rule 3(d) of the NC Rules of Appellate Procedure requires that the notice of appeal must specifically “designate the judgment or order from which appeal is taken.” In the present case, although the juvenile purported to appeal from the dispositional order as well, the Court determined that his arguments alleging error as to disposition were not properly before the Court. Consequently, the Court did not address the juvenile’s arguments regarding the trial court’s disposition order. In the juvenile’s arguments regarding the adjudication order, the juvenile asserted that the trial court erred by (1) denying him his right to be present at “judgment” and (2) making insufficient findings of fact to support its adjudication. Specifically, the juvenile contended that although he was in court for all of the adjudicatory portion of the hearing, the trial court denied him his right to be present at adjudication. The record indicates that at the close of the adjudication portion of the hearing, the trial court announced its adjudication of the juvenile as “guilty” and then immediately proceeded to disposition. The juvenile contended that the trial court “rendered an erroneous adjudication order” at the hearing by using inappropriate criminal terminology and that the written order of adjudication the court later filed represented a substantive change from the “criminal conviction” the court announced from the bench.

The Court disagreed finding that while it was unfortunate that the district court failed to use the proper terms, the meaning of the court’s phrase “verdict of guilty” was utterly clear: the juvenile was responsible and adjudicated thusly. Further, the Court determined that the trial court did adjudicate the juvenile delinquent in the juvenile’s presence at the hearing by inquiring whether the parties were “ready to proceed to disposition,” which confirmed the juvenile’s adjudication. The Court also found that the written order did not represent a substantive change from the adjudication rendered at the hearing.

Next the Juvenile argued that the trial court erred in making insufficient oral and written findings of fact to support its adjudication. The Court disagreed noting that N.C.G.S § 7B-2411 does not require the trial court to make any oral findings of fact. Further, the Court has previously held that a written adjudication order satisfies the minimum requirements of N.C.G.S. § 7B-2411 when it provides the date of the offense, the class and level of the underlying offense, the date of the adjudication, and clearly states that the court considered the evidence and adjudicated the juvenile delinquent as to the petition’s allegation . . . beyond a reasonable doubt. In the present case, the Court found that adjudication order met each of the aforementioned requirements. Accordingly, the order was affirmed.

http://appellate.nccourts.org/opinions/?c=2&pdf=32753

## In the matter of J.V.J., 209 N.C. App. 737; 707 S.E.2d 636; 2011 N.C. App. LEXIS 312

Rule(s): Under N.C.G.S. § 7B-2411, if allegations have been proved, the court’s adjudicatory order must include the date of the offense, the classification of the offense, and the date of adjudication.

The juvenile was adjudicated delinquent of assault on a government official.

As disposition was pending, the juvenile filed a petition for writ of certiorari asking the court to hear the appeal of the adjudication order. The Court of Appeals granted certiorari as the juvenile was not appealing from a final order, and therefore had no right to appeal. Juvenile argued that the trial court erred by failing to make sufficient findings of fact to support that he committed assault on a government official. The Court agreed, finding that pursuant to N.C.G.S. § 7B-2411, the court failed to include the requisite findings in its adjudication order. Specifically, § 7B2411 provides that if the court finds that the allegations in the petition have been proven, the court shall so state in a written order of adjudication, which shall include the date of the offense, the classification of the offense, and the date of adjudication. In this case, the Court held that the trial court failed to address any of the allegations as mandated by § 7B-2411. Conversely, the trial court only indicated that the facts as presented by the evidence had been proven beyond a reasonable doubt and that the juvenile was responsible without providing any information regarding the allegations other than the offense, offense classification, and date of the offense.

Furthermore, the Court noted that the adjudication order did not indicate that the allegations in the petition had been proven.

The Court remanded the case to the trial court to make statutorily mandated findings for the juvenile’s adjudication.

http://appellate.nccourts.org/opinions/?c=2&pdf=MjAxMS8xMC0xMDc0LTEucGR m

## In the matter of J.E., 143 N.C. App. 712, 547 S.E.2d 146 (2001), 2001 N.C. App. LEXIS 334

Rule(s): If delinquency is proved beyond a reasonable doubt, the judge must file an adjudicatory order for the disposition to be valid. Absence of such is reversible error.

The juvenile was adjudicated delinquent of two counts of indecent liberties between children. The trial court did not file a written order, and there was no indication that the state proved the allegations beyond a reasonable doubt.

The Court of Appeals vacated the trial court order, stating that the language “the judge…shall so state” that the allegations in the petition be proven beyond a reasonable doubt mandates that the trial court comply with the statute. With no adjudication order, the trial court had no authority to enter disposition.

## In the Matter of J.B., \_\_\_\_ N.C. App. \_\_\_\_ , No. 18-1036, (August 20, 2019)

Rule(s):

1. The trial court erred in denying the motion to dismiss as a matter of law when the State presented no evidence that the juvenile wished for the video to be made or that he was the one who distributed it on a petition alleging second-degree sexual exploitation of a minor.
2. The trial court erred in denying the motion to dismiss the petition alleging first-degree forcible sexual offense when the State failed to prove penetration, the central element of this crime.
3. The trial court erred when it accepted the juvenile’s admission to attempted larceny when there was not a factual basis to support the juvenile’s admission of guilt, as required by §7B-2407(c).
4. The out of court statements offered by the State were admitted in violation of the juvenile’s constitutional right to confront and cross-examine witnesses and the error was prejudicial.
5. Despite the dispositions being vacated, the court addressed the following disposition (sentencing) errors –
   1. The court must provide adequate written reasons in the Disposition and Commitment Order to support its findings using the factors required by §7B-2501(c).
   2. The court must find compelling reasons to deny release to the juvenile pending appeal when commitment to YDC is ordered according to §7B-2605.

This case arises from sexual misconduct by the juvenile toward a friend (Z) who was attending a sleepover at his house with the juvenile and two of the juvenile’s cousins. The evidence tended to show that sometime during the night, Z woke up to find his pants pulled down and the juvenile behind him. The friend believed someone was holding his legs. Z testified that he “felt [the juvenile’s] privates on his butt” but that he did not feel them “go into his butt.” One of the cousins filmed much of the incident. In the video the juvenile can be heard saying “do not record this.” The video ended up on Facebook.

At the hearing, the State presented statements to the police from the juvenile’s cousins, neither of whom testified at trial. The juvenile’s motions to dismiss at the end of the state’s evidence and at the close of all evidence was denied and the court adjudicated the juvenile responsible for first-degree forcible sexual offense and second-degree exploitation of a minor. The court continued disposition until the juvenile could be assessed by Children’s Hope Alliance (CHA).

At the disposition hearing, the judge was presented with the CHA report indicating that the juvenile’s risk for sexually harmful behaviors were in the low to low-moderate range. The court counselor recommended a level 2 disposition.

Prior to the disposition, the juvenile admitted to an attempted larceny of a bicycle. After considering the juvenile’s assessments and his admission to attempted larceny, the trial court entered a level 3 order, committing the juvenile to a YDC indefinitely. The juvenile appealed and requested his release pending disposition of the appeal. A subsequent hearing was held on the question of his release and the trial court entered an order concluding the juvenile would remain in YDC.

Issue 1 (Second degree sexual exploitation of a minor):

The court found that the trial court erred as a matter of law due to the evidence being insufficient to support the charge. The charge requires the defendant take an active role in the production or distribution of child pornography. The court found that the state presented no evidence that the juvenile wished for the video to be made or that he was the one who distributed it. In fact, the court concluded that it was clear that the juvenile did not want to be filmed, as he explicitly told the cousin to stop recording. The court also rejected the state’s contention that there was a common plan or purpose of humiliating the victim, stating there was nothing in the record to support that contention. As a result, the court vacated the adjudication.

Issue 2 (First degree Forcible Sexual Offense):

An essential element of the charge is that a “sexual act” must take place. A “sexual act” is defined by statute (§14-27.20(5)). In order to have a sexual act, there must be “penetration, however slight by any object into the genital or anal opening of another person’s body.” (§14-27.20(4)).

In this case, the victim’s statement is not ambiguous. Z specifically states in his testimony that penetration did not occur. To support its contention that penetration occurred, the state relies upon the video. The court found that at most the video showed no more than “sexual contact” which is sexual battery (§14-27.33)). Responding to the dissent, the majority asserted that circumstantial evidence cannot be used to overcome a victim’s direct testimony that no penetration occurred. As a result, the state has failed to prove penetration, the central element of this crime. The court ruled that the trial court erred in denying the juvenile’s motion to dismiss and vacated the adjudication.

Issue 3 (Attempted Larceny Admission):

There must be a sufficient factual basis for a juvenile’s admission of guilt before accepting the admission and the factual basis may be based on statements presented by the attorneys (§7B-2407(c)). The facts presented do not support the juvenile’s admission of guilt.

The facts presented indicated a bicycle was stolen by two black males (the juvenile is a black male). The juvenile was found by officers biking down the road with two others who also matched the description. The juvenile was described by the prosecutor as “kind of off on his own” from the other two. Officers asked all the youth to stop and of the three, only the juvenile stopped. He told the officers that he had not stolen the bike, that he knew who had, and admitted to having bolt cutters in his back pack. The juvenile’s attorney argued that the juvenile had loaned his book bag to someone, who then placed the bolt cutters inside it and left to “do their deed.” The state presented no evidence as to where or from whom the bike was recovered.

Because the state failed to present sufficient evidence that the juvenile took affirmative steps, but did not succeed, to take another’s property with no intent to return it, (elements of attempted larceny) there was insufficient evidence upon which the trial court should have accepted the juvenile’s admission of guilt. The adjudication for attempted larceny should be vacated.

Issue 4 (Right of Confrontation):

The state offered out-of-court statements from the two cousins which tended to support the charges against the juvenile. Errors affecting constitutional rights are presumed to be prejudicial unless the state can prove that the error was harmless beyond a reasonable doubt. The state’s contention that the evidence was overwhelming (the video and the victim’s testimony) and the numerous references to the cousin’s statements in the closing cannot overcome the fact that the evidence was ambiguous at best and that this additional evidence of penetration was not prejudicial. Therefore, the state failed to prove these statements were harmless beyond a reasonable doubt.

Issue 5 (a) (Level 3 commitment):

The trial court failed to adequately support the statutorily required factors for committing a juvenile to YDC as required by §7B-2501(c).

The assessment provided by CHA found the juvenile’s risk factors for sexually harmful behaviors were in the low to low-moderate range. The juvenile’s evaluation from the court counselor indicated he “is a low/moderate risk for reoffending” and recommended a level 2 disposition. The recommended terms that were recommended as part of the juvenile’s probation included therapy, curfew, no sleepovers, monitoring of electronic devices, not being used as a babysitter, maintain passing grades at school and no contact with the victim. The report from CHA indicated the juvenile had a stable home life and that his family relationships are close and supportive. The court found that when taking into account the evaluations by the court counselor and CHA and their recommendations, the trial court’s failure to explain its reasoning and basis for some findings that conflicted with the evidence presented did not satisfy the requirements of §7B-2501(c).

Issue 5 (b) (Confinement pending appeal):

§7B-2605 requires the release of the juvenile, with or without conditions, should issue in every case unless the court orders otherwise *and* if the court enters a temporary order affecting the custody or placement of the juvenile the court *must* find compelling reasons and state the reasons in writing.

The trial court failed to list anything under “[c]ompelling reasons release is denied” on the Appellate Entries form and in a separate order with Findings of Facts and Conclusions of Law the trial court’s supporting reasons were phrased as contentions of defense counsel and the state. The trial court did not list independent compelling reasons and as such violated §7B-2605.

The court concluded that it was especially disturbing that the trial court ignored the requirements of the statute thus causing the juvenile to be held in detention for a period of 17 months when his convictions were improper.

**Dissent**:

The dissent would have affirmed all of the trial court’s rulings and orders. The dissent asserts that while there was strong evidence suggesting the juvenile did not commit these offenses, it is the trial judge in juvenile delinquency proceedings who resolves any conflicts in the evidence, not the Court of Appeals. Additionally, when the evidence is viewed in the light most favorable to the state, the dissent would have found that the state met its burden on each of the adjudications.

The dissent also found that the recitation of the facts was sufficient to show that the juvenile directly participated, or at least acted in concert, in the commission of the attempted theft of the bike.

With regard to the level 3 order, the dissent would have found that the trial judge’s findings of fact were sufficient and “appropriate” under §7B-2501 and despite the fact that the trial court *could* have imposed a level 2 disposition, its decision to impose a level 3 disposition was not unreasonable.

While confinement pending appeal requires compelling reasons, the court need not be verbose. The dissent concluded that the trial court’s order sufficiently noted compelling reasons for continued confinement pending his appeal.

<http://appellate.nccourts.org/opinions/?c=2&pdf=37905>

## In the Matter of T.T.E., \_\_\_\_ N.C. \_\_\_\_ , No. 238A18, (August 16, 2019)

Rule(s):

1. The court has subject matter jurisdiction when the petition closely tracks the language of the statute. By tracking the language of the statute regarding disorderly conduct (N.C.G.S. §14-288.4) the juvenile was clearly apprised of the charges against him.
2. The State provided sufficient evidence of every element of the disorderly conduct offense to withstand a motion to dismiss the charge of disorderly conduct.

Note: This appeal reversed a Court of Appeals decision (818 S.E.2d 324 (2018)) vacating the adjudication and disposition orders relating to the disorderly conduct offense. The Court of Appeals decision to vacate the adjudication and disposition orders entered in regard to the charge of resisting a public officer remains undisturbed.

The juvenile was alleged to have thrown a chair in the school cafeteria during a period when students can receive tutoring and hang out in the cafeteria. The chair did not hit anyone or damage any property. The School Resource Officer (SRO) was in the cafeteria and witnessed the event. The juvenile ran out of the cafeteria and the SRO followed him and grabbed him from behind and instructed the juvenile to come with him. The juvenile told the SRO “no” but the SRO then brought him to the school lobby and searched him, at which time the juvenile cursed at the SRO and was subsequently handcuffed. Other students began to get involved, yelling at the SRO. The juvenile subsequently told the SRO that he had thrown the chair at his brother in the course of playing. He was originally charged and adjudicated delinquent for disorderly conduct and resisting a public officer. As noted above, the Court of Appeals overturned both adjudications and dispositions.

The Supreme Court began its analysis by noting that the “true and safe rule” for prosecutors in drawing indictments is to follow strictly the precise wording of the statute. So long as the petition tracks the statutory language with sufficient specificity to clearly apprise the juvenile of the offense with which he was charged, the district court was properly cloaked with subject-matter jurisdiction over this alleged offense. The petition in this matter satisfied the “true and safe rule.”

In determining whether the evidence was sufficient to withstand a motion to dismiss the charge of disorderly conduct, the Court must view the evidence in the light mist favorable to the State and give the State the benefit of every reasonable inference. Under this standard of review, substantial evidence was presented that the juvenile perpetrated an “annoying, disturbing, or alarming act…exceeding the bounds of social toleration normal for” the school through a public disturbance by “engaging in violent conduct” by “throwing a chair toward another student in the school’s cafeteria.” The evidence included that: (1) the juvenile threw a chair at his brother across the cafeteria where other students were present, (2) the juvenile then ran through the school’s hallways, (3) the behavior occurred at a time when other students were able to observe the hallway interaction between the juvenile and the SRO, (4) the juvenile cursed while being searched, (5) other students became involved in yelling and cursing at the SRO, to the point that another student was also handcuffed and arrested, (6) the SRO considered the act of throwing the chair to be conduct that disrupted or disturbed the school, and (7) another school faculty member described the circumstances as a significant safety issue as other students gravitated to the situation.

The Supreme Court only addressed the evidence with regard to the juvenile’s motion to dismiss. As a result, when viewed in the light most favorable to the State, the evidence presented was sufficient to deny a motion to dismiss regarding adjudication for disorderly conduct. Thus, the Court of Appeals decision was vacated.

**Dissent**: Judge Earls issued a lengthy dissent.

The evidence was not sufficient to support an adjudication for disorderly conduct. In order to be sufficient, the evidence, when considered in the light most favorable to the State, must be substantial evidence from which a rational trier of fact could find *beyond a reasonable doubt* that the juvenile *intentionally* caused a public disturbance by engaging in *violent* conduct.

The petition alleged that the juvenile engaged in disorderly conduct by throwing a chair toward another student in the cafeteria. The only evidence specific to the throwing of the chair was the SRO’s testimony and he testified that the juvenile stated that the chair was thrown “at his brother because they were playing or something.” Viewed in the light most favorable to the State, the SRO’s testimony can be fairly said to raise a suspicion that the juvenile engaged in violent conduct. However, based on the evidence presented specifically about throwing the chair, any rational trier of fact could not find beyond a reasonable doubt that the juvenile intentionally threw a chair in a manner that constituted violent conduct in order to cause a public disturbance. The evidence regarding events after the chair was thrown is relevant to the adjudication of resisting a public officer, which was the juvenile engaged in disorderly conduct--intentionally causing a public disturbance by engaging in violent conduct by throwing a chair toward another student in the cafeteria.

<https://appellate.nccourts.org/opinions/?c=1&pdf=384>

## In the Matter of: H.D.H., \_\_\_\_ N.C. \_\_\_\_, No. COA19-490 (January 21, 2020)

Rule(s): When the court enters an order extending juvenile probation under NCGS 7B-2510(c), the court must make written findings of fact supporting the decision to extend probation.

The juvenile was adjudicated undisciplined and later found to have “violated a contempt warning” by failing to abide by the protective supervision order. The juvenile admitted to indirect contempt and was placed on probation as a delinquent juvenile. A motion for review was filed against the juvenile, not alleging any violation, but requesting the court to extend probation to allow for further supervision. The juvenile asked for supervision to be terminated, but the court extended probation, without including written findings or conclusions. The juvenile appealed, arguing that NCGS 7B-2510(c) requires the trial court to make written findings.

The court considered the statute and noted that it requires the court to find that probation extension is necessary either to protect the community or safeguard the welfare of the juvenile. The court then noted that the problem may have arisen due to the use of an outdated form which didn’t provide for a probation extension. A review of the current form revealed that space was provided on the form to make findings. As a result the court determined that the statute requires the trial court to make written findings to support extension of probation. Because there was information provided to the court which would support findings of extension, but the court did not make findings, the case was reversed and remanded for entry of a new order.

<http://appellate.nccourts.org/opinions/?c=2&pdf=38699>

## In the Matter of: V.W.-J., 21-NCCOA-674, (December 7, 2021) (unpublished)

Rules: The court must enter a written dispositional order containing appropriate findings of fact and conclusions of law, and a trial court must consider each of the factors in Section 7B-2501(c) when entering a dispositional order. Additionally, the trial court should mark the box on the dispositional order that correctly reflects the ordered disposition.

Summary: Juvenile contends the trial court failed to make statutorily required findings of fact. On the dispositional order in this case, the trial court checked boxes indicating that it received, considered, and incorporated by reference a predisposition report, a risk assessment, and a needs assessment, but otherwise made no written findings of fact describing its consideration of the section 7B-2501(c) factors, or regarding the juvenile’s circumstances at all. Additionally, the juvenile contends that the trial court erred because it failed to exercise discretion in determining the level of his disposition. Juvenile was adjudicated delinquent of an A1 misdemeanor, a serious offense, and had no known prior delinquency history. The trial court had discretion to order a Level 1 or Level 2 disposition. The court checked the box on the dispositional order indicating it had concluded, “The court is *required* to order a Level 2 disposition.” In circumstances where the trial court has discretion over its disposition but chooses to enter the stricter disposition, the more correct box on the dispositional order states: “The court is required to order either a Level 1 disposition or a Level 2 disposition and is entering a Level 2 disposition.” The court stated that it would have been correct for the court to check the latter box, but determined that in these circumstances, the trial court’s error was purely clerical.

Outcome: Vacated and remanded for a new disposition hearing.

# ADMISSION/PLEA TRANSCRIPT

Rules concerning the validity, admissibility, and preconditions of admissions and plea transcripts.

## State v. Benitez, 2014 N.C. App. LEXIS 1413 (unpublished opinion)

Rule(s): (1) When the juvenile is less than 14 years of age, no in-custody admission or confession resulting from interrogation may be admitted into evidence unless the confession or admission was made in the presence of the juvenile's parent, guardian, custodian, or attorney.

(2) Interprets “guardian” as one that has established legal authority through a court proceeding.

Juvenile defendant signed an incriminating statement. Defendant’s uncle, who the trial court’s order found “was the defendant’s custodian,” was with the defendant he was interrogated and when the defendant gave, reviewed and signed his statement. Defendant appeals from a judgment entered pursuant to a plea agreement sentencing him to life imprisonment with the possibility of parole for first degree murder, but reserving his right to appeal the denial of his motion to suppress his confession. Defendant has also filed a motion for appropriate relief ("MAR") asserting that his trial counsel provided ineffective assistance of counsel by failing to argue that his confession was inadmissible because it was not made in the presence of a statutory person as required by N.C.G.S. § 7B-2101(b) (2013).

The defendant first argued that the trial court erred in denying his motion to suppress the statement because his rights under N.C.G.S. § 7B-2101(b) were violated, which provides: "When the juvenile is less than 14 years of age, no in-custody admission or confession resulting from interrogation may be admitted into evidence unless the confession or admission was made in the presence of the juvenile's parent, guardian, custodian, or attorney. Since the defendant was only 13 years old at the time he gave the statement, that statement is admissible only if the statement was made in the presence of defendant’s “parent, guardian, custodian or attorney.”

In Oglesby, the Supreme Court did not simply reference “legal authority,” but rather narrowed the necessary inquiry to whether the relationship was one “established by legal process.” The Court believed that the Supreme Court’s requirement of “legal process” necessarily means that the individual’s authority was established through a court proceeding. Legal authority held by a guardian, within the meaning of N.C.G.S. § 7B-2101(b), requires authority gained through some legal proceeding and not authority recognized by some government body. The record contains no evidence that defendant's uncle had obtained legal authority over defendant through any legal proceeding of any type. Consequently, the Court found that if trial counsel had argued in support of his motion to suppress that no statutory person was present during defendant's interrogation, the trial court would have been obligated to suppress the statement.

Therefore, the Court reversed the decision of the trial court in denying defendant's suppression order, and we remanded with instructions to set aside defendant's conviction, to allow defendant to withdraw his guilty plea, and for further proceedings thereafter. http://appellate.nccourts.org/opinions/?c=2&pdf=32176

## In the matter of J.R.S., 2013 N.C. App. LEXIS 32 (unpublished opinion)

Rule(s): Before accepting an admission, the trial court must affirmatively satisfy the conditions set forth in N.C.G.S. § 7B-2407(a). This includes informing the juvenile of her right to remain silent, confirming that she was satisfied with her representation, and informing her of the most restrictive disposition.

Juvenile was charged by two petitions with injury to personal property. Following the Judge’s colloquy, the juvenile was adjudicated delinquent and the disposition was transferred to Alamance County, where the juvenile resided. At the disposition hearing, the judge placed the juvenile on 6 months probation and ordered him to pay restitution.

The juvenile appealed arguing that the trial court judge erred in accepting his admission to the charges without first undergoing the full colloquy required by N.C.G.S. § 7B-2407(a). The Court agreed finding that the district court failed to (1) inform the juvenile that he had a right to remain silent; (2) determine if the juvenile was satisfied with his attorney; and (3) to inform the juvenile of the most restrictive disposition on the charge.

The Court of Appeals has held that that a district court’s failure to cover even one of the six enumerated inquiries in N.C.G.S. § 7B-2407(a) when accepting a juvenile’s admission requires a reversal of the adjudication. Accordingly, the Court reversed the adjudication and disposition orders, and remand for proceedings consistent with the opinion.

http://appellate.nccourts.org/opinions/?c=2&pdf=MjAxMy8xMi03NzctMS5wZGY=

## In the matter of C.L.K.C., 2012 N.C. App. LEXIS 927 (unpublished opinion)

Rule(s):

1. Under N.C.G.S. § 7B-2407(c), the factual basis for an admission must include factual allegations related to each essential element of the violation at issue.
2. “[W]hen a trial court plans to impose a disposition level higher than that set out in the [transcript of admission], the juvenile must be given a chance to withdraw his plea ….”

A petition was filed alleging that the juvenile unlawfully, willfully, and feloniously engaged in a sexual act with a victim that was under the age of thirteen years. The petition further alleged a violation of N.C.G.S. § 14-27.4(a)(1), asserting the juvenile committed the delinquent act when he was under the age of sixteen but was at least four years older than the victim. The juvenile admitted to the charge of first degree statutory sex offense “in exchange for…the disposition of probation, specifically to placement in Keys of the Carolinas.” The trial court accepted and signed the juvenile’s admission on October 6, 2011. After the October 6, 2011 hearing, the trial court adjudicated the juvenile delinquent of first degree sex offense of a child and proceeded to the disposition; which was continued until November 8, 2011. The trial court then changed its order, finding it was in the best interest of the juvenile to be placed in a youth development center for a minimum of six months and a maximum of his 21st birthday.

The juvenile appealed arguing the trial court erred by accepting his admission without receiving a proper factual basis to establish all of the elements of the offense as outlined in N.C.G.S. § 7B-2407(c). The Court found that there was no statement or sworn testimony regarding the victim’s age; an element required in N.C.G.S. 1427.4(a)(1), therefore, the trial court could not have made a proper factual determination without such evidence. The State conceded this argument, and the Court agreed with the juvenile and the State.

The juvenile also argued that the trial court erred by accepting the juvenile’s admission pursuant to a plea arrangement that imposed a Level II disposition, and then rejecting his plea arrangement to instead impose a Level III disposition. The Court agreed, finding that under In re D.A.F., 179 N.C. App. 832, 836,635 S.E.2d 509, 511 (2006) (citing In re W.H., 166 N.C. App. 643, 647, 603 S.E.2d 356, 359 (2004), “when a trial court plans to impose a disposition level higher than that set out in the [transcript of admission], the juvenile must be given a chance to withdraw his plea…”

Lastly, the juvenile contended the trial court abused its discretion by imposing a Level III disposition without making sufficient findings of fact to show that it had considered the factors listed in N.C.G.S. 75-2501(c). The Court agreed holding that there were no additional written findings beyond the checkmarks placed beside the pre-printed portions of the order.

Accordingly, the Court vacated the juvenile’s admission of guilt, reversed the trial court’s dispositional order and remanded the matter for a new adjudication and dispositional hearing.

http://appellate.nccourts.org/opinions/?c=2&pdf=MjAxMi8xMi05NC0xLnBkZg

In the matter of M.A.M., 2009 N.C. App. LEXIS 341 (unpublished opinion) Rule(s): Under N.C.G.S. § 7B-2407(a), an admission is invalid if the court fails to inform the juvenile that she has a right to remain silent and that her statements may be used against her, that she has the right to deny the allegations at issue, or that the right to confront witnesses is waived by virtue of admission.

The juvenile was adjudicated delinquent of felonious larceny and felonious breaking and entering following an admission to both crimes.

The juvenile appealed from the adjudication and disposition, arguing that the trial court erred by accepting the admission without conducting the entire dialogue mandated by N.C.G.S. § 7B-2407(a), which requires “(1) Informing the juvenile that the juvenile has a right to remain silent and that any statement the juvenile makes may be used against the juvenile; (2) Determining that the juvenile understands the nature of the charge; (3) Informing the juvenile that the juvenile has a right to deny the allegations; (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; (5) Determining that the juvenile is satisfied with the juvenile's representation; and (6) Informing the juvenile of the most restrictive disposition on the charge.” The Court of Appeals agreed, and found that the trial court failed to address N.C.G.S. § 7B-2407(a) (1), (3), and (4) during the dialogue with the juvenile.

The court reversed the order and remanded the case for a new hearing.

http://appellate.nccourts.org/opinions/?c=2&pdf=MjAwOS8wOC05NjgtMS5wZGY

In the matter of N.S.H., 2009 N.C. App. LEXIS 1858 (unpublished opinion) Rule(s): The requirement that an admission include a factual basis, N.C.G.S. § 7B2407(c), may be satisfied by a stipulation in the juvenile’s statement of the facts.

The juvenile was adjudicated of disturbing the peace, and disposition was entered requiring him to complete 45 hours of community service.

The juvenile appealed, arguing that the trial court (1) lacked subject matter jurisdiction to adjudicate him due to the juvenile court counselor failing to file the petition timely; (2) erred in permitting Judge Davis (and not the initial judge) to preside over the hearing to determine whether the trial court lacked subject matter jurisdiction; and (3) lacked a factual basis to accept his delinquency admission.

Regarding his first argument, the juvenile specifically reasoned that since there was no evidence that the court counselor received an extension of time to file the juvenile complaint, the trial court lacked subject matter jurisdiction. The Court of Appeals disagreed with the first argument, finding that the record indicated that the court counselor received a timely extension to file the complaint (i.e., an additional 15 days granted by the chief court counselor), and that the complaint was filed as a petition timely thereafter.

The Court of Appeals also disagreed with the juvenile’s second argument that only the initial judge had the authority to hear evidence pertaining to the extension since he (i.e., the initial judge) entered the adjudication order and continued disposition. The Court found that as a final disposition had not been entered by the court, Judge Davis had authority to determine whether the trial court had subject matter jurisdiction at the adjudicatory hearing.

For his third argument, the juvenile contended that the court lacked an adequate factual basis to accept his admission pursuant to N.C.G.S. § 7B-2407 because the deputy provided unsworn testimony as the factual basis for the juvenile’s admission. The Court of Appeals disagreed, finding that the trial court had ample sources to provide the court with an adequate factual basis to accept the juvenile’s admission (e.g., the deputy’s unsworn testimony; stipulation to the deputy’s testimony; the opportunity to cross examine the deputy that was declined by juvenile’s counsel; and the juvenile’s waiver of a formal reading). The Court found that the juvenile’s stipulation complied with N.C.G.S. § 7B-2407 as the court could accept an admission based upon a statement of facts by the juvenile’s attorney.

The Court affirmed the order adjudicating the juvenile delinquent.

http://appellate.nccourts.org/opinions/?c=2&pdf=MjAwOS8wOS0zNzEtMS5wZGY

## In the matter of D.C., 191 N.C. App. 246, 662 S.E.2d 570 (2008), (2008 N.C. App. LEXIS 1189)

Rule(s): Under N.C.G.S. § 7B-2407(c), an admission must include some factual basis for admitting a plea; this may include the prosecutor’s statement of facts, a written statement from the juvenile, or sworn testimony, but does not include the juvenile petition.

The juvenile admitted to one count of felony larceny and one count of attempted felony larceny.

The juvenile appealed, arguing that the State failed to provide a factual basis pursuant to N.C.G.S. § 7B-2407(c). The Court of Appeals agreed, finding that the prosecutor’s statement of facts did not contain any evidence that the truck was worth more than $1000, an essential element of the offense of felony larceny. http://appellate.nccourts.org/opinions/?c=2&pdf=MjAwOC8wNy0xMTg2LTEucGR m

In the matter of P.L.N., 2008 N.C. App. LEXIS 1364 (unpublished opinion) Rule(s): Under N.C.G.S. § 7B-2407(a), an admission is invalid if the court fails to inform the juvenile of her right to remain silent, her right to deny the allegations at issue, or the maximum disposition of the charge.

The juvenile admitted to one count of second-degree kidnapping.

The juvenile appealed, arguing that the trial court had failed to conduct the full inquiry at admission pursuant to N.C.G.S. § 7B-2407. The Court of Appeals agreed, finding that the trial court failed to inform the juvenile of the juvenile’s right to remain silent, the juvenile’s right to deny the allegations, the waiver of the juvenile’s right to be confronted by witnesses against the juvenile, and informing the juvenile of the most restrictive disposition on the charge.

http://appellate.nccourts.org/opinions/?c=2&pdf=MjAwOC8wNy0xNDE0LTEucG Rm

## In the matter of A.W., 182 N.C. App. 159, 641 S.E.2d 354 (2007), 2007 N.C. App. LEXIS 473

Rule(s): If the court fails to satisfy each of the conditions set forth in § 7B-2407, the admission does not constitute a filly formed choice, and the admission is invalid. This includes notifying the juvenile, at trial, of the right against self-incrimination and the right to deny allegations.

The juvenile admitted to possession of marijuana with intent to sell or deliver.

The juvenile appealed, but filed an Anders brief, stating that appellate counsel was unable to identify any issue with sufficient merit to support a meaningful argument for relief on appeal. The Court Appeals found that the trial court failed to satisfy completely the requirements of N.C.G.S. § 7B-2407. The trial court failed to notify the juvenile of his right against self-incrimination or of his right to deny the allegations. The Court noted that the written transcript of admission was complete, but held that under In re T.E.F., 359 N.C. 570 (2005) the trial court is required to ask the juvenile each of the questions listed under § 7B-2407 to asses the juvenile’s understanding of each question.

http://appellate.nccourts.org/opinions/?c=2&pdf=MjAwNy8wNi00MTYtMS5wZGY

In the matter of D.A.F., 635 S.E.2d 509 (2006), 2006 N.C. App. LEXIS 2154 Rule(s): If a juvenile defendant is misinformed as to the maximum commitment for an offense, the juvenile’s admission is not made knowingly and voluntarily.

The juvenile admitted to one count of first-degree sex offense. The transcript of admission presented to the court and signed by the juvenile indicated the most restrictive disposition facing the juvenile would be commitment to a youth development center for a minimum of six months and a maximum of the juvenile’s 19th birthday. After the juvenile’s oral admission to the court, the court informed the juvenile that the maximum the juvenile could be committed would be until the juvenile’s 21st birthday.

The juvenile appealed, arguing that the maximum term of commitment was not known to the juvenile at the time the transcript was signed. The Court of Appeals agreed, finding that in In re W.H., 166 N.C. App. 643, 603 S.E.2d 356 (2004), the Court held that a juvenile must be given a chance to withdraw the plea if the admission was not made knowingly and voluntarily. The Court found that because the juvenile’s admission was based on knowledge that the maximum commitment the juvenile was facing was the juvenile’s 19th, not 21st, birthday, the case should be reversed and remanded.

http://appellate.nccourts.org/opinions/?c=2&pdf=MjAwNi8wNi04My0xLnBkZg==

## In the matter of W.H., 166 N.C. App. 643, 603 S.E.2d 356 (2004), 2004 N.C. App. LEXIS 1959

Rule(s): A trial court may not order a disposition level higher than the level reflected on a juvenile’s admission.

The juvenile admitted to one count of misdemeanor assault inflicting serious injury. The juvenile also admitted to a violation of probation, but the admission to the violation was not noted on the transcript of admission. The transcript reflected that the most restrictive disposition the juvenile could receive was a Level 2 disposition. During the adjudication hearing, the judge informed the juvenile that his “ultimate power” was the ability “to send people to training school.” At the disposition hearing, the court ordered a Level 3 disposition based on both the adjudication of delinquency and the probation violation.

The juvenile appealed, arguing that the court could not order a Level 3 disposition when the transcript reflected a Level 2 disposition. The Court of Appeals agreed, finding that because the judge informed the juvenile of a possible disposition other than what was stated on the transcript, the admission was not knowing and voluntary as is necessary for an admission of responsibility.

In the matter of T.E.F., 167 N.C. App. 1, 604 S.E.2d 348, 2004 N.C. App. LEXIS 2060, affirmed by 359 N.C. 570, 614 S.E.2d 296 (2005), 2005 N.C. LEXIS 642

Rule(s): If the court fails to satisfy each of the conditions set forth in § 7B-2407, the admission does not constitute a filly formed choice, and the admission is invalid. This includes asking the juvenile whether she was satisfied with her representation.

The juvenile admitted to three counts of robbery with a dangerous weapon and one count of assault with a deadly weapon. During the recitation of the plea, the juvenile was not asked if he was satisfied with his representation. The juvenile was adjudicated and sent to a youth development center.

The juvenile appealed, arguing that the trial court's failing to ask the question amounted to less than a "fully formed choice" being made by the juvenile as to his admission. The Court of Appeals agreed with the juvenile (with a dissent arguing that a "totality of the circumstances" approach should be used in juvenile cases to determine whether or not the juvenile made a fully formed choice).

The Supreme Court agreed with the Court of Appeals, holding that the statutory language is mandatory and that the steps during the recitation of the plea are "paramount and necessary in accepting a juvenile's admission as to guilt during an adjudicatory hearing." Further, the Supreme Court reviewed the adjudicatory statute (§ 7B-2405) finding that "it is clear that our legislature intended a procedure more protective and careful than that afforded adults to ensure a fully informed choice and voluntary decision by all juveniles." Finally, the Supreme Court cited prior rulings that "our courts have consistently recognized that the State has a greater duty to protect the rights of a respondent in a juvenile proceeding rather than in a criminal prosecution," and that "we refuse to blur the distinction between juvenile proceedings and adult criminal proceedings, and we reemphasize the fact that increased care must be taken to ensure complete understanding by juveniles regarding the consequences of admitting their guilt."

## In the Matter of J.B., \_\_\_\_ N.C. App. \_\_\_\_ , No. 18-1036, (August 20, 2019)

Rule(s):

1. The trial court erred in denying the motion to dismiss as a matter of law when the State presented no evidence that the juvenile wished for the video to be made or that he was the one who distributed it on a petition alleging second-degree sexual exploitation of a minor.
2. The trial court erred in denying the motion to dismiss the petition alleging first-degree forcible sexual offense when the State failed to prove penetration, the central element of this crime.
3. The trial court erred when it accepted the juvenile’s admission to attempted larceny when there was not a factual basis to support the juvenile’s admission of guilt, as required by §7B-2407(c).
4. The out of court statements offered by the State were admitted in violation of the juvenile’s constitutional right to confront and cross-examine witnesses and the error was prejudicial.
5. Despite the dispositions being vacated, the court addressed the following disposition (sentencing) errors –
   1. The court must provide adequate written reasons in the Disposition and Commitment Order to support its findings using the factors required by §7B-2501(c).
   2. The court must find compelling reasons to deny release to the juvenile pending appeal when commitment to YDC is ordered according to §7B-2605.

This case arises from sexual misconduct by the juvenile toward a friend (Z) who was attending a sleepover at his house with the juvenile and two of the juvenile’s cousins. The evidence tended to show that sometime during the night, Z woke up to find his pants pulled down and the juvenile behind him. The friend believed someone was holding his legs. Z testified that he “felt [the juvenile’s] privates on his butt” but that he did not feel them “go into his butt.” One of the cousins filmed much of the incident. In the video the juvenile can be heard saying “do not record this.” The video ended up on Facebook.

At the hearing, the State presented statements to the police from the juvenile’s cousins, neither of whom testified at trial. The juvenile’s motions to dismiss at the end of the state’s evidence and at the close of all evidence was denied and the court adjudicated the juvenile responsible for first-degree forcible sexual offense and second-degree exploitation of a minor. The court continued disposition until the juvenile could be assessed by Children’s Hope Alliance (CHA).

At the disposition hearing, the judge was presented with the CHA report indicating that the juvenile’s risk for sexually harmful behaviors were in the low to low-moderate range. The court counselor recommended a level 2 disposition.

Prior to the disposition, the juvenile admitted to an attempted larceny of a bicycle. After considering the juvenile’s assessments and his admission to attempted larceny, the trial court entered a level 3 order, committing the juvenile to a YDC indefinitely. The juvenile appealed and requested his release pending disposition of the appeal. A subsequent hearing was held on the question of his release and the trial court entered an order concluding the juvenile would remain in YDC.

Issue 1 (Second degree sexual exploitation of a minor):

The court found that the trial court erred as a matter of law due to the evidence being insufficient to support the charge. The charge requires the defendant take an active role in the production or distribution of child pornography. The court found that the state presented no evidence that the juvenile wished for the video to be made or that he was the one who distributed it. In fact, the court concluded that it was clear that the juvenile did not want to be filmed, as he explicitly told the cousin to stop recording. The court also rejected the state’s contention that there was a common plan or purpose of humiliating the victim, stating there was nothing in the record to support that contention. As a result, the court vacated the adjudication.

Issue 2 (First degree Forcible Sexual Offense):

An essential element of the charge is that a “sexual act” must take place. A “sexual act” is defined by statute (§14-27.20(5)). In order to have a sexual act, there must be “penetration, however slight by any object into the genital or anal opening of another person’s body.” (§14-27.20(4)).

In this case, the victim’s statement is not ambiguous. Z specifically states in his testimony that penetration did not occur. To support its contention that penetration occurred, the state relies upon the video. The court found that at most the video showed no more than “sexual contact” which is sexual battery (§14-27.33)). Responding to the dissent, the majority asserted that circumstantial evidence cannot be used to overcome a victim’s direct testimony that no penetration occurred. As a result, the state has failed to prove penetration, the central element of this crime. The court ruled that the trial court erred in denying the juvenile’s motion to dismiss and vacated the adjudication.

Issue 3 (Attempted Larceny Admission):

There must be a sufficient factual basis for a juvenile’s admission of guilt before accepting the admission and the factual basis may be based on statements presented by the attorneys (§7B-2407(c)). The facts presented do not support the juvenile’s admission of guilt.

The facts presented indicated a bicycle was stolen by two black males (the juvenile is a black male). The juvenile was found by officers biking down the road with two others who also matched the description. The juvenile was described by the prosecutor as “kind of off on his own” from the other two. Officers asked all the youth to stop and of the three, only the juvenile stopped. He told the officers that he had not stolen the bike, that he knew who had, and admitted to having bolt cutters in his back pack. The juvenile’s attorney argued that the juvenile had loaned his book bag to someone, who then placed the bolt cutters inside it and left to “do their deed.” The state presented no evidence as to where or from whom the bike was recovered.

Because the state failed to present sufficient evidence that the juvenile took affirmative steps, but did not succeed, to take another’s property with no intent to return it, (elements of attempted larceny) there was insufficient evidence upon which the trial court should have accepted the juvenile’s admission of guilt. The adjudication for attempted larceny should be vacated.

Issue 4 (Right of Confrontation):

The state offered out-of-court statements from the two cousins which tended to support the charges against the juvenile. Errors affecting constitutional rights are presumed to be prejudicial unless the state can prove that the error was harmless beyond a reasonable doubt. The state’s contention that the evidence was overwhelming (the video and the victim’s testimony) and the numerous references to the cousin’s statements in the closing cannot overcome the fact that the evidence was ambiguous at best and that this additional evidence of penetration was not prejudicial. Therefore, the state failed to prove these statements were harmless beyond a reasonable doubt.

Issue 5 (a) (Level 3 commitment):

The trial court failed to adequately support the statutorily required factors for committing a juvenile to YDC as required by §7B-2501(c).

The assessment provided by CHA found the juvenile’s risk factors for sexually harmful behaviors were in the low to low-moderate range. The juvenile’s evaluation from the court counselor indicated he “is a low/moderate risk for reoffending” and recommended a level 2 disposition. The recommended terms that were recommended as part of the juvenile’s probation included therapy, curfew, no sleepovers, monitoring of electronic devices, not being used as a babysitter, maintain passing grades at school and no contact with the victim. The report from CHA indicated the juvenile had a stable home life and that his family relationships are close and supportive. The court found that when taking into account the evaluations by the court counselor and CHA and their recommendations, the trial court’s failure to explain its reasoning and basis for some findings that conflicted with the evidence presented did not satisfy the requirements of §7B-2501(c).

Issue 5 (b) (Confinement pending appeal):

§7B-2605 requires the release of the juvenile, with or without conditions, should issue in every case unless the court orders otherwise *and* if the court enters a temporary order affecting the custody or placement of the juvenile the court *must* find compelling reasons and state the reasons in writing.

The trial court failed to list anything under “[c]ompelling reasons release is denied” on the Appellate Entries form and in a separate order with Findings of Facts and Conclusions of Law the trial court’s supporting reasons were phrased as contentions of defense counsel and the state. The trial court did not list independent compelling reasons and as such violated §7B-2605.

The court concluded that it was especially disturbing that the trial court ignored the requirements of the statute thus causing the juvenile to be held in detention for a period of 17 months when his convictions were improper.

**Dissent**:

The dissent would have affirmed all of the trial court’s rulings and orders. The dissent asserts that while there was strong evidence suggesting the juvenile did not commit these offenses, it is the trial judge in juvenile delinquency proceedings who resolves any conflicts in the evidence, not the Court of Appeals. Additionally, when the evidence is viewed in the light most favorable to the state, the dissent would have found that the state met its burden on each of the adjudications.

The dissent also found that the recitation of the facts was sufficient to show that the juvenile directly participated, or at least acted in concert, in the commission of the attempted theft of the bike.

With regard to the level 3 order, the dissent would have found that the trial judge’s findings of fact were sufficient and “appropriate” under §7B-2501 and despite the fact that the trial court *could* have imposed a level 2 disposition, its decision to impose a level 3 disposition was not unreasonable.

While confinement pending appeal requires compelling reasons, the court need not be verbose. The dissent concluded that the trial court’s order sufficiently noted compelling reasons for continued confinement pending his appeal.

<http://appellate.nccourts.org/opinions/?c=2&pdf=37905>

## In re W.M.C.M., \_\_\_\_ N.C. App. \_\_\_\_ , No. COA20-164, (April 20, 2021)

<https://ncjuveniledefender.files.wordpress.com/2021/05/in-re-wmcm.pdf> - Level 3 commitment order affirmed (with a dissent) .

Rule(s):

1. The statute does not require that the exact statutory language be used when accepting an admission.
2. During an admission, when the court asks the juvenile questions from Form AOC-J-410 nearly verbatim, and the trial court gives a broader explanation of his confrontation rights than the exact language in the statute, there is no error, prejudice, or violation of the youth’s confrontation rights and an admission is entered into knowing and voluntary.
3. The trial court provided sufficient findings of fact to support its decision to commit the youth to a Youth Development Center (YDC), as was provided by statute.

The youth 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 the youth the questions on Form AOC-J-410 nearly verbatim, with additional clarification questions regarding the youth’s ability to confront witnesses if he were to have an adjudicatory trial. Specifically, the court asked “[y]ou also understand you have the right to ask witnesses questions during a hearing?” The judge accepted the youth’s admission and found the youth responsible. In the adjudication order 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 the youth to the YDC and detailed his delinquency, history of criminal acts, and violent and aggressive behavior in the Disposition and Commitment order.

The juvenile argued that the adjudication should be reversed because the trial court did not follow the exact language of §7B-2407, specifically as to the question regarding confrontation of witnesses. The Court of Appeals found that the trial court addressed all six prongs required by §7B-2407(a), explicitly clarified the youth’s understanding, and fully informed him of his rights. The youth then expressly agreed to take the plea offer and admit responsibility and he signed the Form AOC-J-410. The Court of Appeals determined that the youth’s rights were protected by the court and his admission was knowing and voluntary.

The opinion also found that the trial court is not required to use the AOC form Adjudication Order. The court’s order met all of the requirements of §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.”

With regard to the disposition order committing the youth to a YDC, the trial court made findings of fact as required by §7B-2501(c), including naming the offenses that were admitted to, his extensive delinquency history, increasing violent behaviors, and refusal to comply with services and placements. The trial court also relied on many reports from organizations that had worked with the youth in the past. There was no abuse of discretion at disposition.

Dissent (Judge Murphy)

Judge Murphy dissented and would have found that (1) the trial court’s colloquy with the youth during the adjudication hearing was inadequate; and (2) the trial court’s adjudication order was insufficient. He would have reversed the trial court’s orders and remanded for further proceedings.

Judge Murphy argues that the trial court did not comply with the requirements of §7B-2407(a)(4); specifically, the trial court did not ask the youth whether he understood that by his “admissions [he] waive[d] [his] right to be confronted by the witnesses against [him.]” §7B-2407(a)(4) (2019) (emphasis added). Instead, the trial court asked the youth whether he understood he had “the right to ask witnesses questions during a hearing[.]” Judge Murphy contends that this is not what *In re T.E.F.* (the precedent case relied upon for admissions) requires. He contends that “[t]he right to confront the witnesses against oneself is a greater right than to ask questions of the witnesses the State chooses to call.”

With regard to the sufficiency of the adjudication order, Judge Murphy argues that the trial court failed to state the precise allegations the youth was found responsible for, and as such would have found that the findings were insufficient.

# ADULT RIGHTS AFFORDED TO JUVENILES

Rules concerning incorporation of adult rights and protections into juvenile law by statute or common law.

## In the matter of A.W., 2011 N.C. App. LEXIS 215

Rule(s):

1. For the charge of a second-degree sexual offense, the State must provide evidence that the victim was “mentally disabled, mentally incapacitated, or physically helpless.”
2. For the charge of indecent liberties between children, the element of “purpose to arouse or gratify his sexual desires” may be evidenced by the following: the juvenile’s age and maturity, the method used to engage the victim in the act; and evidence of prior sexual activity with another child.
3. Because an incident’s date is not an element of the charge of indecent liberties between children, slight discrepancies in dates do not bar adjudication.
4. Preventing a juvenile’s counsel from making a closing argument constitutes denial of the juvenile’s right to counsel.

The juvenile was adjudicated of second-degree sexual offense, indecent liberties between children, and breaking and entering. A Level 3 disposition was entered.

Juvenile appealed, arguing that the State presented insufficient evidence that he committed second-degree sexual offense and indecent liberties between children. Because the juvenile failed to challenge the sufficiency of the evidence at the close of all of the evidence (which would bar him from challenging the sufficiency of the evidence on appeal), the juvenile argued that there was ineffective assistance of counsel. Alternatively, the juvenile requested review pursuant to Rule 2 of the North Carolina Rules of Appellate Procedure, which allows an appellate court to modify the provisions of the rules of appellate procedure to preclude “manifest injustice.”

Finding that there was insufficient evidence to support the adjudication, the Court reviewed the case pursuant to Rule 2. In reviewing the case, the Court of Appeals held that the evidence was insufficient to prove the elements of second degree sexual offense, as there was no evidence that the victim was “mentally disabled, mentally incapacitated, or physically helpless.” Accordingly, the Court vacated the second-degree sexual offense adjudication, and remanded for dismissal.

Regarding the adjudication for indecent liberties between children, the Court held that there was sufficient evidence as all elements of the offense were met, including “with a purpose to arouse or gratify his sexual desires.” Specifically, the Court held that the juvenile’s age and maturity, including the age disparity between the juvenile and victim (13-year old juvenile and 3-year old victim); the method he used to engage the victim in the act (by telling him his private parts tasted like candy); and evidence of prior sexual activity with another child a few months before the incident in question indicated that he acted for the purpose to arouse or gratify sexual desires.

Regarding an alternative argument that the indecent liberties between children should have been dismissed due to a discrepancy between the date upon which the offense was alleged to have occurred, the Court held that the date was not an element of the crime, and therefore not grounds for dismissal (particularly where the discrepancy was slight and did not affect the juvenile’s ability to provide a defense).

The juvenile’s last argument was that he was entitled to a new adjudicatory hearing on the charge of indecent liberties between children because the trial court denied his counsel the opportunity to make a closing argument. The Court agreed, citing cases that held that denial to make a closing argument was a denial of the right to have assistance of counsel. Consequently, the Court vacated the adjudication finding the juvenile delinquent of incident liberties between children and remanded the case for a new adjudication hearing on that charge and the felonious breaking and entering charge.

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Y

## In re D.A.H., \_\_\_\_ N.C. App. \_\_\_\_ , No. COA20-212 (filed April 20, 2021)

<https://appellate.nccourts.org/opinions/?c=2&pdf=39944> - Trial court relied on an improper legal test in determining that the juvenile was not entitled to *Miranda* warnings, reversed and remanded for further proceedings.

Rule(s):

1. School interrogations are unique in determining whether or not a student is in a custodial situation requiring *Miranda* warnings.
2. No single factor is controlling, and the inquiry is whether the totality of the circumstances surrounding the questioning constitute a custodial interrogation.
3. The proper legal standard that should be used in analyzing the factors in determining whether a youth was subjected to a custodial interrogation is objective, not subjective.

Facts:

A middle school student was found with marijuana on the school bus. After questioning from the principal and school resource officer (SRO), the student said that he had arranged to buy marijuana from another student, Deacon, that morning. Deacon was absent from school the following two days. When he returned to school, he was called to the principal’s office, and both the principal and the SRO were present while the principal questioned Deacon. During testimony the SRO gave three slightly different versions of what happened during Deacon’s questioning. Eventually Deacon stated that he had sold the other student marijuana. Deacon’s guardian was not contacted until after Deacon’s confession, and he then repeated his statement in her presence. At no point was Deacon read his *Miranda* rights, told he did not have to answer questions, or that he was free to leave. A petition was filed against Deacon alleging he had sold and delivered a schedule VI substance (marijuana). Deacon filed a motion to suppress his statement arguing that his statements to the principal and SRO were inadmissible due to a violation of his *Miranda* rights. The trial court heard the motion and denied the motion to suppress concluding that Deacon was not entitled to *Miranda* warnings because the meeting with the principal was not a custodial interrogation. After an adjudicatory hearing, Deacon was found responsible for the sale and delivery of marijuana.

Opinion

In addition to traditional *Miranda* rights afforded to youth in custodial interrogations, NC has provided additional statutory protections for youth who face custodial interrogations (§ 7B-2101(a)(1)–(4) (2019)) and even greater protections for youth under 16 years of age (§ 7B-2101(b)). However, these protections are only triggered when the youth is subjected to a custodial interrogation which typically is initiated by law enforcement after a person has been taken into custody or otherwise been deprived of his/her freedom of action.

Questioning youth in the context of school presents unique *Miranda* considerations, in part because students inherently shed some of their freedom when they enter the school. A child is only under custodial interrogation in school when that child is subjected to additional restraints beyond those generally imposed during school.

However, 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 during questioning by school officials and does not participate in the questioning, or participates in a limited way, may qualify as a custodial interrogation requiring *Miranda* warnings. The Court has found that the presence of a SRO can create a coercive environment that goes beyond the restraints generally imposed during school and that a reasonable student would not readily believe s/he is free to leave.

Presence of a SRO or other law enforcement when a student is being interrogated weighs heavily in the determination of whether or not an encounter is a custodial interrogation, but it is not dispositive. All remaining *Miranda* factors must be considered in determining whether or not the statement a student makes is the product of a custodial interrogation. The remaining factors the court considers most relevant to address custody include:

1. traditional indicia of arrest;
2. location of the interview;
3. length of the interview;
4. the student’s age;
5. what the student is told about the interview;
6. people present during the interview; and
7. purposes of the questioning.

When determining whether the encounter constitutes an interrogation in the school setting, the court identified the following factors as most relevant:

1. the nature of the questions asked (interrogative or mandatory);
2. willingness of the juvenile’s responses; and
3. the extent of the SRO’s involvement.

The court noted that as with the reasonable adult standard, no single factor is controlling in determining whether or not the statements made by the youth are a product of a custodial interrogation. The inquiry is whether the totality of the circumstances surrounding the questioning add up to custody.

The court applied the above factors to the facts in its analysis of Deacon’s case and determined that no reasonable 13-year-old would have felt free to leave, concluding that Deacon was in custody. With regard to whether or not Deacon was interrogated, the court determined that Deacon was subjected to interrogation due to the nature of the questions asked, length of the interview, extent of the SRO’s involvement, and the difference in treatment in questioning the first student who was questioned regarding the marijuana.

The court also noted that the trial court applied the wrong legal standard in its analysis of the issue. The court noted that the trial court’s decision to deny the motion to suppress was based on assumed familiarity between the student and the SRO. The correct *Miranda* analysis is objective and not subjective in nature. The focus is whether a reasonable 13-year-old would have felt free to end the interrogation and leave under the circumstances. Therefore, the trial court erred in concluding that Deacon’s confession was not the product of a custodial interrogation and in denying the motion to suppress Deacon’s confession. Reversed and remanded.

# AFFRAY

Rules concerning juveniles fighting in public.

## In the matter of M.K.M., 153 N.C. App. 299, 569 S.E.2d 704 (2002), 2002 N.C. App. LEXIS 1130, affirmed by In re May, 357 N.C. 423, 584 S.E.2d 271 (2003), 2003 N.C. LEXIS 833

Rule(s):

1. To satisfy the public-place element of affray, a location must be either be a place considered public by nature of its use or intended use, or a private place close enough to public thoroughfares that persons traveling see or hear the fighting.
2. When a location is not public by nature of its use or intended use, evidence must be produced as to whether passerby could have observed the incident.

The juvenile was adjudicated delinquent for simple affray. The facts indicated that the juvenile did engage in a fight with another juvenile on the front grounds of a group home.

The juvenile appealed, arguing that the location of the fight did not satisfy the element of a "public place" under the common-law definition of affray. The Court of Appeals reversed the district court ruling, but was appealed to the North Carolina Supreme Court due to a divided panel.

The Supreme Court affirmed the Court of Appeals ruling, stating that a "public place" must either be a place considered public by nature of its use or intended use, or a private place close enough to public thoroughfares that persons traveling see or hear the fighting. The Court found that the State failed to prove this element beyond a reasonable doubt, as no particular evidence was introduced showing whether or not passers-by could observe the fight. In addition, the Court found that the State also failed to prove that the fight caused "terror to the people" since the four individuals who observed the fight were members or employees of the group home, rather than public persons passing by.

# APPEALS

Rules concerning appellate procedure and the scope of appellate review.

## In the Matter of B.B., No. COA18-428; Filed: 5 February 2019

Rule(s):

(1) An appeal is moot once the terms of the disposition have been completed.

The juvenile appealed a disposition order committing him to a youth development center for six months. The Court dismissed the appeal as moot due the fact that the “subject matter of the litigation had ceased to exist” once the juvenile turned 18 during the pendency of his appeal and had completed the terms of his disposition. As a result, the Court did not address the merits of the appeal.

<https://appellate.nccourts.org/opinions/?c=2&pdf=37624>

## In re J.F., 766 S.E.2d 341; 2014 N.C. App. LEXIS 1143

Rule(s): An appeal from a trial court order stays all further proceedings in the court below upon the judgment appealed from, or upon the matter in question.

The trial court adjudicated the juvenile delinquent on two counts of firstdegree sexual offense and two counts of crime against nature. On appeal, the juvenile first argued that the trial court erred in denying his motion to dismiss on the ground that the petitions were defective. Specifically, the juvenile contends that “the petitions [did not] give him enough actual notice for the crimes he is alleged to have committed, and whether it was during one setting or one period of time or more, or one or two or more acts of fellatio.” In State v. Edwards, the Court found that it is not necessary to specify in the petition which particular sexual act was committed. Similarly, a petition charging a crime against nature involving a juvenile victim is sufficient if it states that the “defendant did unlawfully, willfully and feloniously commit the infamous crime against nature with a particular man, woman or beast” and further alleges the age of the victim or otherwise indicates that the victim was a minor. Applying the precedents of State v. Edwards and State v. O’Keefe regarding the necessary specificity of a petition, the Court held that the four petitions in the case were sufficient to satisfy the applicable statutory and constitutional requirements.

The juvenile also asserted that even if each petition is sufficient standing alone, they are defective when viewed together because “there is no specification if one or two acts of fellatio are alleged,” and therefore the petitions “did not give [the juvenile] enough actual notice for the crimes he is alleged to have committed.” The Court rejected this argument because it is precluded by its case law, holding that when pleading these sex offenses, the State need not identify the particular sex acts involved or describe the manner in which they were performed.

Next the juvenile contended that the two petitions alleging that the victim performed fellatio on the juvenile are defective because the victim “was the actor” and therefore the petitions do not allege a crime by the juvenile. The statute defining first-degree sexual offense does not require that the accused perform the sexual act on the victim, but rather that he “engage[] in a sexual act with” the victim. N.C.G.S. § 14-27.4(a) (2013). Moreover, the Court found that the statute under which the juvenile was charged, does not require that the sex acts involve force or be against the will of the victim; instead, the statute requires only that the victim is under 13 years of age and there is a sufficient age differential between the accused and the victim. Our appellate courts repeatedly have upheld crime against nature adjudications in which the alleged victim performed fellatio on the accused. Accordingly, the Court rejected the juvenile’s arguments and held that the petitions were not defective.

The juvenile then argues that the State failed to present evidence of “sexual purpose” with respect to the first-degree sexual offense and crime against nature charges. This “sexual purpose” language comes from the indecent liberties between children statute, which requires that the sex act be “for the purpose of arousing or gratifying sexual desire.” N.C.G.S. § 14-202.2(a)(2) (2013). Applying the reasoning of In re R.L.C., 361 N.C. at 294, 643 S.E.2d at 924 here, the Court held that neither the first-degree sexual offense statute nor the crime against nature statute contains a sexual purpose requirement. Simply put, the Court must give effect to each of the statutes as written; [they] do not have the power to add a sexual purpose element to an unambiguous criminal statute that does not contain one. Accordingly, the Court rejected the argument.

The juvenile next argued that the State failed to prove that penetration occurred, contending that penetration is an essential element of both first-degree sexual offense and crime against nature. Because there was no direct evidence of penetration and insufficient evidence to infer penetration, the State failed to meet its evidentiary burden. As a result, the Court reversed the crime against nature adjudications.

Finally, the Court’s decision to reverse the two crime against nature adjudications compelled the Court to vacate and remand the disposition order. But, the Court determined that they would have been required to vacate and remand that order in any event, because the trial court lacked jurisdiction over the disposition proceeding. As a general matter, an appeal from a trial court order “stays all further proceedings in the court below upon the judgment appealed from, or upon the matter embraced therein.” N.C.G.S. § 1-294 (2013). The trial court entered its adjudication order on 14 May 2013. No disposition was made within 60 days, and the juvenile filed notice of appeal from the adjudication order under section 7B-2602 on 15 July 2013. The court later held a disposition hearing on 23 January 2014. As a result of the pending appeal, the trial court had no jurisdiction to conduct that disposition hearing.

Accordingly, the Court affirmed the trial court’s adjudication order on the two counts of first-degree sexual offense; reversed the trial court’s adjudication order on the two counts of crime against nature; and vacated the trial court’s disposition order and remand for a new disposition consistent with this opinion.

http://appellate.nccourts.org/opinions/?c=2&pdf=32002

## In the matter of A.B.D., 2013 N.C. App. LEXIS 1198 (unpublished opinion)

Rule(s):

1. Where the juvenile fails to object to evidence as hearsay, the grounds for appeal is barred.
2. When video recording of a victim’s forensic interview adds no facts that were not referred to at trial, but merely clarifies testimony to add weight or credibility, the recording constitutes a hearsay exception under North Carolina Rule 801.

Three petitions were filed in July 2012 alleging that the juvenile committed indecent liberties between children, first-degree sexual offense and crime against nature. The juvenile court entered an order for secure custody whereby the juvenile was placed in a detention facility, then released placed on house arrest. At the adjudication hearing, the victim testified that the juvenile “took me in the closet and he pulled his pants down and my pants down and then he took his thing and put – I poop at.” A forensic interviewer subsequently testified about her interview with the victim. The forensic interviewer brought a video recording of the interview to the hearing. The juvenile objected to admission of the recording on chain of custody grounds. The record reveals that at the conclusion of the voir dire, the juvenile’s counsel “renew[ed] my chain of custody objection,” which the trial court overruled.

The State moved to introduce the recording, and the trial court asked the forensic interviewer several questions about the recording including, “How do I know that that video, that disk that you’re looking at there is the video that you copied?” The forensic interviewer assured the trial court that she had reviewed the disk prior to the hearing. The juvenile’s counsel again renewed her objection, which the trial court noted before admitting and playing the recording. At the close of the adjudication hearing, the juvenile court dismissed the charge of indecent liberties between children, but found that the juvenile committed the offenses of crime against nature and first-degree sexual offense. The trial court ordered a Level 2 disposition and placed the juvenile on probation for twelve months.

The juvenile appealed arguing that the trial court erred in admitting the video recording of the interview between the victim and the forensic interviewer. Specifically, the juvenile contended that the recording was inadmissible hearsay. The Court concluded that the juvenile failed to preserve his right to appellate review of the issue as he did not object to the recording on hearsay grounds. Further, the juvenile did not “specifically and distinctly” argue plain error thus waiving any appellate review. However the Court elected in its discretion to review for plain error pursuant to Rule 2 of the Rules of Appellate Procedure.

The juvenile argued that the recording contained inadmissible hearsay without which there was no evidence of penetration, an essential element of firstdegree sexual offense. The juvenile asserted that the recording did not fall into the hearsay exception specified in the Rules of Evidence, Rule 803(4), as a statement made for purposes of medical diagnosis or treatment. The Court did not address the juvenile’s contention on the point, finding that the recording fell into another hearsay exception as a prior consistent statement, Rule 801. The Court determined that the recording did not add “facts not referred to in [the victim’s] trial testimony[,]” but rather, simply clarifies her testimony in more explicit language than she used while on the stand, so as to “add weight or credibility to [her] testimony.”

The recording was thus admissible for corroborative non-hearsay purposes. Thus, the trial court’s order adjudicating the juvenile delinquent was affirmed.

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## In the matter of G.C., 2013 N.C. App. LEXIS 1203

Rule(s):

1. Under N.C.G.S. § 7B-2605, to deny the release of a juvenile whose appeal is pending, the court must provide compelling reasons in writing.
2. In some circumstances, when an initial dispositional order that does not comply with N.C.G.S. § 7B-2512 for failure to state “appropriate findings of fact and conclusions of law,” the failure may be remedied by a later order that does include such findings and conclusions.
3. Holding adjudicatory and dispositional hearings scheduled separately from a transfer hearing is not necessary as long as the juvenile’s counsel is given opportunity to make the juvenile’s case as she normally would.

In January 2012 two petitions were filed alleging the juvenile committed two counts of first-degree sexual offense and two counts of indecent liberties between children. Counsel was assigned to the juvenile and an order was entered to conduct a probable cause hearing in March 2012. The victim, the juvenile’s step-father, a Fayetteville Police Department detective, a forensic interviewer, a pediatrician and the victim’s clinical social worker and psychotherapist testified during the hearing. The juvenile did not testify during the proceedings. After hearing the evidence, the trial court entered an order finding probable cause to believe the juvenile committed first degree sexual offense. The judge also issued a Juvenile Adjudication Order, adjudicating the juvenile delinquent for violating N.C.G.S. § 14-202.2 (2011) concerning indecent liberties between children.

A transfer hearing was held in September 2012 to determine whether the case should be removed to superior court. The district court denied the motion and retained jurisdiction in the case and then immediately began the disposition proceedings. The trial court placed the juvenile in the custody of the Youth Development Center for a period of not less than six months, nor greater than his 21st birthday.

The juvenile appealed first requesting a writ of certiorari requesting review of whether the trial court erred in denying the juvenile’s request for release pending appeal without providing any factual basis for that decision. N.C.G.S. § 7B-2605 (2011) requires the release of a juvenile pending appeal, unless written compelling reasons are provided by the trial court. In the present case, those facts were not found in the record. There were no findings of fact or conclusions of law set out during or following the juvenile’s adjudication or disposition hearings. Further, the Appellate Entries Form executed by the trial court did not state any reasons with the juvenile’s release was denied. N.C.G.S. § 7B-2605 first requires written compelling reasons be provided when a trial court denies release pending appeal. The juvenile was not provided with such a written statement of the compelling reasons for the denial of his release. The Court vacated the order denying his release pending appeal and remand the matter to the trial court for findings setting out any compelling reasons for the juvenile’s release.

The juvenile next argues that the trial court erred by imposing a Level III disposition without making the required written findings of fact in its initial dispositional order. N.C.G.S. § 7B-2512 (2011) provides that in a juvenile proceeding, “the dispositional order shall be in writing and shall contain appropriate findings of fact and conclusions of law.” Here, while the trial court initially entered a written dispositional order that did not make findings of fact or conclusions of law, a disposition and adjudication order pursuant to the Rule 63 of the NC Rules of Civil Procedure did contain the findings. Concerning the substance of the dispositional order, the later order provided an ample factual basis for the dispositional decision that addressed the factors laid out in § 7B-2501(c). In light of the findings of fact and the fact that the findings were made via a written order that restated the findings made after the disposition and adjudicatory hearings, the Court affirmed the lower court.

Finally, the juvenile argued that the trial court erred by adjudicating him responsible for an offense and committing him to a Youth Development Center without first holding an adjudicatory hearing and a dispositional hearing. The Court disagreed concluding that the juvenile’s constitutional or statutory rights were not negatively impacted by the trial court’s actions. Although the trial judge did not at any point clearly state he was moving from the transfer hearing to the adjudicatory hearing, or from the adjudicatory hearing to the dispositional hearing, the trial judge provided defense counsel with an ample opportunity to present additional evidence, which the juvenile’s counsel took advantage of each time they arose. Consequently, the Court found no error.

Thus, the juvenile’s appeal was affirmed in part and remanded in part.

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## In the matter of J.K.C., 2013 N.C. App. LEXIS 1024 (unpublished opinion)

Rule(s):

1. “Where a lay witness testifies as to his recollection of events, such testimony is within Rule 701 as it is based on the perception and personal knowledge of that witness.” P.1.
2. Assessment of a child’s competence to testify at trial “‘rests in the sound discretion of the trial judge in the light of his examination and observation of the particular witness.’” P.9.
3. “A child witness who can demonstrate an understanding of the requirement of veracity for testimony is deemed competent to testify.” P.1–2.
4. Under N.C.G.S. § 15A-924(a)(6), neither errors in nor omissions of citations are grounds for dismissal or reversal.
5. In ruling on a motion to dismiss, “the question for the Court is whether there is substantial evidence (1) of each essential element of the offense charged, or of a lesser offense included therein, and (2) of [juvenile’s] being the perpetrator of such offense.” P.13.

Five petitions were filed against the juvenile alleging two counts of firstdegree sexual offense, two counts of crime against nature and one count of indecent liberties against children. During the adjudication hearing, the victim, age 3 at the time of the incident, testified that the juvenile “licked [her] private while in the bathroom.” The victim’s father also testified regarding the sequence of events that occurred on the night of the incident in question. At the trial, the juvenile did not offer any evidence. The juvenile was found responsible for two counts of first-degree sexual offense and one count of crime against nature. The trial court entered a Level 2 disposition and placed the juvenile on supervised probation.

The juvenile appealed arguing first that the trial court committed reversible error by allowing the victim’s father to testify that he believed the victim was telling the truth. The juvenile contended that the admission of the victim’s testimony was improperly admitted because it was barred under Rule 701 of the Rules of Evidence which limits testimony by a lay witness to testimony “in the form of opinions or inferences . . . which are (a) rationally based on the perception of the witness and (b) helpful to a clear understanding of his testimony or the determination of a fact in issue.” The Court disagreed, finding that the testimony of the victim’s father was proper lay witness testimony because it was meant not to establish the credibility of the victim’s statements, but to reveal the victim’s father’s perception of and response to the events of that night.

The juvenile next argued that the trial court committed reversible error in ruling that the victim was competent to testify. Specifically, the juvenile asserted that during the victim’s voir dire, the victim demonstrated her incompetence because she showed an inability to distinguish between fact and fiction. The Court found that the issue of whether a child is competent to testify at trial “is a matter which rests in the sound discretion of the trial judge in the light of his examination and observation of the particular witness.” The record revealed that the trial court made detailed findings of fact in open court following the completion of the victim’s voir dire and determined that despite giving contradictory testimony in response to questioning, the victim was competent to testify. Accordingly, as the decision of the trial court to admit the victim’s testimony was based upon the trial court’s personal observations of the victim during voir dire, and finding her sufficiently competent to testify, the Court determined that the trial court did not err in admitting the victim’s testimony. The third argument the juvenile raised was the trial court lacked jurisdiction because the juvenile petitions charging her referenced subsection N.C.G.S. § 1427.4A(a)(2), while the allegations in the petitions tracked the language of N.C.G.S. § 14-27.4A(a)(1). However, the Court has found that under N.C.G.S. § 15A-924(a)(6) (2011), regarding content of criminal pleadings, “[e]rror in the citation or its omission is not ground for dismissal of the charges or for reversal of a conviction.” In the present case, the Court found that it was clear from the petitions that although a typographical error was made, citing to N.C.G.S. § 14-27.4A(a)(2), which pertains to an offender 18 years old or older, rather than to the correct statute, N.C.G.S. § 1427.4A(a)(1), the language used in the petitions clearly follows that of the appropriate statute, N.C.G.S. § 14-27.4A(a)(1). Therefore, the petitions, as alleged, were valid and sufficient to properly charge the juvenile with two counts of first-degree sexual offense. Accordingly, the Court overruled the argument.

Fourth, the juvenile argued that the trial court committed reversible error by denying the motion to dismiss the charges where the State failed to present sufficient evidence of each and every element of the offense. The Court disagreed noting that in ruling on a motion to dismiss, “the question for the Court is whether there is substantial evidence (1) of each essential element of the offense charged, or of a lesser offense included therein, and (2) of [juvenile’s] being the perpetrator of such offense. If so, the motion was properly denied.” In the present case, the juvenile argues that the State presented insufficient evidence that the juvenile committed a first-degree sexual offense. N.C.G.S. § 14-27.1(4) (2011) defines a sexual act is as “cunnilingus, fellatio, analingus or anal intercourse, but does not include vaginal intercourse.” In the present case, the Court found that the victim repeated testified that the juvenile performed cunnilingus on her. Further, the victim’s statements to others, as well as her trial testimony, was consistent regarding the juvenile’s sexual act of digital penetration. Viewing the evidence in the light most favorable to the State, the Court found that the evidence was sufficient to prove each element of each count of first-degree sexual offense.

The juvenile further argued that because no specific act constituting crime against nature was alleged in the petition, the trial court adjudicated the juvenile’s charges on alternate theories. The Court found that the evidence supported separate sexual acts, either of which can support a charge of crime against nature. Therefore, in the light most favorable to the State, sufficient evidence was presented to permit the trial court to find the juvenile responsible as to each of the charges of first-degree sexual office and crime against nature. Accordingly, the trial court did not err in denying the juvenile’s motion to dismiss the charges.

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## In the matter of E. K. H., 2013 N.C. App. LEXIS 398

Rule(s): For an error to be reversible, there must be a “reasonable possibility that, had the error in question not been committed, a different result would have been reached at the trial out of which the appeal arises.”

The juvenile entered an admission to a charge of common law robbery. At the time of the incident, the juvenile was on probation. The trial court ordered that the juvenile be committed to a youth development center for an indefinite period but not to exceed his eighteenth birthday.

The juvenile appealed arguing that the trial court erred by entering a dispositional order without receiving or considering the risk and needs assessments, or in the alternative, without making findings of fact that the risk and needs assessments were not necessary in violation of N.C.G.S. § 7B-2413. The Court determined that there was no indication in the record that the trial court either received or considered the risk and needs assessment and, therefore, violated N.C.G.S. § 7B-2413. However, the Court went on to state that “not every statutory violation is grounds for reversal.” Under N.C.G.S. § 15A-1443, the juvenile is prejudiced by errors other than constitutional errors “when there is a reasonable possibility that, had the error in question not been committed, a different result would have been reached at the trial out of which the appeal arises.” Although the juvenile argues that the trial court committed a reversible error, he failed to articulate any specific prejudice. Further the record indicates the trial court received and considered a report from the Department of Juvenile Justice that contained much of the information contemplated by N.C.G.S. § 7B-2413.While the Court concluded that the trial court erred, it held that the error – entering a dispositional order without first receiving and considering risk and needs assessment – was harmless. Consequently, the dispositional order was affirmed.

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## In the matter of N.J., 2014 N.C. LEXIS 819

Rule(s):

1. In denying a motion to suppress, a trial court must state the findings of fact and conclusions of law that ground the decision.
2. Under N.C.G.S. § 7B-2407, before accepting a juvenile’s admission, a trial court must address the juvenile personally and inform her of the charge’s maximum disposition.
3. Findings of fact by a trial judge are conclusive on appeal, even if contradicting evidence has been offered at trial.
4. A juvenile’s subjective feeling that she is not free to leave does not constitute custody under *Miranda*.
5. In determining whether a juvenile had intention to sell or deliver a controlled substance, the quantity of the substance in the juvenile’s possession is relevant. When the substance is marijuana, 215.5 grams is too low a quantity to raise such an inference.
6. A controlled substance’s packaging alone is not determinative of intent to sell.
7. Showing that the amount possessed is greater than the amount typically purchased for personal use is a necessary condition for inferring intent to sell from the quantity possessed.

A petition was filed charging the juvenile with possession of a controlled substance with intent to manufacture, sell, or deliver. The juvenile made incriminating statements to the investigating officer. During the adjudication hearing, the juvenile moved to suppress the statements. The juvenile contended the he was in custody at the time the statement was made but he had not been advised of his *Miranda* rights or his rights in accordance with the North Carolina Juvenile Code. The trial court denied the motion to suppress. The juvenile then agreed to admit to one count of possession of a controlled substance with intent to manufacture, sell, or deliver but retained his right to appeal the denial of his motion to suppress. The trial court accepted the juvenile’s admission and entered disposition.

The juvenile appealed arguing that “[t]he trial court erred by failing to make any written or oral findings of fact or conclusions of law prior to ruling on [his] motion to suppress in violation of N.C.G.S. § 15A-977 (f).” The Court first inquired as to whether the statute, which explicitly applies to superior court, also applies to district court. The Court considered the case of State v. Norris, 77 N.C. App. 525 (1985), which held that procedural standards for juveniles must be at least as strict as those for adults, and applied N.C.G.S. § 15A-974 (which references N.C.G.S. § 15A977 (f)) to a juvenile proceeding. The Court found that “[u]nlike N.C.G.S. § 15A-977, nothing in N.C.G.S. § 15A-974 limits its provisions to superior court.” Therefore, the Court applied N.C.G.S. § 15A-977 (f), and found that the trial court failed to provide its rationale for denying the motion, and also failed to make findings of fact and conclusions of law.

The juvenile also argued that the trial court erred by failing to inform him of

“the most restrictive disposition on the charge prior to accepting [his] admission.” The Court agreed. According to N.C.G.S. § 7B-2407 (2011): “When admissions by juvenile may be accepted… The court may accept an admission from a juvenile only after first addressing the juvenile personally and… (6) Informing the juvenile of the most restrictive disposition on the charge.” The adjudication and disposition orders were vacated and the matter remanded to the trial court to articulate its rationale, supported by findings of fact and conclusions of law.

In August 2012 the trial court re-heard the matter regarding the juvenile’s motion to suppress the investigating officer’s testimony. After hearing Respondent’s argument, the juvenile court adopted the State’s proposed written order denying the juvenile’s motion to suppress. The juvenile admitted the allegation of possession with intent to sell or deliver marijuana, preserving his right to appeal the denial of his motion to suppress. The trial court adjudicated Respondent delinquent and entered a Level 2 disposition.

The juvenile appealed the denial of the motion to suppress arguing (1) the trial court’s finding that “[the juvenile] and the two others were asked to sit back down on the electrical box” is unsupported by the evidence because some elements of the transcript suggest that it was unclear whether the juvenile was “asked” to sit down. The Court disagreed noting that the arresting officer testified that “[t]hey were still seated on the electrical box after they were done – after we were done determining if they had any weapon(s) on them.” The Court determined that this was competent evidence to support the trial court’s finding that the juvenile and the others were “asked” to sit down. The Court has held that “findings of fact made by the trial judge are conclusive on appeal if supported by competent evidence, even if…there is evidence to the contrary.” Accordingly, the juvenile’s first argument was overruled. Next the juvenile argued that the trial court erred in denying his motion to suppress because his admission to the officers that the marijuana belong to him was obtained via custodial interrogation which violated N.C.G.S. § 7B-2101 and *Miranda* v. Arizona. The juvenile asserted that “no reasonable 15 year-old child would believe he could walk away from questioning by two armed and uniformed police officers after being patted down, directed where to site and stand and seeing his companion arrested after officers conducted a search.” The Court disagreed finding that “while the juvenile may or may not have subjectively felt “free to leave,” the circumstances of this case do not objectively suggest that a reasonable 15 year-old juvenile would have believed he was under arrest. Indeed, the fact that the juvenile’s friend, J.J., had just been detained, handcuffed, and directed to sit on the sidewalk would have indicated to a reasonable fifteen-year-old juvenile that his friend was under arrest and he was not. Unlike J.J., the juvenile was never handcuffed. Further, though the juvenile was frisked, he was not searched. The entire process took place in an open area, while the sun was still up, and the juveniles were only asked one question. Indeed, the question asked was directed to all three juveniles, as a group, not just the juvenile. For these reasons, we conclude that the trial court’s findings of fact support its conclusion that juvenile was not “in custody.” Accordingly, the Court overruled the juvenile’s argument.

Third, the juvenile argued that the State failed to provide sufficient information to establish a factual basis for his admission of guilt as to possession of a controlled substance with the intention to sell or deliver that substance, an essential element of the offense charged in the petition. The Court agreed. Intent to sell or deliver a controlled substance may be shown by direct or circumstantial evidence. When reviewing circumstantial evidence a court may consider (1) the packaging, labeling and storage of the controlled substance; (2) the defendant’s activities; (3) the quantity of the substance found; and (4) the presence of case or drug paraphernalia on the defendant’s person. In the present case, only 10.98 grams of “leafy substance” were found. Alone, this does not show that the juvenile had the intent to sell or deliver as the Court has held that “possession of 215.5 grams of marijuana was insufficient to raise an inference that the marijuana was kept for the purpose of distribution.” Regarding the packaging of a controlled substance, the Court determined that “packaging is not determinative. There is simply no way to know, without more evidence, whether the person possessing the packages purchased them for personal use or with the intent to effectuate a sale or delivery of the drugs.” In this case, there was no evidence presented at the hearing that the amount of marijuana seized from the juvenile, less than half an ounce, was more than the amount typically purchased for personal use. Finally, the juvenile did not possess any drug paraphernalia, weapons or cash at the time of the incident. Consequently, the Court found that the evidence presented was insufficient to support an inference of intent to sell or deliver marijuana. Accordingly, the Court vacated the delinquent adjudication and remanded for entry of a judgment as upon a verdict of guilty of simple possession of marijuana.

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## In the Matter of J.J. Jr., 2011 N.C. App. LEXIS 2238 Rule(s):

1. A trial court is not required to hold separate probable cause, transfer, and adjudicatory hearings.
2. The court’s adjudicatory order must indicate the standard of proof met at trial.
3. The court’s disposition order must include written findings of fact.
4. Where the court denies the release of a juvenile whose appeal is pending, the court’s written account of compelling reasons must include findings of fact support by the record.

After the Stated filed a petition alleging that the juvenile committed firstdegree sexual offense on a female child under 13, probable cause was found, and the court moved for the case to be transferred to Superior Court. At the transfer hearing, the trial court retained jurisdiction, and thereafter found the juvenile responsible for attempted first-degree sex offense. The juvenile was adjudicated of attempted firstdegree sexual offense, and committed to a youth development center until his 18th birthday.

The juvenile appealed, arguing that the trial court erred by (1) entering the adjudication and disposition without holding the proper adjudicatory and dispositional hearings and (2) failing to release him during pending the appeal. A week after the juvenile entered appeal, the court entered an adjudication order finding that he committed the attempted first-degree sex offense. Following the Appellant Defender’s office being appointed to represent the juvenile, the trial court failed to indicate whether the juvenile would be released pending appeal, and provided an “NA” in the section reserved for “compelling reasons release is denied.”

As to the juvenile’s first argument, he indicated that his due process rights were violated because the court only held a probable cause and transfer hearing prior to the adjudication and disposition. Furthermore, the juvenile contended that the adjudication and dispositional orders failed to provide requisite written findings of fact to support the order entered. The Court of Appeals disagreed, concluding that no statutes require that the trial court separate the probable cause, transfer, and adjudicatory hearings as long as the juvenile’s statutory and constitutional rights are not violated. The Court found that the juvenile’s rights were not violated as the transcript indicated that he: received written notice of the facts alleged in the juvenile petition; was present at the hearings and provided evidence on his behalf while also cross-examining witnesses; had adequate time to conduct discovery during the seven month period between the first appearance and the hearing in question; had failed to show how he was prejudiced by the manner in which the hearing was conducted as both parties presented evidence and indicated there was no further evidence at the conclusion of the transfer hearing; and the court considered all of the evidence in making its adjudication decision.

The Court, however, held that the trial court failed to include the standard of proof in its written adjudication order as required by law, and therefore vacated the adjudication order and remanded to the trial court to make the necessary findings of fact. Regarding the dispositional hearing, the Court held that although the court was required to, first, conclude the adjudication hearing, next, receive and consider the predisposition report, and then, proceed to disposition, there was nothing in the record to indicate at which point the report was received. Moreover, the Court indicated that although there was no showing of prejudice, the trial court failed to make written findings of fact in the disposition order. Accordingly, the court also vacated the disposition order and remanded the case to the trial court to make the necessary findings of fact.

In reference to the juvenile’s second argument that the trial court erred by failing to release the juvenile pending appeal, the Court of Appeals agreed. The Court reasoned that although release was denied in court, the trial court failed to address release in the Appellate Entries, and provided no compelling reasons indicating why the juvenile should not be released pending appeal. The trial court only indicated direct contempt although nothing in the record supported the finding. Consequently, the Court remanded the case to the trial court to enter written findings of fact in support of the adjudication and dispositional orders, as well as its order denying release during the juvenile’s pending appeal.

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## In the matter of A.W., 2011 N.C. App. LEXIS 215

Rule(s):

1. For the charge of a second-degree sexual offense, the State must provide evidence that the victim was “mentally disabled, mentally incapacitated, or physically helpless.”
2. For the charge of indecent liberties between children, the element of “purpose to arouse or gratify his sexual desires” may be evidenced by the following: the juvenile’s age and maturity, the method used to engage the victim in the act; and evidence of prior sexual activity with another child.
3. Because an incident’s date is not an element of the charge of indecent liberties between children, slight discrepancies in dates do not bar adjudication.
4. Preventing a juvenile’s counsel from making a closing argument constitutes denial of the juvenile’s right to counsel.

The juvenile was adjudicated of second-degree sexual offense, indecent liberties between children, and breaking and entering. A Level 3 disposition was entered.

Juvenile appealed, arguing that the State presented insufficient evidence that he committed second-degree sexual offense and indecent liberties between children. Because the juvenile failed to challenge the sufficiency of the evidence at the close of all of the evidence (which would bar him from challenging the sufficiency of the evidence on appeal), the juvenile argued that there was ineffective assistance of counsel. Alternatively, the juvenile requested review pursuant to Rule 2 of the North Carolina Rules of Appellate Procedure, which allows an appellate court to modify the provisions of the rules of appellate procedure to preclude “manifest injustice.”

Finding that there was insufficient evidence to support the adjudication, the Court reviewed the case pursuant to Rule 2. In reviewing the case, the Court of Appeals held that the evidence was insufficient to prove the elements of seconddegree sexual offense, as there was no evidence that the victim was “mentally disabled, mentally incapacitated, or physically helpless.” Accordingly, the Court vacated the second-degree sexual offense adjudication, and remanded for dismissal.

Regarding the adjudication for indecent liberties between children, the Court held that there was sufficient evidence as all elements of the offense were met, including “with a purpose to arouse or gratify his sexual desires.” Specifically, the Court held that the juvenile’s age and maturity, including the age disparity between the juvenile and victim (13-year old juvenile and 3-year old victim); the method he used to engage the victim in the act (by telling him his private parts tasted like candy); and evidence of prior sexual activity with another child a few months before the incident in question indicated that he acted for the purpose to arouse or gratify sexual desires.

Regarding an alternative argument that the indecent liberties between children should have been dismissed due to a discrepancy between the date upon which the offense was alleged to have occurred, the Court held that the date was not an element of the crime, and therefore not grounds for dismissal (particularly where the discrepancy was slight and did not affect the juvenile’s ability to provide a defense).

The juvenile’s last argument was that he was entitled to a new adjudicatory hearing on the charge of indecent liberties between children because the trial court denied his counsel the opportunity to make a closing argument. The Court agreed, citing cases that held that denial to make a closing argument was a denial of the right to have assistance of counsel. Consequently, the Court vacated the adjudication finding the juvenile delinquent of incident liberties between children and remanded the case for a new adjudication hearing on that charge and the felonious breaking and entering charge.

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## In the matter of P.K.M, 2011 N.C. App. LEXIS 377

Rule(s): “Where the trial court’s order granting the juvenile’s motion to suppress did not terminate the prosecution, the State has no right of appeal.” P.1.

A delinquency petition was filed alleging the juvenile and several other students broke into and vandalized a vacant building. The juvenile made incriminating statements during a meeting with the school resource officer and the investigating detective. The juvenile subsequently filed a motion to suppress the statements. The trial court granted the juvenile’s motion based upon the J.D.B. v. North Carolina decision, which held that the juvenile’s age is a relevant factor when determining whether a juvenile was in custody.

The State appealed arguing that the “suppressed evidence [was] essential to the prosecution of the case.” The Court of Appeals disagreed, finding that the State could only appeal the order granting the juvenile’s motion to suppress if that order terminated the prosecution. The trial court’s order did not state that the prosecution was terminated, and the record suggested that the State could present alternate evidence of the juvenile’s alleged involvement in the break-in. Accordingly, the appeal was dismissed.

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## In the matter R.D.K., 2011 N.C. App. LEXIS 185 (unpublished opinion)

Rule(s): “‘A motion in limine is insufficient to preserve for appeal the question of the admissibility of evidence if the defendant fails to further object to that evidence at the time it is offered at trial.’” P.2.

The juvenile was adjudicated delinquent for possessing drug paraphernalia, and placed on probation for 12 months along with other conditions.

The juvenile appealed, arguing that the trial court erred in denying his motion to suppress because the necessary findings of fact were not made. Nonetheless, as the juvenile failed to renew his objection to the admission of the challenged evidence at the adjudication hearing, he did not properly preserve the issue for appellate review. Accordingly, the Court of Appeals dismissed the appeal.

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## State v. Pettigrew, 2010 N.C. App. LEXIS 951

Rule(s):

1. Because the date of an offense listed on the bill of indictment, “‘variance between allegation and proof as to time is not material where no statute of limitations is involved.’” P.8.
2. Language indicating that an event took place “on or about” a given date (or range of dates) is common. When such language is used on a bill of indictment and the date (or dates) are not long after the juvenile’s 16th birthday, the juvenile may be tried as an adult.
3. The holding in Roper, concerning cruel and unusual punishment of juveniles, applies only to death-penalty cases.

The defendant was found guilty of two counts of first-degree sexual offense, but not guilty of taking indecent liberties with a child, and sentenced to consecutive terms of 192 and 240 months imprisonment.

Defendant appealed, arguing, first, that there was insufficient evidence to support his conviction because there was no evidence that the abuse occurred during the time frame alleged in the bill of particulars (i.e., between the February 01, 2001 and November 20, 2001 when the victim was 10 years old). The Court of Appeals disagreed, finding that the evidence and testimony tended to show that the defendant sexually abused the victim between the ages of five and ten, and that the time frame listed in the bill of particulars would have been when the victim was 10 years old. In looking at the time frame, the Court noted that the defendant would have been 16 when the victim was 10, and therefore could be prosecuted as an adult pursuant to N.C.G.S. § 7B-1604(a). Furthermore, the Court noted that the time frame in the bill of particulars “is not an essential element of the crime charged and the fact that the crime was in fact committed on some other date is not fatal” (quoting State v. Norris, 101 N.C. App. 144, 151, 398 S.E.2d 652, 656 (1990), disc. review denied, 328 N.C. 335, 402 S.E.2d 843 (1991)). Accordingly, the Court found that there was sufficient evidence to support that the abuse occurred during the alleged time frame.

Defendant’s next argument was that the superior court lacked jurisdiction because the time frame of the offenses alleged in the superseding indictment encompassed a time prior to the defendant’s 16th birthday. Specifically, the defendant argued that the use of the language, “on or about” in front of the dates specified indicated that the indictment could be referring to acts when he was 15 years old. The Court disagreed, holding that there was sufficient evidence that the offenses were committed during the specified time frame when the defendant was 16. Further the Court indicated that the language of “on or about” is common in indictments and sufficient pursuant to N.C.G.S. § 7B-15A-924(a) (4).

Last, the defendant argued that his sentence, 32 to 40 years, violated the prohibitions against cruel and unusual punishment. The defendant relied upon Roper v. Simmons, 543 U.S. 551, 161 L. Ed. 2d 1 (2005), which held that diminished culpability and capacity for change of juveniles made the death penalty unconstitutional for any offenders committing offenses prior to reaching 18. The Court disagreed, holding that Roper referred to death penalty cases only, and not life imprisonment or other terms of imprisonment for juveniles. Consequently, the Court upheld the sentence.

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## In the matter of A.V., 188 N.C. App. 317, 654 S.E.2d 811 (2008), 2008 N.C. App. LEXIS 80

Rule(s): When the appellate court finds that the State’s evidence was sufficient to withstand a motion to dismiss, the juvenile is not prejudiced by counsel’s failure to preserve the argument challenging that sufficiency; such failure by counsel does not constitute ineffective assistance of counsel.

The juvenile was adjudicated delinquent of assault on a state employee.

The juvenile appealed, first arguing that the juvenile received ineffective assistance of counsel. The Court of Appeals stated that to establish ineffective assistance, the juvenile must show that the attorney’s performance was deficient and that the juvenile suffered prejudice as a result of the deficient performance. The juvenile argued that because trial counsel failed to renew its motion to dismiss at the close of all the evidence, the juvenile was unable to preserve an argument challenging the sufficiency of the evidence. The Court found however, that the State presented substantial evidence at trial to withstand a motion to dismiss, and therefore the juvenile could not show that the juvenile suffered prejudice from trial counsel’s deficient performance.

The juvenile also argued that the trial court erred by not considering the risk and needs assessment and other pre-dispositional reports at disposition, as well as not attaching the predisposition report as required by the disposition form. The Court held that, while the issue was preserved of right because it was an issue of statutory mandate, trial counsel only appealed the adjudication order and therefore the Court did not have jurisdiction to hear any claims regarding disposition.

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## In the matter of J.J.D.L., 189 N.C. App. 777, 659 S.E.2d 757 (2008), 2008 N.C. App. LEXIS 693

Rule(s): Where a juvenile does not challenge the trial court’s findings of fact and a court denies the juvenile’s motion for release pending appeal and, the requirement of stating a compelling reason for denial is satisfied by citing the offense of first-degree sex offense with a child.

The juvenile was adjudicated delinquent of three counts of first-degree sex offense.

The juvenile appealed, first arguing that the trial court erred by denying the juvenile’s motion for release pending appeal by stating no reason for denying the motion. The Court of Appeals disagreed, finding that on the appellate entries form, the trial court stated as a compelling reason for maintaining the juvenile in custody that the juvenile was adjudicated of “first-degree sex offense with a child § 1727.4(a)(1).”

The juvenile next argued that the trial court erred in admitting into evidence a summary of the juvenile’s statement to a law enforcement officer in which the juvenile admitted some of the allegations. The juvenile argued that the state failed to establish the summary as an accurate account of the statement and that the document entered constituted hearsay. The Court disagreed, finding that the officer’s testimony as to what was in the document was admissible under both the rules of evidence and the rules governing the acceptance of juvenile admissions.

Finally, the juvenile argued that the trial court erred by holding the dispositional hearing prior to receiving the results of a court ordered sex offender evaluation. The Court held that the juvenile failed to raise the argument at trial, and therefore was procedurally barred from bringing the argument on appeal. Furthermore, on review of the claim, the Court found that the juvenile failed to show how the absence of the report hindered the trial court in making its determination at disposition.

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## In the matter of D.K.B., 2008 N.C. App. LEXIS 839 (unpublished opinion)

Rule(s): Under N.C.G.S. § 7B-2605, to deny the release of a juvenile whose appeal is pending, the court must provide compelling reasons in writing.

The juvenile admitted to violating the terms of probation and was committed to a youth development center. The juvenile appealed and requested release from custody pending appeal, which the trial court denied.

On appeal, the juvenile argued that the trial court erred in not granting the juvenile’s request for release by failing to make any findings of fact. The Court of Appeals agreed, noting that the disposition order stated that the juvenile should not be released if the court’s order was appealed. However, the Court found that in the appellate entries, the trial court neither indicated whether the juvenile should be released pending appeal, nor did the court enter a temporary order affecting the juvenile’s custody as required by statute. http://appellate.nccourts.org/opinions/?c=2&pdf=MjAwOC8wNy0xMzU5LTEucGR m

## In the matter of M.B.B., 183 N.C. App. 155, 643 S.E.2d 675 (2007), 2007 N.C. App. LEXIS 926 (unpublished opinion)

Rule(s): When a juvenile does not give proper notice of an appeal, the court does not have jurisdiction to hear the appeal.

The juvenile was adjudicated delinquent for simple assault and simple affray, and disposition for both offenses were entered on the same day. The juvenile appealed the adjudications, but the juvenile's notice of appeal and appellate entries form stated that he only appealed the adjudication of simple affray. During oral arguments, juvenile's counsel made an oral motion to treat his brief as a petition for a writ of certiorari, but the Court of Appeals determined that counsel had not followed the Rules of Appellate Procedure in seeking the writ. The Court therefore held that it lacked jurisdiction to hear the appeal from the adjudication of the simple affray.

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## In the matter of H.D., 2007 N.C. App. LEXIS 1267 (unpublished opinion)

Rule(s):

1. If a party fails offer proof of the significance of excluded evidence, a trial court may not review the exclusion for error.
2. Under the North Carolina Code of Professional Responsibility, an attorney may not serve as witness in a case she is handling.
3. Expert testimony regarding legal conclusions is inadmissible, but admitting such testimony is nevertheless harmless where admission does not result in prejudice.

The juvenile was adjudicated delinquent for misdemeanor assault and misdemeanor breaking and entering.

The juvenile only appealed the trial court's ruling that the juvenile was competent, arguing that the trial court erred in not allowing the juvenile's witness to testify and in not allowing the attorney to testify on the juvenile's behalf. The Court of Appeals decided not to rule on the first argument, stating that at trial the attorney failed to make an offer of proof as to the significance of the excluded evidence, therefore preventing the Court from reviewing the merits of counsel's argument. The Court also held that it was not error to refuse the attorney's testimony when it would be adverse to the rules of professional ethics and conduct as the attorney may not act as both advocate and witness.

Finally, the Court held that although the trial court erred in allowing the state's witness to testify as to the legal conclusion of capacity to proceed, it amounted to harmless error because there was no possibility the trial court would have concluded otherwise based only on the State's witness.

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## State v. Evans, 184 N.C. App. 736, 646 S.E.2d 859 (2007), 2007 N.C. App. LEXIS 1600

Rule(s): When a defendant pleads guilty, the right of appeal, her right of appeal is limited to the categories delineated at N.C.G.S. § 15A-1444 (along with petitions for writs of certiorari). When a case neither falls under § 15A-1444 nor is brought under a petition for a writ of certiorari, the court the appellate court lacks jurisdiction to hear the merits of the arguments.

The juvenile was charged with first-degree murder and two other offenses. The district court held a probable cause hearing and found probable cause that the juvenile committed all of the offenses charged. The juvenile had filed a “motion against juvenile being transferred and tried as an adult,” but the district court denied the motion finding that N.C. Gen. Stat § 7B-2200 mandated the transfer of the case to superior court. The juvenile’s counsel appealed the decision to superior court under the same motion, which was denied. The juvenile, now defendant, pled guilty to second-degree murder and another charge, but attempted to preserve the right to appeal the issue regarding the transfer.

The defendant appealed, arguing that the automatic transfer of the case to superior court upon a finding of probable cause violated his constitutional rights to due process and equal protection. The Court of Appeals declined to consider the defendant’s argument, finding that the defendant’s appeal following his guilty plea did not fall under any of the categories of appeal under N.C. Gen. Stat § 15A-1444. There was a dissent, which held that the defendant did have a right to appeal under§ 7B-2603(d). The dissent also noted that upon reaching the merits it would find that § 7B-2200 is not unconstitutional.

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## In the matter of R.S.C., 2006 N.C. App. LEXIS 196 (unpublished opinion)

Rule(s): Although the Court of Appeals recognized that the trial court failed to make findings of fact when denying release pending appeal, it would not have prejudiced the juvenile as it had no impact on the decision to commit the juvenile.

The juvenile was adjudicated delinquent for misdemeanor breaking and entering and larceny. At the dispositional hearing, the trial court committed the juvenile to a youth development center.

The juvenile appealed, and asked the court to stay the commitment pursuant to N.C.G.S. § 7B-2605. The trial court denied the juvenile’s motion to stay the commitment. Among other issues, the juvenile argued that the trial court erroneously denied the juvenile release pending appeal because it failed to make findings of fact as to why the order should not be stayed. The Court of Appeals did find that the trial court failed to make its findings in writing, but determined that this error did not prejudice the juvenile because “[t]he disposition order finding the juvenile violated his probation and ordering him to be held pending the appeal was the same commitment he would have received.”

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## In the matter of A.L., 166 N.C. App. 276, 601 S.E.2d 538 (2004), 2004 N.C. App. LEXIS 1612

Rule(s): “Under N.C.G.S. § 7B-2602 (2003), appealable final orders in juvenile matters include orders of disposition after an adjudication, but the statute does not authorize appeals following the adjudicatory portion of the case.” P.1.

The juvenile was adjudicated delinquent of one count of crime against nature.

The juvenile appealed the trial court decision, but the Court of Appeals dismissed the appeal for lack of jurisdiction. The appeal referred only to the adjudicatory hearing, not the dispositional hearing, and the Court of Appeals had previously held in In re Pegram, 137 N.C. App. 382, 527 S.E.2d 737 (2000) (a dependency matter) that N.C.G.S. § 7B-2602 does not authorize an appeal from the adjudicatory phase.

## In the matter of D.E.R., 161 N. C. App. 150, 587 S.E.2d 467 (2003), 2003 N.C. App. LEXIS 1997

Rule(s): Appeal to the appellate division divests the trial court of jurisdiction, including when appeal has been made from an adjudication order and disposition has yet to be entered.

On August 6, 2001, the juvenile was adjudicated delinquent in Catawba County District Court for the charge of indecent liberties between children. The court ordered that the case be transferred to the juvenile's county of residence, Rowan County, for disposition. On August 10, 2001, the adjudication order was filed, but failed to reflect that the State had proven its case beyond a reasonable doubt, and lacked any findings of fact regarding the allegations in the petition. On October 10, 2001, the juvenile filed notice of appeal. On November 16, 2001, the Rowan County District Court determined that the order from Catawba County was insufficient and transferred the case back to Catawba County to include the required written findings. On December 11, 2001, the Catawba County district court amended the order, and the case was transferred back to Rowan County, where the court entered disposition on January 25, 2002 and placed the juvenile on probation.

The juvenile appealed, arguing that the Rowan County court lacked jurisdiction both to transfer the case and to enter disposition since the adjudication order was on appeal. The Court of Appeals found that the appeal of the August 10th order divested the district court of jurisdiction, since under §7B-2602 the juvenile has a right to appeal the order after no disposition was made after 60 days. The court also found that although the Catawba County court made sufficient oral findings of fact, the written order had to be corrected so that the record reflected the court's findings.

## In the matter of M.A.P., 2016 N.C. App. COA16-279 (unpublished opinion)

Rule(s): (1) Notice of appeal may be entered any time from the oral rendition of the order until 10 days after entry of the written order.

(2) The court lacks subject matter jurisdiction to adjudicate a juvenile for an offense that is not a lesser included offense of the offense charged in the petition. On March 10, 2015, a 13-year-old boy was confronted by a crowd of twenty other students on his way home from school. He was goaded into a fight with the 12-yearold juvenile by other students who threatened to jump him if he did not engage in the fight with the other boy. After trading some combative words, the 13-year-old boy threw the first punch and the two boys began to fight briefly before stopping. After the two ceased their fight, another student attacked the older boy, hitting him in the face until he attempted to retreat across the street. The other student chased the boy and knocked him down, joined by other students who surrounded him and began kicking him in the back and the head. The boy was able to identify two students out of the crowd that assaulted him and indicated that the juvenile was not among the crowd that attacked him after their initial fight. Following the incident, he was diagnosed with “a severe concussion” and had scrapes and bruises on his back, knees, elbows, arms and neck, in addition to several bumps on the back of his head. The juvenile was charged with committing an assault inflicting serious injury. The juvenile made a motion to dismiss on the basis of insufficient evidence to prove assault inflicting serious injury. The trial court granted the juvenile’s motion with regard to assault inflicting serious injury, but entered an adjudication for the offense of simple affray.

The juvenile filed a written notice of appeal three months prior to the trial court entering written orders. N.C. Gen. Stat. 7B-2602 states that notice of appeal should be given in open court at the time of the hearing or in writing 10 days after entry of the order. Consistent with previous case law, the court determined that written notice of appeal could be filed at any time between the oral rendition of the order and 10 days after the written order was entered. The court concluded that the juvenile’s notice was proper and the court had jurisdiction to hear the appeal.

The trial court’s orders were vacated because the trial court lacked subject matter jurisdiction to adjudicate the juvenile delinquent based on the offense of simple affray, which is not a lesser included offense of assault inflicting serious injury. Prior case law clearly states that defendants must be given proper notice of the charges against them to prepare their defense and prevent double jeopardy in order to sustain a conviction. If the offense is not a lesser included offense, the trial court lacks subject matter jurisdiction. The elements of the offense of simple affray are distinct from the elements of the offense of assault inflicting serious injury and a petition was not filed charging the juvenile with the offense of simple affray. Therefore, the juvenile could not be adjudicated delinquent based on the offense of simple affray.

# BURDEN OF PROOF

Rules concerning the assignment of the burden of proof at trial to the juvenile or State.

## In the matter of B.E., 186 N.C. App. 656, 652 S.E.2d 344 (2007), 2007 N.C. App. LEXIS 2255

Rule:

1. Under N.C.G.S. § 7B-2409, a the standard for adjudicating a juvenile delinquent is “beyond a reasonable doubt.”
2. Under N.C.G.S. § 7B-2411, a trial court finding the State to have met its burden must state as much affirmatively.

The juvenile was adjudicated of indecent liberties between children.

The juvenile appealed, arguing under one assignment of error that the trial court erred when it adjudicated the juvenile delinquent by “clear, cogent and convincing evidence” instead of “beyond a reasonable doubt.” The Court of Appeals agreed, finding that while the trial court’s standard of proof may be reflected in the record either orally or in writing, the standard must be “beyond a reasonable doubt” and unambiguous.

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## In the matter of C.B., 187 N.C. App. 803, 654 S.E.2d 21, 2007 N.C. App. LEXIS 2521

Rule(s):

1. Under N.C.G.S. § 7B-2409, the standard for adjudicating a juvenile delinquent is “beyond a reasonable doubt.”
2. Under N.C.G.S. § 7B-2411, a trial court finding the State to have met its burden must state as much affirmatively.

The juvenile was adjudicated delinquent for assault inflicting serious injury.

The juvenile appealed, arguing under one assignment of error that the trial court erred when it adjudicated the juvenile delinquent by “clear, cogent and convincing evidence” instead of “beyond a reasonable doubt.” The Court of Appeals, finding that the Court addressed a similar issue in In re B.E., 652 S.E.2d 344 (2007), determined that the trial court failed to unequivocally state the standard of proof in the order and remanded the case for clarification of the order.

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# CAPACITY TO PROCEED

Rules concerning juveniles’ capacity to stand trial.

## In the matter of A.S., 2016 N.C. App. LEXIS 750 (unpublished opinion)

Rule(s):

1. “[N]o particular procedure is mandated” for a hearing on the defendant’s capacity to stand trial.
2. “’The statutory hearing requirement appears to be satisfied as long as it appears from the record that the defendant, upon making the motion, is provided an opportunity to present any and all evidence he or she is prepared to present.’” P.6
3. Evidence must be presented that the defendant was or likely was incompetent, not a request by the attorney to consider the issue of competency further.

The juvenile was adjudicated delinquent for assault on a person under 12.

The juvenile appealed arguing that the trial court abused its discretion in denying a motion to continue to have the juvenile assessed for his capacity to proceed. The Court of Appeals determined nothing in the record indicated failure to conduct a hearing or abuse of discretion.

The juvenile contended that the trial court did not satisfy the procedural right of holding a hearing. Citing State v. Robinson, 221 N.C. App. 509, 729 S.E.2d 88 (2012), the court noted that “’no particular procedure is mandated’” for a hearing, and that “’the hearing requirement appears to be satisfied as long as it appears from the record that the defendant, upon making the motion, is provided an opportunity to present any and all evidence he or she is prepared to present.’” The procedural hearing requirement was met in the present case, because the juvenile had an “’opportunity to present any and all evidence.’”

Next the juvenile argued that the trial court’s denial of the motion was error. The Court of Appeals disagreed determining that the juvenile’s counsel “did not present evidence that he was or likely was incompetent, but rather wanted to conduct a fishing expedition to consider the issue.” Because nothing in the record indicated that the juvenile was incompetent to stand trial and because the procedural requirement for a hearing was met the arguments were overruled.

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## In the matter of J.K.C., 752 S.E.2d 256; 2013 N.C. App. LEXIS 1024 (unpublished opinion)

Rule(s):

1. “Where a lay witness testifies as to his recollection of events, such testimony is within Rule 701 as it is based on the perception and personal knowledge of that witness.” P.1
2. Assessment of a child’s competence to testify at trial “‘rests in the sound discretion of the trial judge in the light of his examination and observation of the particular witness.’” P.9.
3. “A child witness who can demonstrate an understanding of the requirement of veracity for testimony is deemed competent to testify.” P.1–2.
4. Under N.C.G.S. § 15A-924(a)(6), neither errors in nor omissions of citations are grounds for dismissal or reversal.
5. In ruling on a motion to dismiss, “the question for the Court is whether there is substantial evidence (1) of each essential element of the offense charged, or

of a lesser offense included therein, and (2) of [juvenile’s] being the perpetrator of such offense.” P.13.

Five petitions were filed against the juvenile alleging two counts of firstdegree sexual offense, two counts of crime against nature and one count of indecent liberties against children. During the adjudication hearing, the victim, age 3 at the time of the incident, testified that the juvenile “licked [her] private while in the bathroom.” The victim’s father also testified regarding the sequence of events that occurred on the night of the incident in question. At the trial, the juvenile did not offer any evidence. The juvenile was found responsible for two counts of first-degree sexual offense and one count of crime against nature. The trial court entered a Level 2 disposition and placed the juvenile on supervised probation.

The juvenile appealed arguing first that the trial court committed reversible error by allowing the victim’s father to testify that he believed the victim was telling the truth. The juvenile contended that the admission of the victim’s testimony was improperly admitted because it was barred under Rule 701 of the Rules of Evidence which limits testimony by a lay witness to testimony “in the form of opinions or inferences . . . which are (a) rationally based on the perception of the witness and (b) helpful to a clear understanding of his testimony or the determination of a fact in issue.” The Court disagreed, finding that the testimony of the victim’s father was proper lay witness testimony because it was meant not to establish the credibility of the victim’s statements, but to reveal the victim’s father’s perception of and response to the events of that night.

The juvenile next argued that the trial court committed reversible error in ruling that the victim was competent to testify. Specifically, the juvenile asserted that during the victim’s voir dire, the victim demonstrated her incompetence because she showed an inability to distinguish between fact and fiction. The Court found that the issue of whether a child is competent to testify at trial “is a matter which rests in the sound discretion of the trial judge in the light of his examination and observation of the particular witness.” The record revealed that the trial court made detailed findings of fact in open court following the completion of the victim’s voir dire and determined that despite giving contradictory testimony in response to questioning, the victim was competent to testify. Accordingly, as the decision of the trial court to admit the victim’s testimony was based upon the trial court’s personal observations of the victim during voir dire, and finding her sufficiently competent to testify, the Court determined that the trial court did not err in admitting the victim’s testimony. The third argument the juvenile raised was the trial court lacked jurisdiction because the juvenile petitions charging her referenced subsection N.C.G.S. § 1427.4A(a)(2), while the allegations in the petitions tracked the language of N.C.G.S. § 14-27.4A(a)(1). However, the Court has found that under N.C.G.S. § 15A-924(a)(6) (2011), regarding content of criminal pleadings, “[e]rror in the citation or its omission is not ground for dismissal of the charges or for reversal of a conviction.” In the present case, the Court found that it was clear from the petitions that although a typographical error was made, citing to N.C.G.S. § 14-27.4A(a)(2), which pertains to an offender 18 years old or older, rather than to the correct statute, N.C.G.S. § 1427.4A(a)(1), the language used in the petitions clearly follows that of the appropriate statute, N.C.G.S. § 14-27.4A(a)(1). Therefore, the petitions, as alleged, were valid and sufficient to properly charge the juvenile with two counts of first-degree sexual offense. Accordingly, the Court overruled the argument.

Fourth, the juvenile argued that the trial court committed reversible error by denying the motion to dismiss the charges where the State failed to present sufficient evidence of each and every element of the offense. The Court disagreed noting that in ruling on a motion to dismiss, “the question for the Court is whether there is substantial evidence (1) of each essential element of the offense charged, or of a lesser offense included therein, and (2) of [juvenile’s] being the perpetrator of such offense. If so, the motion was properly denied.” In the present case, the juvenile argues that the State presented insufficient evidence that the juvenile committed a first-degree sexual offense. N.C.G.S. § 14-27.1(4) (2011) defines a sexual act is as “cunnilingus, fellatio, analingus or anal intercourse, but does not include vaginal intercourse.” In the present case, the Court found that the victim repeated testified that the juvenile performed cunnilingus on her. Further, the victim’s statements to others, as well as her trial testimony, was consistent regarding the juvenile’s sexual act of digital penetration. Viewing the evidence in the light most favorable to the State, the Court found that the evidence was sufficient to prove each element of each count of first-degree sexual offense.

The juvenile further argued that because no specific act constituting crime against nature was alleged in the petition, the trial court adjudicated the juvenile’s charges on alternate theories. The Court found that the evidence supported separate sexual acts, either of which can support a charge of crime against nature. Therefore, in the light most favorable to the State, sufficient evidence was presented to permit the trial court to find the juvenile responsible as to each of the charges of first-degree sexual office and crime against nature. Accordingly, the trial court did not err in denying the juvenile’s motion to dismiss the charges.

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## In the matter of H.D., 2007 N.C. App. LEXIS 1267 (unpublished opinion)

Rule(s):

1. If a party fails offer proof of the significance of excluded evidence, a trial court may not review the exclusion for error.
2. Under the North Carolina Code of Professional Responsibility, an attorney may not serve as witness in a case she is handling.
3. Expert testimony regarding legal conclusions is inadmissible, but admitting such testimony is nevertheless harmless where admission does not result in prejudice.

The juvenile was adjudicated delinquent for misdemeanor assault and misdemeanor breaking and entering.

The juvenile only appealed the trial court's ruling that the juvenile was competent, arguing that the trial court erred in not allowing the juvenile's witness to testify and in not allowing the attorney to testify on the juvenile's behalf. The Court of Appeals decided not to rule on the first argument, stating that at trial the attorney failed to make an offer of proof as to the significance of the excluded evidence, therefore preventing the Court from reviewing the merits of counsel's argument. The Court also held that it was not error to refuse the attorney's testimony when it would be adverse to the rules of professional ethics and conduct as the attorney may not act as both advocate and witness.

Finally, the Court held that although the trial court erred in allowing the state's witness to testify as to the legal conclusion of capacity to proceed, it amounted to harmless error because there was no possibility the trial court would have concluded otherwise based only on the State's witness.

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## In the matter of I.R.T., 184 N.C. App. 579, 647 S.E.2d 129 (2007), 2007 N.C. App. LEXIS 1624 Rule(s):

1. “‘The question of defendant’s capacity is within the trial judge’s discretion and his determination thereof, if supported by the evidence, is conclusive on appeal.’” P.4.
2. The age of a juvenile is a relevant factor in determining whether a reasonable person would feel free to leave upon being stopped by law enforcement.
3. A juvenile’s conduct and other circumstances may suffice to establish reasonable suspicion.
4. In considering a motion to dismiss for insufficient evidence, the trial court is to “determine whether, in the light most favorable to the State, there was substantial evidence supporting each element of the charged offense. ‘Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.’” P.13 (citations omitted).

The juvenile was adjudicated of possession of cocaine with the intent to sell or distribute.

The juvenile appealed, first arguing that the juvenile was not competent to stand trial. The Court of Appeals disagreed, finding that the trial court did not abuse its discretion in finding that the juvenile was competent to stand trial, after considering the testimony of two psychologists.

The juvenile next argued that the trial court erred in denying the juvenile’s motion to suppress evidence of the cocaine. The Court reviewed state and federal law and found that there had not been a holding from a North Carolina state court as to whether the age of a juvenile was a relevant inquiry in determining whether a seizure has occurred within the meaning of the Fourth Amendment. The Court then held that the age of a juvenile is a relevant factor in determining whether a reasonable person would feel free to leave upon being stopped by law enforcement. The Court found that the juvenile was seized, but that the juvenile’s conduct and other circumstances surrounding the seizure were sufficient to establish reasonable suspicion to be seized by the officer. The court also found that the officer had probable cause, based on the same factors finding reasonable suspicion, to search the juvenile. The court therefore upheld the trial court’s ruling denying the juvenile’s motion to suppress.

Finally, the juvenile argued that the trial court erred in denying the juvenile’s motion to dismiss the charge. The Court agreed, finding that upon viewing all of the evidence there was not enough evidence to demonstrate intent. The court then removed the case for disposition based on an adjudication for simple possession of cocaine. In a separate concurrence, one judge questioned the authority of one of the witnesses as to the juvenile’s competency, but ultimately found that the trial court did not abuse its discretion.

In a separate concurrence and dissent, another judge concurred that the juvenile was competent to stand trial and that the trial court error in denying the juvenile’s motion to dismiss. However, the judge dissented from the determination that the search and seizure of the juvenile was justified because of the lack of reasonable suspicion to stop the juvenile and the lack of probable cause to search the juvenile.

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# CONFESSIONS

Rules concerning the validity, admissibility, and preconditions of juveniles’ confessions.

## State v. Salderina, N.C. December 21, 2016 (published opinion– reversing State v. Saldierna, \_\_ N.C. App. \_\_, 775 S.E.2d 326 (2015))

Rule (s):

(1)A juvenile must give a clear invocation of his right to consult a parent or guardian prior to questioning by law enforcement.

After signing a waiver of both his *Miranda* rights and his right to have a parent or attorney present during questioning, the juvenile requested to call his mother during an interrogation, which the interrogating officer allowed. The juvenile was unable to reach his mother, but spoke with someone else over the phone. The interrogation continued after the call was made. During the interrogation the juvenile confessed his involvement in several home break-ins.

During the dispositional hearing the juvenile moved to suppress the confession, stating that it was obtained in violation of his constitutional rights. The trial court denied the juvenile’s motion to suppress evidence from the interrogation because there was no clear indication that the juvenile desired to have his mother present during questioning.

The Court of Appeals reversed the trial courts order to deny the motion for suppression of evidence, vacated the judgments entered upon the juvenile’s guilty pleas, and remanded the case to the trial courts for further proceedings. The Court of Appeals originally concluded that unlike an adult, a juvenile may make an ambiguous statement to invoke his right to have a parent present during questioning and it falls upon the interviewing officer to clarify the juvenile’s meaning before proceeding with questioning. However, after reviewing *Davis v. United States*, the N.C. Supreme Court concluded that officers are not required to ask clarifying questions or cease questioning unless the juvenile clearly invokes his right. Because the juvenile did not clearly state that he wanted his mother present for the interrogation, there was no violation of his statutory rights. However, the Court of Appeals did not consider if the juvenile knowingly, willingly and understandingly waived his rights so the case was remanded back to the Court of Appeals for further review.

Dissent: Justice Beasley stated in her dissent that the juvenile’s request to call his mother was unambiguous and was a clear invocation of his statutory right to have his parent present during questioning. She argued that faced with the pressure of being under the authority of law enforcement, even adults become nervous and apprehensive, and it would be more difficult for a juvenile to express their desire to have a parent present or to even understand their rights in those circumstances. She agreed that officers should be required to ask simple, clarifying questions when juveniles may be invoking their right ambiguously, and acknowledged that due to the maturity and experience of juveniles, they should have greater protection than the rights afforded to adults by *Miranda*.

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## In the matter of C.M., 2015 N.C. App. Lexis 249 (unpublished opinion)

Rule(s): Absent formal arrest, the fact that police have identified a person interviewed as a suspect and the fact that an interview is designed to produce incriminating responses from the person are not relevant in assessing whether that person is in custody for *Miranda* purposes.

Petitions were filed against juvenile alleging that he committed felony breaking and entering, felony larceny pursuant to felonious breaking and entering, conspiracy to commit felony breaking and entering, and violated local curfew ordinances. The juvenile filed a motion to suppress the statements made to the police, asserting that he was not advised of his rights under *Miranda* and N.C.G.S. § 7B-2101 prior to the interrogation. At the adjudication hearing, the trial court denied the juvenile’s motion to suppress, finding that given the totality of the circumstances, no custodial interrogation had occurred. The juvenile admitted to one count of conspiracy to commit felony breaking and entering and the trial court adjudicated the juvenile delinquent and placed him on supervised probation for nine months.

The juvenile appealed arguing that the trial court erred by denying his motion to suppress, asserting that his statements resulted from a custodial interrogation. The juvenile contended that the circumstances found in *In re D.A.C.*, which the trial court used as guidance in determining if the juvenile was subject to a custodial interrogation, were distinguishable from the present case.

The Court disagreed finding that similar to *In re D.A.C.*, the juvenile’s mother had scheduled the meeting with the police and invited the officers inside her home for the meeting. The juvenile was fifteen years old on the date of the interrogation and the detective was aware of this fact. The detective testified that when he asked juvenile a question, his answers were given “freely.” The conversation took place in juvenile’s home at 4:00 p.m. so it was still light outside. The detective wore civilian clothes while the other officer was in uniform. The juvenile was questioned in the presence of his mother. Although both officers were armed, neither reached for their weapons at any point in the conversation. The juvenile was not handcuffed or physically restrained in any way. At no point throughout the conversation did juvenile or his mother ask the officers to leave or request to end the conversation.

Further, in *In re D.A.C.* the Court found that although any interview of a suspect will necessarily possess coercive aspects, *Miranda* warnings are not required simply because the questioned person is suspected by the police of wrongdoing. In fact, absent indicia of formal arrest, [the facts] 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. Therefore in the present case, the Court concluded that that the trial court did not err by finding that juvenile’s statements to officers resulted from an impermissible custodial interrogation conducted without the warnings required pursuant to *Miranda* and N.C.G.S. § 7B-2101. Accordingly, the trial court’s denial of juvenile’s motion to suppress was affirmed.

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## In the matter of D.A.C., 741 S.E.2d 378; 2013 N.C. App. LEXIS 180

Rule(s):

1. “‘Absent indicia of formal arrest, [the facts] 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.’” P.13.
2. The fact that a juvenile’s parents instructed him to speak honestly with officers does not warrant an inference of custodial arrest, though evidence suggesting that the parents were acting as agents of the officer(s) would be relevant in making such a determination.

Two petitions were filed alleging the juvenile committed offenses of injury to personal and real property related to allegations that gunshots were fired into a home. During the investigation the officers determined that the shots had originated from the house across the street. The officers, one uniformed and one in plain clothes, encountered the juvenile when they approached the home across the street. The officers obtained permission from the juvenile’s mother to search the outside of the house and found spent shotgun shells. When the officers informed the juvenile’s father that they were going to speak with the juvenile, the father instructed the juvenile to go with the officers and to be truthful. Both parents remained inside the home with the door shut while the officers talked with the juvenile about 10 feet away from the home. The juvenile was not placed under arrest, handcuffed, or searched. However, neither officer ever explicitly told the juvenile that he was free to leave or advised the juvenile of his rights under *Miranda* v. Arizona, 384 U.S. 436, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966) or N.C.G.S. § 7B-2101. During the conversation with the officers, the juvenile admitted having fired the shot in question and, subsequently, agreed to provide a written statement. After conducting an evidentiary hearing, the trial court denied the juvenile’s motion to suppress his oral statement and granted his motion to suppress his written statement. The trial court adjudicated the juvenile delinquent and placed him on probation.

On appeal, the juvenile contended that the trial court erred by denying his motion to suppress an inculpatory statement which he alleged was obtained as the result of a violation of his rights under *Miranda* and N.C.G.S. § 7B-2101. Although the trial court findings indicated that the juvenile was never advised of his rights “*Miranda* warnings and the protections of N.C.G.S. § 7B-2101 apply only to custodial interrogations.” As a result, in order to properly evaluate the merits of the juvenile’s challenge to the denial of his suppression motion, the Court first sought to resolve whether the juvenile was in custody at the time that he orally admitted having fired the shot which struck the neighbor’s residence.

A determination as to whether or not an individual subjected to questioning by law enforcement was in custody “requires the trial court to apply an objective test as to whether a reasonable person in the position of the [questioned individual] would believe himself to be in custody or that he had been deprived of his freedom of action in some significant way.” In making the required determination, a reviewing court must consider the totality of the surrounding circumstances, including “(1) the nature of the interrogator, (2) the time and place of the interrogation, (3) the degree to which suspicion had been focused on the defendant, (4) the nature of the interrogation and (5) the extent to which defendant was restrained or free to leave. In the present case, the Court determined that the juvenile was not subject to the degree of restraint inherent in a formal arrest at the time that he admitted having shot in the direction of the neighbor’s house. The fact that the investigating officers asked him to step outside, rather than instructing him to do so, suggests that the juvenile was not subject to any formal restraint at the time he was questioned. In addition, the record contained no indication that the juvenile did anything more during his conversation with the officers than answer a simple, straightforward question.

Further, while the court accepted the juvenile’s argument that he was immediately suspected of having shot at his neighbor’s house and was questioned by investigating officers for that reason, “[a]bsent indicia of formal arrest, [the facts] 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.” As a result, the Court found that these aspects of the juvenile’s challenge to the trial court’s denial of his suppression motion do not suffice to support a determination that he was subjected to custodial interrogation prior to admitting having fired a gun in the direction of the neighbor’s residence.

The Court also determined that the fact that the juvenile’s parents told him to speak honestly with the officers does not establish the appropriateness of a different outcome either. Although a determination that the juvenile’s parents were acting as agents of the investigating officers might suffice to support a finding that the juvenile was in custody at the time in question, the Court found that the record provides no support for such a conclusion. The Court went on to state that although common sense suggests that a juvenile is likely to comply with a parental instruction to talk to investigating officers, “the fact that the defendant is youthful will not preclude the admission of his inculpatory statement absent mistreatment or coercion by the police.” As a result, the Court held that the trial court did not err by finding that the juvenile’s oral admission that he shot in the direction of the neighbor’s residence did not result from an impermissible custodial interrogation conducted without the provision of the warnings required by *Miranda* and N.C.G.S. § 7B-2101. Accordingly, the trial court’s orders were affirmed.

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## State v. Williams, 209 N.C. App. 441; 705 S.E.2d 409; 2011 N.C. App. LEXIS 182

Rule(s): Where a juvenile states that he wants his mother present while discussing prior convictions but explicitly states that he does not want her present while discussing matters related to a current investigation, the interrogation is not made deficient by virtue of the mother’s absence while discussing the latter.

The defendant (seventeen years old) was found guilty of first-degree murder, robbery with a firearm, and conspiracy to commit robbery after a motion to suppress incriminating statements was denied.

Defendant appealed, arguing that the trial court erred by denying his motion to suppress incriminating statements because (1) they were obtained in violation of N.C.G.S. § 7B-2101, his Fifth Amendment right against self-incrimination, and his Sixth Amendment right to counsel, and that (2) interrogation was not electronically recorded pursuant to § 14A-211. The Court of Appeals disagreed with the defendant’s arguments.

The Court first looked at 7B-2101, which provides that a juvenile should be advised before questioning that he or she has a right to have a parent, guardian or custodian present during questioning, and that once the juveniles requests one of the aforementioned persons, questioning should cease until the requested person is present, unless the juvenile initiates further communication. In this case, the Court noted that the defendant was already in custody at the time of questioning; that he invoked his right to have a parent present during questioning; and that questioning was ceased until he initiated further communication regarding the crimes after he was asked how to contact his mother. The Court further noted that during the questioning, the defendant told the detectives that they misunderstood him earlier, and that he only wanted his mother present for questioning pertaining to the charges for which he was already in custody, and not for the murder or robbery charges. Thereafter, the Court held that the defendant signed a statement, voluntarily and knowingly waiving his rights before making incriminating statements.

As to the Fifth Amendment argument, the Court held that the defendant failed to show coercive techniques or overbearing interrogation tactics similar to the cases he provided.

For the Sixth Amendment argument, the Court held that the right to counsel had not attached as the defendant had not been formally charged and was in custody for prior offenses.

Finally, regarding the court’s failure to record electronically the interrogation, the Court held that the interrogation occurred prior to the recording requirement becoming effective. Accordingly, the appeal was overruled.

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## J.D.B. vs. North Carolina, 2011 U.S. LEXIS 4557; 22 Fla. L. Weekly Fed. S 1135

Rule(s): In determining whether a reasonable person in the juvenile’s position would have considered himself free to leave an interrogation, the court must consider the juvenile’s age.

The juvenile was adjudicated delinquent for felonious breaking and entering and larceny, and placed on probation and ordered to pay restitution.

The juvenile appealed, arguing that his statement to the officers at school occurred during a custodial interrogation, that officers failed to provide warnings under *Miranda*, and that a reasonable 13-year old student in special education classes would not have felt he could leave the room. The North Carolina Court of Appeals and North Carolina Supreme Court disagreed, and affirmed the trial court’s decision, finding that the admissibility of the confession was based upon competent evidence (i.e., school administrators were present; the door was closed, but not locked; the juvenile was not searched or handcuffed; the juvenile began speaking with the officer after agreeing to answer questions; the juvenile indicated that he was aware that he did not have to answer questions and that he was not under arrest; the juvenile understood that the matter was still going to court; the juvenile left the room to catch the bus after writing his statement; the juvenile freely offered to allow officers to view his home; and the juvenile voluntarily provided items to officers after they returned to his home with a search warrant), and that a reasonable person in the juvenile’s position would not have considered himself to be in custody during the time in question, and therefore the juvenile was not entitled to the protections of *Miranda*.

The state Supreme Court further held that that it had not in the past and would not extend the objective test to include factors such as age and academic standing, which it viewed to be “creating a subjective inquiry.”

On certiorari to the U.S. Supreme Court, in a 5-4 decision, the Court reversed, holding that “So long as the child’s age was known to the officer, or would have been objectively apparent to a reasonable officer, including age in the custody analysis is consistent with *Miranda*’s objective nature.” As part of its reasoning, the court relied upon cases distinguishing between the maturity, judgment, comprehension, and perception of adults versus children. The Court indicated that a child’s age, in some cases, could affect how a reasonable person in the same position would perceive his or her freedom to leave, and that courts could address this without harming the objective nature of the custody analysis. Accordingly, the U.S. Supreme Court remanded the case to the state courts to address whether the juvenile was in custody when he was interrogated, taking into consideration all of the relevant factors at the time of interrogation, including the juvenile’s age. http://www.supremecourt.gov/opinions/10pdf/09-11121.pdf

## In the matter of K.D.L., 207 N.C. App. 453; 700 S.E.2d 766, 2010 N.C. App. LEXIS 1954

Rule(s):

1. Where a juvenile is transported to a principal’s office in an officer’s car, is frisked, is held alone with the officer until the principal arrives, is interrogated for six hours, is not told that he may leave, and may be under the impression that the officer and principal are acting in concert over the course of the interrogation (whether or not that is the case), a reasonable person in the juvenile’s position would believe that he was in custody.
2. Denying the juvenile’s motion to suppress statements made in the above conditions is error and may be prejudicial.

The juvenile was adjudicated delinquent of misdemeanor possession of marijuana, and placed on a Level 1 disposition.

The juvenile appealed, arguing that the trial court erred by denying his motion to suppress his statements because he was subjected to custodial interrogation in violation of his Fifth Amendment right against self-incrimination and statutory rights afforded by the North Carolina Juvenile Code. The Court of Appeals agreed, finding that the juvenile’s statements were made while in custodial interrogation. The Court reasoned that the juvenile was treated in a manner that a reasonable person in his situation would have believed he was in custody. The Court also indicated that a reasonable person would have believed that he was functionally under arrest. For its rationale, the Court pointed to the following: the juvenile was interrogated for approximately six hours in the presence of an armed police officer; was frisked and transported in the officer’s vehicle to the principal’s office and remained alone with the officer until the principal arrived; there was no indication that the juvenile was free to leave at any time; the officer was close by throughout the day; and although the principal conducted questioning, the officer’s conduct increased the likelihood that the juvenile would make an incriminating statement given that a reasonable person could believe that the officer and principal were acting in concert. The Court also disregarded the State’s argument that the case was comparable to In re W.R., 363 N.C. 244, 675 S.E.2d 342 (2009) by distinguishing the case on the grounds that there was no suppression hearing in W.R.., and therefore, the Supreme Court could not conclude that there was custodial interrogation due to the limited record.

Regarding the State’s comparison to In re J.D.B., 363 N.C. 664, 686 S.E.2d 135 (2009), the Court also disagreed, nothing that in that case the juvenile consented to questioning wherein in the instant case, there was no indication that the juvenile was given an option of answering questions or ever free to leave.

Regarding the State’s argument that the officer was necessary due to security concerns, the Court pointed out that the officer had already frisked the juvenile for weapons and found none and left the room several times during questioning indicating that safety was not a concern. Accordingly, the Court held that the violation of the juvenile’s rights was prejudicial error, and reversed the denial to suppress, vacated the order, and remanded for further proceedings.

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## In the matter of W.R., 179 N.C. App. 642, 634 S.E.2d 923, 2006 N.C. App. LEXIS 2028, reversed by In re W.R., 363 N.C. 244, 2009 N.C. LEXIS 346, 2009 N.C. LEXIS 346

Rule(s):

1. Where a middle-school student is subjected to repeated questioning in an assistant principal’s office in the presence of a school resource officer, a totality-of-the-circumstances reviews suggests that the juvenile would have reasonably believed that she was not free to leave and so was in custody.
2. An appellate court generally may not consider the merits of arguments not properly preserved at trial.

The juvenile (a fourteen-year-old seventh grader) admitted to possession of a weapon on school property. (The juvenile had been escorted from class by the principal and assistant principal after they received a phone call that he had a weapon on school grounds the day before. While in the office, the juvenile was asked whether he had brought a weapon on campus. Some time later, the school resource officer arrived, and completed a search of the juvenile and his locker. Although the principal, assistant principal, and school resource officer left the room, the school resource officer remained with the juvenile during most of the questioning. The assistant principal informed the juvenile that other students indicated that he had a weapon on campus and that the allegations were serious. The juvenile then admitted to possessing the weapon on school grounds after approximately 30 minutes of questioning. After the school administrators realized that the juvenile did not live in the school district, they would not allow him to return to class. He remained in the assistant principal’s office until a parent arrived over 90 minutes later).

After the juvenile was adjudicated and placed on Level One disposition, the juvenile appealed arguing that the trial court committed plain error by admitting evidence of statements that he made during the interrogation absent a finding that he waived his rights. The Court of Appeals, agreeing with the juvenile, vacated the adjudication of delinquency and the disposition. The Court ruled that the juvenile was in custody during the interrogation and that the lower court committed error when it admitted the juvenile’s statements.

The Supreme Court disagreed with the Court of Appeals, finding that the issue of custodial interrogation had not been preserved for appeal. Consequently, the Court ruled that it was “not prepared based on the limited record before this Court to conclude that the presence and participation of the school resource officer at the request of school administrators conducting the investigation rendered the questioning of respondent juvenile a “custodial interrogation,” requiring *Miranda* warnings and the protections of N.C.G.S. § 7B-2101.” The Court reversed the decision.

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## In the matter of M.L.T.H., 685 S.E.2d 117, 2009 N.C. App. LEXIS 1717 Rule(s):

1. Where a juvenile is informed that she has the “right to have a parent, guardian, custodian or any other person present during questioning,” the language of “any other person” is incorrect, and the juvenile has not been properly advised of her rights. Granting the juvenile’s request to have her brother present does not secure the juvenile’s rights, and statements made in such conditions are deficient under N.C.G.S. § 7B-2101(a).
2. Where a juvenile admits to charges only after the court errantly denies a motion to suppress a statement obtained in violation of the juvenile’s, such error is prejudicial.

The juvenile was adjudicated delinquent for felonious sex offense with a child, and placed on Level 2 disposition.

The juvenile appealed the trial court’s denial of his motion to suppress incriminating statements and the adjudication order, but not the disposition order.

First, the Court of Appeals reviewed the case to determine whether it had jurisdiction to consider an appeal. The Court of Appeals relied upon N.C.G.S. § 7B2602, which mandates that notice of appeal be given in open court at the hearing; within 10 days in writing after the order is entered; or within 70 days in writing after the order is entered if no disposition is made within 60 days after such entry. The court noted that (1) the juvenile did not appeal the final order (disposition order); (2) the disposition order was entered 127 days after the adjudication order and 159 days after the juvenile filed notice of appeal; and (3) the notice of appeal of the order denying the motion to suppress was filed 85 days after it was entered. Therefore, the Court found that the notice of appeal from the motion to suppress was not filed timely. As the juvenile lost his right to appeal, the Court treated the juvenile’s appeal as a petition for certiorari and granted certiorari to address his arguments.

The Court reviewed the court’s denial of the motion to suppress, finding that the trial court made findings of fact that the juvenile was aware that he could request his parents be present for the interview; that he did not request his parents’ presence; and that he only requested his brother be present during the interview.

Next, the Court addressed the sufficiency of the *Miranda* rights presented to the juvenile, and his waiver of such rights. The Court agreed that the trial court erred in denying the juvenile’s motion to suppress incriminating statements, finding that although the *Miranda* rights form used by the sheriff’s department correctly stated the juvenile’s rights, it did not adequately state his rights pursuant to N.C.G.S. § 7B-2101. Specifically, the department’s form provided that the juvenile had a right to have a parent, guardian, custodian, or any other person present during the questioning when N.C.G.S. § 7B-2101 provides that only a parent, guardian, or custodian may be present. When the juvenile was read the *Miranda* rights as included on the department’s form, the Court found that he did not waive his right to have someone present during questioning as permitted under N.C.G.S. § 7B-2101, but instead chose to have his brother present, someone who is not a parent, guardian, or custodian. The Court considered such an option an improper choice that was not permitted under N.C.G.S. § 7B-2101.

Last, the Court addressed the juvenile’s argument that the denial of his motion to suppress resulted in prejudicial error. The Court reviewed the record, which indicated that the juvenile entered an admission only after the court denied his motion to suppress his statements. The Court, finding that the only evidence presented at trial was a brief statement from an investigator based upon statements given by the victim and the juvenile’s admission, ruled that the juvenile’s statements were admitted as a result of a statutory violation (N.C.G.S. § 7B-2101), and prejudicial as a different result may have occurred if the juvenile had been adequately advised of his rights. Consequently, the Court reversed the order denying the motion to suppress, vacated the adjudication order, and remanded to the trial court.

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## In the matter of Z.A.K., 189 N.C. App. 354, 657 S.E.2d 894 (2008), 2008 N.C. App. LEXIS 539

Rule(s): Where the juvenile was questioned during merely exploratory investigation, was not a suspect during questioning, and was not coerced into participation, the juvenile was not in police custody.

The juvenile was adjudicated of involuntary manslaughter and possession with intent to sell and deliver Ecstasy.

The juvenile appealed, arguing that the state failed to prove that the juvenile’s actions were the proximate cause of the victim’s death. The Court of Appeals, after review of the evidence, determined that the juvenile’s failure to aid the victim (not obtaining help, lying to various individuals regarding the situation) after the juvenile provided the victim with the drug constituted culpable negligence but proximately resulted in the victim’s death.

The juvenile also argued that the trial court erred in denying the juvenile’s motion to suppress. The juvenile had been taken to the police station by his father and was interviewed without handcuffs, but was constantly escorted and never told he was free to leave. The Court found that the juvenile was not in custody because the juvenile was not a suspect at the time, that the investigation was merely exploratory, and that neither the police nor the juvenile’s father coerced the juvenile to participate.

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## State v. Oglesby, 174 N.C. App. 658, 622 S.E.2d 152 (2007), 2005 N.C. App. LEXIS 2624

Rule(s):

When an aunt has never lived with a juvenile, signed papers on his behalf, or lived with him, she does not constitute a guardian for purposes of N.C.G.S. § 7B2101, and the juvenile does not have the right to have the aunt present during questioning.

The defendant, sixteen years old at the time of the offense, was charged with first-degree murder, first-degree kidnapping, and attempted robbery with a firearm. During the investigation, the defendant was questioned by law enforcement officers at the police department. During questioning, the defendant requested to telephone his aunt, but the officers did not cease questioning. The trial court denied the motion to suppress the statement, finding that the aunt was not the defendant’s “guardian” under N.C. Gen. Stat § 7B-2101, that this “was not a time specific request,” and that the defendant did not specifically refuse to speak to officers until he was allowed to make the call. The defendant was found guilty of all charges and appealed the denial of the motion to suppress.

The Court of Appeals found no error, and the Supreme Court allowed the defendant’s petition for discretionary review. Though the Supreme Court found that the defendant failed to preserve the issue for appeal, the Court decided to review the decision “to prevent manifest injustice.” The Court found that an “aunt” was not an enumerated person to be present under N.C. Gen. Stat § 7B-2101, and was not described as a “guardian” in Black’s Law Dictionary; therefore, the Court would not disturb the plain meaning of the word. The Court made further findings that the aunt never had custody of the defendant, that the defendant only stayed with the aunt on occasion and for short periods of time, and that the aunt never signed any school papers for him. The Court affirmed the Court of Appeals decision, but there was a dissent, which held that the Court should consider the issue from the information known at the time of the interrogation, not after the fact “following a subsequent legal determination.” http://appellate.nccourts.org/opinions/?c=2&pdf=MjAwNS8wNC0xNTM0LTEucG Rm

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## In the matter of R.H., 2005 N.C. App. LEXIS 1309 (unpublished opinion)

Rule(s): Where the juvenile is intimidated but understands that he is not under arrest, does not have to talk to an officer, and is free to leave, he is not in custody.

The juvenile was adjudicated of misdemeanor larceny. At the adjudicatory hearing, the juvenile moved to suppress his statement to the law enforcement officer.

The trial court denied the motion to suppress, and the juvenile appealed.

The Court of Appeals affirmed the trial court, first stating the there must be a finding that the juvenile is in custody, which means, based on the totality of the circumstances, there is a formal arrest or restraint on the freedom of movement to the degree associated with a formal arrest. The officer testified that he and the juvenile spoke in the principal’s office, that the juvenile was told he was not under arrest and free to leave at any time, and that the officer told the juvenile that he would not arrest the juvenile regardless of what the juvenile told him. The juvenile testified that he felt intimidated and that he was afraid that if he left the room the officer would call his mother and/or arouse suspicion on the part of the officer. However, the juvenile also testified that he understood that he was not under arrest, that he did not have to talk to the officer, and that he was free to leave at any time. The Court concluded that under those circumstances, the juvenile was not in custody at the time the statement was made.

## State v. Branham, 153 N.C. App. 91, 569 S.E.2d 24 (2002), 2002 N.C. App. LEXIS 1078

Rule(s): Under N.C.G.S. § 7B-2101, a parent or guardian may not waive a juvenile’s right to have a parent or guardian present during interrogation.

Defendant (16 years old at the time of the offense) was convicted of three felony drug charges. During the investigation, upon being questioned by police officers, the defendant asked for his mother to be present under N.C.G.S. § 7B-2101, which states that a person 14 years or older has the right to have a parent or guardian present during questioning (which the court found to apply to persons under 18). The mother was at the police station, but told the officers that she did not want to be present when the defendant gave his statement. Relying on previous decisions, the Court of Appeals remanded the case for a new trial, holding that a parent or guardian does not have the ability to waive the defendant's right to have her present during his interrogation.

## State v. Lee, 148 N.C. App. 518, 558 S.E.2d 883 (2002), 2002 N.C. App. LEXIS 34

Rule(s): Reviewing under the totality of the case’s circumstances, waiver-form language sufficed to communicate the juvenile’s *Miranda* rights, including the right to counsel during questioning and regardless of willingness to undergo interrogation.

The juvenile was alleged to have committed first-degree murder and robbery with a dangerous weapon. During the investigation, the juvenile signed a waiver and provided a statement to the police. The juvenile, now defendant, was found guilty of the same charges.

The defendant appealed, arguing that the waiver form warnings were insufficient to satisfy the *Miranda* standard, specifically that the warnings did not clearly direct that the defendant had a right to counsel before questioning, and that the warnings conditioned defendant’s right to counsel on his amenability to participate in the questioning. The Court of Appeals disagreed, finding that under a totality of the circumstances review, the waiver form was adequate in notifying the defendant of his rights, and that considering defendant’s background, experience, etc., that he made a knowing and intelligent waiver of his rights.

## State v. Jones, 147 N.C. App. 527, 556 S.E.2d 644 (2001), 2001 N.C. App. LEXIS 1239

Rule(s): When an aunt has been given legal authority over a juvenile and feeds, clothes, and houses the juvenile, the aunt constituted a guardian “within the spirit and meaning of the Juvenile Code” under former N.C.G.S. § 7A-595.

The juvenile, thirteen years old at the time of the offense, was charged with one count of first-degree murder, two counts of first-degree sexual offense and one count of first-degree kidnapping. During the investigation, the juvenile made incriminating statements to law enforcement officers while in the presence of his aunt. The juvenile was bound over to superior court and found guilty of all charges.

The juvenile, now defendant, appealed, arguing that his aunt was not his “guardian” for the purposes of former N.C.G.S. § 7A-595 (now § 7B-2101). The Court of Appeals disagreed, while finding that the aunt was clearly not the defendant’s parent or custodian, the aunt was the defendant’s guardian “within the spirit and meaning of the Juvenile Code” due to the care, control and legal (although not court-authorized) authority she maintained over the defendant.

## State v. Johnson, 136 N.C. App. 683, 525 S.E.2d 830 (2000), 2000 N.C. App. LEXIS 164

Rule(s): If a juvenile initially states that he does not want to answer questions with police, but nods affirmatively after interjected encouragement from his mother, police may continue questioning (compliant with former N.C.G.S. § 7A-595).

The juvenile was alleged to have committed first-degree murder and robbery with a dangerous weapon. During the investigation, the juvenile went to the police station in the presence of his mother. The juvenile stated initially that he did not want to answer any questions, but his mother told defendant that “we need to get this straightened out today and we’ll talk with him anyway.” The juvenile then nodded affirmatively when asked by the detective if he wanted to answer questions without a lawyer or his parent being present. The juvenile, now defendant, was found guilty of the same charges.

The defendant appealed, arguing that when he refused initially to answer questions, the questioning should have ceased. The Court of Appeals disagreed, finding that by nodding his head affirmatively, the defendant re-initiated the conversation, therefore waiving his right against self-incrimination.

## State v. McKeithan, 140 N.C. App. 422, 537 S.E.2d 526 (2000), 2000 N.C. App. LEXIS 1205

Rule(s): A warning that complied with *Miranda* but which failed to mention that a juvenile’s right to an attorney did not hinge on indigence complied with N.C.G.S. § 7A-595, though the court urged agencies “to comply literally with the provisions of the new juvenile interrogation procedures statute[,]” N.C.G.S. § 7B-2102.

The defendant was charged with two counts of first-degree murder, one count of first-degree arson, one count of first-degree burglary, and one count of conspiracy to commit murder. During the investigation, defendant was read his rights and signed a waiver. He was later convicted of the same charges.

The defendant appealed, arguing that he did not make a knowing and voluntary waiver of his rights. The *Miranda* warnings stated that “if you cannot afford a lawyer one will be appointed for you before questioning if you wish,” and the defendant argued that under N.C.G.S. § 7B-2101 (then § 7A-595), a juvenile is presumed indigent and is granted a lawyer without a question of his indigency. The Court of Appeals disagreed, finding that the warnings were sufficient to inform the defendant of his rights, but added “we urge law enforcement agencies to comply

literally with the provisions of the new juvenile interrogation procedures statute.”

## State v. Flowers, 128 N.C. App. 697, 497 S.E.2d 94 (1998), 1998 N.C. App. LEXIS 162

Rule(s):

1. *Miranda* rights need not be explained in any greater detailed to juvenile defendants than to adults.
2. Presenting some evidence of lower-than-average mental function does not establish that a defendant did not understand her rights or that she was coerced into making a confession.

The juvenile was alleged to have committed robbery with a dangerous weapon and assault with a deadly weapon with intent to kill inflicting serious injury. The juvenile was bound over to superior court. The juvenile, now defendant, pled guilty to both charges.

The defendant appealed, making several arguments regarding the admissibility of his statements. He specifically argued that his constitutional and statutory rights were not explained to him sufficiently, and even if his rights were sufficiently explained, he did not waive his rights knowingly, willingly or intelligently due to his age and low intellectual functioning. The Court of Appeals disagreed with both arguments.

As to the claim of sufficiency of the explanation, the court found that the interrogating officer was not required to explain the defendant’s rights “in any greater detail” than is required either by *Miranda* or by statute, “even when the suspect is a minor.”

As to the defendant’s second claim, the court determined that even though the defendant presented evidence of lower intellectually functioning, there was no evidence that the defendant did not understand his rights and that he was not coerced into making a confession.

## State v. Bunnell, 340 N.C. 74, 455 S.E.2d 426 (1995), 1995 N.C. LEXIS 168

Rule(s): In determining whether a juvenile’s confession was made voluntarily, a court is to consider the totality of the circumstances surrounding the statement, including whether the juvenile was in custody, her mental capacity, the physical environment, and the manner of the interrogation.

The juvenile was alleged to have committed first-degree murder and robbery with a dangerous weapon. The juvenile was bound over to superior court, where he was found guilty of first-degree murder.

The juvenile, now defendant, appealed the decision, arguing that his confession to law enforcement was not voluntary due to his age and mental capacity. The Supreme Court disagreed, stating that the court should consider “the totality of the circumstances” surrounding the statement, including whether or not the defendant was in custody, the defendant’s mental capacity, physical environment, and manner of the interrogation. The Supreme Court found there was no showing that the defendant was of “subnormal intelligence” and that the defendant “seemed familiar” with the *Miranda* warnings. No link available.

## In the Matter of T.T.W., 2016 N.C. App COA 15-1360 (unpublished opinion)

Rule(s):

(1) Despite an error by both the defendant juvenile and the officer indicating that the juvenile’s mother was present during the interrogation on the juvenile waiver form, if a juvenile is advised of his right to have a parent or attorney present during interrogation and his waiver was knowing, voluntary, and intelligent, his statements may not be suppressed.

On July 8, 2014, the 16-year-old juvenile was arrested for armed robbery and questioned by law enforcement. He was read his rights by the detective who conducted the interrogation and confirmed with the juvenile that he understood his rights and he could read the documents presented to him, including a Juvenile Waiver of Rights Form, which includes the right for him to have a parent, guardian, or custodian present during questioning. The officer erroneously marked the box on the form indicating that juvenile’s mother was present during the interrogation and the juvenile initialed the box. Following his indictment on charges of attempted robbery with a dangerous weapon, the juvenile moved to suppress his statements on the grounds that they were obtained in violation of his constitutional rights. The judge found that the initialing of the form was in error of both the juvenile and the detective, but because the juvenile was advised of his rights, there was no evidence suggesting that he requested his mother be present, and he voluntarily and knowingly waived the rights, it was concluded that “any statements made thereafter are admissible” and the juvenile’s motion to suppress was denied.

The juvenile contended that his statutory rights were violated pursuant to the fact that he was questioned without his parent present and he “unambiguously indicated that he wanted his mother present during questioning” by initialing the box that stated that she was present, and he had not chosen to waive his right to counsel. The juvenile also asserted that even if his invocation of his rights were ambiguous, the detective’s failure to clarify if he desired to have his mother present during interrogation constituted sufficient evidence to suppress any incriminating statements. N.C. Gen. Stat. 7B-2101 states that the State must show that the juvenile made “a knowing and intelligent waiver of his rights” and prior case law states that the juvenile may not be interrogated any further until counsel (or a parent) arrives after they have requested to have them present for any questioning unless the juvenile initiates the communications themselves. The factual finding of the trial court showed that despite an error by both the officer and the defendant juvenile indicating that the juvenile’s mother was present for the interrogation on the juvenile waiver form, the juvenile understood his rights and that there was no request made for his mother to be present. The court concluded that the juvenile did not invoke his right and validly waived his right to have a parent present. Therefore, the trial court’s denial of the juvenile’s motion to suppress statements made to law enforcement is affirmed.

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## In the Matter of: J.D.F., \_\_\_ N.C. \_\_\_, No. COA20-371 (October 5, 2021)

Rule: The trial court made insufficient findings of fact regarding whether the juvenile was in custody to determine if the juvenile’s confession should be suppressed.

The juvenile was charged with first-degree sexual offense. The juvenile filed a motion to suppress challenging the juvenile’s confession. The trial court denied the motion to suppress, upon which the juvenile admitted to the offense under an Alford admission. The juvenile appealed, arguing that the juvenile was in custody at the time of the confession and was not given Miranda or statutory warnings, and that the statements were not voluntary.

The Court of Appeals reviewed constitutional and statutory law regarding confessions and determined that whether an individual is in custody when questioned by law enforcement is an objective test. Reviewing the totality of the circumstances, of “whether a reasonable person in the position of the [questioned individual] would believe himself to be in custody or that he had been deprived of his freedom of action in some significant way.”

As applied to the case, the Court noted that the trial court failed to make a finding whether the juvenile’s age was considered as it impacted custody, and remanded the case to make those findings. However, the Court continued to review the issue of custody based on other facts presented. Noting that the juvenile challenged the trial court findings of fact as unsupported by the evidence, the Court determined the evidence presented was in fact competent and continued the custody analysis. The Court determined that the trial court’s finding of the juvenile not in custody was “likely proper” considering the juvenile was not restrained, not searched, was interviewed for approximately 50 minutes, was transported to the sheriff’s office by a relative and was told multiple times that the juvenile would be returning home after the interview. However, since the juvenile’s age was not considered as a factor, the case was to be remanded for a new suppression hearing.

The Court next considered the issue of voluntariness. While recognizing that minority could affect the voluntariness of a statement, generally “a minor has the capacity to make a voluntary confession…without the presence or consent of counsel or other responsible adult.” Factors considered include intelligence, education, experience and the ability to comprehend the meaning and effect of the statement. In considering the facts presented to the trial court, specifically that the juvenile “indicated on the signed confession that the statement given was voluntary,” the Count found the juvenile knew and understood that he was making a voluntary confession. Additionally the Court found that the statements used by the law enforcement officers to elicit the confession did not amount to coercion.

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# CONFLICTS

Rules concerning conflicts of interest

## In the matter of T.H. & A.M., 2015 N.C. App. LEXIS 599 (unpublished opinion)

Rule(s):

1. Dispositional orders requiring restitution must include findings of fact demonstrating that the best interests of the juvenile are being served.
2. Unless circumstances indicate otherwise, trial courts may assume that multiple representation entails no conflict or that the attorney and his clients knowingly accept such risk of conflict may exist

Two juveniles (T.H. & A.M. are brothers) were adjudicated delinquent for committing larceny from a person and placed on probation for twelve months. The juveniles were also ordered to pay restitution in the amount of $70.00, jointly and severally.

The juveniles appealed first arguing that they received ineffective assistance of counsel (IAC) when their trial counsel was under an actual conflict of interest that adversely affected his performance. Specifically, T.H. asserted that “it should have been intuitively obvious to the judge that the potential for conflicts of interest would exist where one attorney represented two juveniles in a contested delinquency case” and the trial court should have conducted an inquiry because there was no record of evidence that he waived any potential conflicts, a reversal was warranted. Further, T.H. contended that his counsel was under an actual conflict of interest because he and A.M. had different, conflicting defenses.

In State v. Wise, the Court states that “unless the circumstances indicated otherwise, the state trial courts may assume either that multiple representation entails no conflict or that the lawyer and his clients knowingly accept such risk of conflict may exist.” Therefore, the Court found that the trial court was not on notice that the joint representation created a potential conflict and was not required to initiate an inquiry or act.

The Court also rejected T.H.’s argument that their counsel performed under an actual conflict because he and A.M. had conflicting defenses. The record showed that neither T.H. nor A.M. testified at their adjudication hearing. Thus, the juveniles’ counsel was not in a position where one client’s testimony was to the benefit or detriment to the other.

Next, A.M. that acting under a conflict, his counsel was unable to argue that there was no evidence that A.M.’s actions had the “intent to permanently deprive the owner of the property,” an essential element of larceny from the person. In In re D.K. the Court determined that “the intent to permanently deprive an owner of his property could be inferred where there was no evidence that the defendant ever intended to return the property, but instead showed a complete lack of concern as to whether the owner ever recovered the property.” In the present case, the Court found that the evidence sufficiently demonstrated that A.M. had a complete lack of concern and total indifference as to whether the victim recovered his property. Moreover, the Court concluded that A.M.’s argument was predicated on a misinterpretation of the law as the record did not show that an actual conflict of interest adversely affected the juveniles’ counsel’s performance.

The juveniles then asserted that they received IAC when their counsel failed to make a motion to dismiss at the conclusion of the evidence. The juveniles argue that there was insufficient evidence that they had the intent to permanently deprive the victim of his property.

“Where the juvenile moves to dismiss, the trial court must determine whether there is substantial evidence (1) of each essential element of the offense charged, . . . and (2) of [juvenile’s] being the perpetrator of such offense.” State v. Heil, 145 N.C. App. 24, 28, 550 S.E.2d 815, 819 (2001). Here, the juveniles both argue that there was insufficient evidence to support element (5). The Court disagreed finding that the evidence was sufficient to withstand a motion to dismiss. Therefore, even assuming arguendo that juveniles’ counsel erred by failing to make a motion to dismiss at the close of all the evidence, the Court concluded that the juveniles failed to establish that but for their counsel’s error, the result of their proceeding would have been different.

Finally, the juveniles contend that the trial court abused its discretion in ordering that the juveniles be jointly and severally liable for restitution in the amount of $70.00. The State conceded that there was no evidence in the record to support the trial court’s order. Further, the Court stated that the “trial court failed to make any findings of fact demonstrating that the best interest of the juveniles would be promoted by requiring them to pay restitution” as the Court decided in In Re Heil.

Accordingly, the trial court’s orders were affirmed in part and vacated and remanded in part. http://appellate.nccourts.org/opinions/?c=2&pdf=32575

# DETENTION AND CUSTODY

Rules concerning the permissibility and requisite preconditions of detention and custody, as well as the crediting of time served.

## In the matter of R.B.L., 2015 N.C. App. LEXIS 592 (unpublished opinion)

Rule(s): A juvenile is not considered in custody unless he is subjected to additional restraints beyond those generally imposed during school hours. Based on an anonymous tip that the juvenile was involved in a drug transaction in the bathroom of a high school, the school principal, assistant principal and school resource officer (SRO) interviewed the juvenile in an unoccupied office that measured between 8x10 and 10x13 feet in area. The door to the office was closed but not locked.

The SRO filed a petition for one count of possessing a controlled substance with intent to sell or deliver and one count of selling or deliver a controlled substance. The juvenile was adjudicated delinquent on the charge of possessing marijuana with intent to sell and deliver, and placed on 12 months of probation, subject to various supplemental conditions.

The juvenile appealed first arguing that it was plain error for the trial court to admit lay opinion testimony from witnesses that the substance contained in State’s Exhibit 1 was marijuana when the State made no showing that any of the witnesses had any personal knowledge, experience, education or training in marijuana identification. The Court disagreed noting that the Court has long recognized that evidence proffered through lay opinion testimony under Rule 701 of the North Carolina Rules of Evidence is admissible “as long as the lay witness has a basis of personal knowledge for his opinion.” In the present case, two witnesses testified that the substance they saw in the juvenile’s tin was marijuana based on their prior knowledge and personal perception. The Court found the argument without merit and overruled.

Next, the juvenile contended that the trial court violated the statutory procedure for conducting a juvenile adjudicatory hearing by failing to fully advise him of his privilege against self-incrimination under N.C.G.S. 7B-2405 before he made inculpatory statements during his voir dire testimony.

In *J.R.V.* the Court made clear that “by stating that the trial court shall protect a juvenile’s delineated rights, [the statute] places an affirmative duty on the trial court to protect, inter alia, a juvenile’s right against self-incrimination” and the Court held that trial court erred because the record revealed that there was no colloquy between the juvenile and the trial court. Here, the Court determined that the transcript of the adjudicatory hearing shows that the trial court and the juvenile engaged in an extensive colloquy, during which the trial court informed the juvenile of both his privilege against self-incrimination and his right to confront and cross-examine witnesses. The Court found that the colloquy clearly satisfied the minimum requirements imposed by N.C.G.S. 7B-2405.

Finally, the juvenile asserted that the trial court erred in denying his motion to suppress the statements made to the principal, assistant principal and SRO. Specifically, the juvenile argued that his statement was the product of a custodial interrogation and should have been suppressed because the juvenile was never given *Miranda* warnings.

In *K.D.L.* the Court “have recognized that schoolchildren inherently shed some of their freedom of action when they enter the school house door….and the school’s position in loco parentis justifies enhanced power of school authorities to regulate students’ conduct. Therefore, a student is not in custody unless he is subjected to additional restraints beyond those generally imposed during school.” In the case at bar, the record indicates that the juvenile was not physically restrained in any way before or during the questioning. Further, as the Court held in *A.N.C., Jr.*, “the fact that a defendant is not free to leave does not necessarily constitute custody for purposes of *Miranda*.

The Court also addressed the juvenile’s assertion that he was in custody because the school administrators questioned him in concert with the SRO in anticipation of filing criminal charges. The Court disagreed noting that unlike the facts of *K.D.L.*, the SRO in the present case did not frisk or deploy any similar degree of physical restraint against the juvenile and the record reveals that the SRO was minimally involved in the questioning of the juvenile. Consequently, the Court concluded that the trial court did not err in determining the juvenile was not in custody.

Accordingly, the trial court’s adjudication order was affirmed.

http://appellate.nccourts.org/opinions/?c=2&pdf=32967

## In the matter of J.L.H., 750 S.E.2d 197, 2013 N.C. App. LEXIS 1155

Rule(s):

1. Where a juvenile has served time in a development center and is scheduled for post-release supervision, erroneous denials of motions for release are not made moot by virtue of the fact that the juvenile has been released.
2. Mere oral notice of a proposal for the extensions of a commitment period does not conform with N.C.G.S. § 7B-2515(a), which requires written notice.

The juvenile was adjudicated delinquent for possession of a handgun by a minor and carrying a concealed weapon. At the disposition the trial court ordered the juvenile be committed to a youth development center for a maximum of six months. The juvenile’s commitment was scheduled to expire on November 15, 2012.

On October 15, 2012 the juvenile’s court counselor, social worker and members of his treatment team held a meeting with the juvenile during which they decided to seek an extension of the juvenile’s commitment period. Due to transportation and work-related difficulties, and with permission from the court counselor, the juvenile’s father participated in the service plan meeting by telephone. At the service planning meeting, the juvenile’s father was orally informed of the treatment team’s recommendation that the juvenile’s commitment period be extended. The juvenile’s father objected to the proposed extension. On October 17, 2012 the juvenile court counselor submitted a formal request for a three-month extension of the juvenile’s commitment period for approval. An extension of no more than six months was approved on October 23, 2012 and written notice was mailed to the juvenile’s parents. The juvenile’s attorney did not receive a copy of the extension plan until the morning of the November 19, 2012 hearing.

On 24 October 2012, the Division of Juvenile Justice (DJJ) filed a motion for review requesting approval of the extension of the juvenile’s commitment period. On 5 November 2012, the juvenile filed a motion seeking to be released from his commitment on the grounds that DJJ had failed to provide written notice of the proposed extension of the commitment period to James and his parents at least 30 days before the last day of his existing commitment period as required by N.C.G.S. § 7B-2515 and that he had served the maximum term of his initial commitment period. At the conclusion of the hearing on November 7, 2012 the trial court entered a written order denying the juvenile’s motion finding that the oral notice the juvenile’s father received over the telephone during the October 12 meeting constituted sufficient compliance with the notice provisions of N.C.G.S. § 7B-2515(a). The juvenile was released from the custody of the DJJ in March 2013 and was placed on one year of post-released supervision.

The juvenile appealed arguing that the trial court erroneously denied his motion for release on the grounds that the DJJ violated the notice provisions set out in N.C.G.S. § 7B-2515(a) in the course of obtaining the extension of his commitment period. More specifically, the juvenile argued that his period of commitment was unlawfully extended because DJJ failed to provide him and his parents with written notice of DJJ’s extension plan at least 30 days prior to the end of his maximum commitment period.

The court began its analysis by addressing the State’s contention that the juvenile’s challenge to the denial of the motion for release from commitment was rendered moot because the juvenile was no longer in custody, making the Court unable to provide any meaningful relief. The Court disagreed holding that “the clear impact of the challenged order was to extend the period during which [the juvenile] was committed to the custody of [DJJ]. In the event that the trial court erroneously refused to release [the juvenile] from his commitment to [DJJ], his release from commitment and the commencement of the one-year period of post-release supervision was delayed for a number of months. As a result, had the trial court granted, instead of denied, [the juvenile’s] motion for release, on the grounds that his period of commitment had been unlawfully extended, he would be much nearer to the end of this one-year period of post-release supervision than is currently the case.” As a result, a decision by this Court to the effect that the juvenile’s period of commitment had been improperly extended would, in actuality, have a practical impact on the juvenile’s life, a determination which precludes us from dismissing his appeal from the denial of his release motion on mootness grounds.

Next the Court addressed the issue is of whether DJJ extended the juvenile’s period of commitment in a lawful manner. N.C.G.S. § 7B- 2515(a) provides that:

if the Division determines that the juvenile’s commitment should be continued beyond the maximum commitment period as set forth in N.C. Gen. Stat § 7B-2513(a), the Division shall notify the juvenile and the juvenile’s parent, guardian, or custodian in writing at least 30 days in advance of the juvenile’s eighteenth birthday or the end of the maximum commitment period, of the additional specific commitment period proposed by the Division, the basis for extending the commitment period, and the plan for future care or treatment.

The record revealed that the treatment team decided to recommend an extension of commitment at the October 15, 2012 meeting and that recommendation was not approved by the relevant DJJ officials until October 23, 2012. However, no written notice of the final extension decision was provided to the juvenile or his parents until October 23, 2012. As a result, the undisputed information contained in the present record established that, even if the extension decision was made at the time of the treatment team meeting rather than on the date upon which the team’s recommendation received official approval, the notice provided in connection with its request for an extension of the juvenile’s period of commitment was “under the statutorily mandated time frame.” Thus, the Court concluded that DJJ failed to comply with the provisions of N.C.G.S. § 7B-2515(a) at the time that it attempted to extend the juvenile’s period of commitment.

Thus, the Court determined that the trial court erred by denying the juvenile’s motion for release from commitment. Consequently, the order was reversed and remanded for further proceedings not inconsistent with the opinion.

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## In the matter of D.L.H., 679 S.E.2d 449, 2009 N.C. App. LEXIS 1175, 2010 N.C.

App. LEXIS 421

Rule(s):

1. Juvenile terms of confinement may not be reduced by time spent in custody prior to disposition.
2. By the express language of N.C.G.S. § 7B-1903(b) and (d), it applies only while the allegations of a violation are pending and not where there has been an admission and adjudication of the conduct.
3. Under N.C.G.S. §§ 7B-1903, -1906(b) and (e), “a juvenile confined to secure custody pending disposition or placement is entitled to a hearing at intervals of no more than 10 calendar days to determine whether continued secure custody is warranted.” P.14.

In July 2007, the juvenile was adjudicated of simple affray, and ordered to remain in detention as disposition was continued until August 2007. At the August 2007 hearing, the juvenile was placed on a Level 2 probation until January 2008, and sentenced to 14 days in detention that were stayed pending compliance with conditions of probation. In December 2007, at a hearing on a motion for review, the juvenile admitted the allegations, and was ordered to serve the 14 days in detention, which had been stayed by the August 2007 order. Disposition was continued to January 2008. At the January 2008 hearing, the court held that the juvenile was delinquent, and would benefit from probation. Disposition was continued to late January, and the juvenile was placed in detention pending disposition. Before being placed in detention in January, the juvenile had filed a motion seeking (1) release from custody, asserting the court did not have authority to order her to remain in custody, or in the alternative (2) a secure custody hearing pursuant to N.C.G.S. § 7B1906. The court ordered that it did not have authority to modify previous orders by another judge. At the disposition hearing, a Level 2 disposition was entered, the juvenile’s probation was extended six months, and a 14-day sentence was stayed pending compliance with conditions of probation.

The juvenile appealed orders entered in December 2007, January 2008, and February 2008. The juvenile’s arguments included two regarding the juvenile’s stays in secure custody. The Court of Appeals first addressed the issue of mootness, finding that although the issues raised were now moot to the juvenile (who had since been released from detention), the issues were “capable of repetition, yet evading review.”

Juvenile’s first argument was that the trial court erred by failing to give credit for time served in secure custody prior to the dispositional hearing. (Note: Specifically, the juvenile did not receive credit for the 27 days that she spent in detention awaiting disposition when she received the 14-day sentence in August 2007. Additionally, when the 14-day sentence was activated in December 2007, the juvenile did not receive any credit for time served. The juvenile also spent an additional 28 days in detention pending another dispositional hearing). The Court of Appeals agreed that the court erred in not providing credit for time served, finding that In re Allison, 143 N.C. App. 586, 547 S.E.2d 169 (2001) held that N.C.G.S.15196.1, Credits Allowed, applied to juvenile commitments.

The juvenile’s second argument was that the trial court erred by ordering the juvenile into secure custody after the admission of probation violations because detention was not authorized. The Court of Appeals disagreed, finding that under N.C.G.S. § 7B-1903(c), the trial court was authorized to order secure custody after the admission of probation violations because (1) the juvenile had been adjudicated delinquent previously; (2) the juvenile admitted the probation violations; and the trial court had good cause to continue the dispositional hearing as the court counselor and juvenile’s mother were determining whether out-of-home placement was appropriate.

Thirdly, the juvenile argued that the trial court erred in its refusal to consider the pending motion for release from secure custody. The Court of Appeals agreed, finding that the juvenile was entitled to a hearing under N.C.G.S. § 7B-1906(b), which states, “as long as the juvenile remains in secure or nonsecure custody, further hearings to determine the need for continued secure custody shall be held at intervals of no more than 10 calendar days.”

Lastly, the juvenile argued that trial court erred because it: (1) lacked authority to reinstate a sentence already served and to extend probation at the January 2008 hearing and (2) failed to enter findings of fact to support the extension. The Court of Appeals disagreed, finding that the trial court was authorized to continue the original conditions of probation or modify the conditions of probation (N.C.G.S. § 7B-2510 (e)). The Court also found that the trial court was authorized to activate the original suspended 14-day sentence and an additional suspended 14-day sentence based on the admission to probation violations as the court is allowed to impose up to the 28 days of confinement for a Level 2 disposition (N.C.G.S. § 7B-2506, 7B-2508, and § 7B-2510). Further, the Court found that the trial court had entered sufficient findings of fact to support the extension of probation as the findings of fact indicated that extension “was necessary to protect the community or to safeguard the welfare of the juvenile.”

On discretionary review, the Supreme Court overruled the Court of Appeals, finding that North Carolina general statutes do not authorize credit for time served for protective custody served by juveniles. The Supreme Court reasoned that juvenile proceedings are distinct from criminal prosecutions, and that although criminal sentences impose punishment pursuant to the offense, juvenile dispositions focus on accountability, responsibility, as well as consequences and treatment. The Court further reasoned that in the instant case, the juvenile’s placement in secure custody, “was a reasonable exercise of the district court’s discretion that was intended to serve D.L.H.’s best interests while the parties gathered information on how best to respond to her particular circumstances.” Regarding whether criminal procedure should be imported into the juvenile context to address credit for time served, the Court maintained that delinquency proceedings are not criminal prosecutions, and therefore not subject to all criminal procedure provisions. The Court reasoned that the absence of any statutory indication that N.C.G.S. § 15-196.1 applies to juvenile matters or that a juvenile is entitled to credit for time served lead them to the conclusion that juvenile terms of confinement may not be reduced by time spent in custody prior to disposition.

Further, the Court reasoned that N.C.G.S. § 7B-2514(f), which specifically allows juvenile commitment terms to be reduced by the amount of time on postrelease supervision, supports the conclusion that the legislature did not intend to provide credit for time served in the juvenile context. Moreover, the Court noted that prior decisions applied criminal procedure protections because they were mandated by constitutional guarantees of due process, which were not argued in this case. Accordingly, the Supreme Court reversed the decision, and left other issues (i.e., the holding that juveniles in secure custody are entitled to a hearing at least every 10 days after adjudication and pending disposition for continued secure custody) undisturbed.

N.C. Court of Appeals:

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N.C. Supreme Court:

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## In the matter of R.T.L., 2007 N.C. App. LEXIS 1025 (unpublished opinion)

Rule(s):

1. Intent may only be inferred from packaging, labeling, and storage, the defendant’s activities, the quality of the substance found, and the presence of cash or drug paraphernalia.
2. Rule concerning N.C.G.S. § 15-196.1 (credit for time served) overturned by In the Matter of D.L.H., 679 S.E.2d 449, 2009 N.C. App. LEXIS 1175, 2010 N.C. App. LEXIS 421.

The juvenile was adjudicated delinquent for possession with intent to sell or deliver cocaine. The evidence at trial indicated that the juvenile was found to be in possession of one plastic bag containing seven “rock-like” substances.

The juvenile appealed, arguing that the trial court erred in denying the juvenile's motion to dismiss due to insufficient evidence. The Court of Appeals agreed, holding that intent may only be inferred from packaging, labeling, and storage, the defendant's activities, the quality of the substance found, and the presence of cash or drug paraphernalia. The Court found that the State failed to provide any other evidence. The judgment was vacated and remanded for entry of judgment on possession of cocaine with resentencing accordingly. The Court also held that the juvenile was entitled to a sentencing credit for time spent in detention prior to adjudication. The Court stated that under In re: Allison, 143 N.C. App. 586 (2001) the Court had previously determined that the provisions of N.C.G.S. § 15196.1 (credit for time served) apply to juvenile offenders.

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## In the matter of R.D.R., 175 N.C. App. 397, 623 S.E.2d 341 (2006), 2006 N.C. App. LEXIS 52

Rule(s): A court may continue disposition hearing pending charges that arise during the adjudication hearing, this falling under the good-cause provision of N.C.G.S. § 7B-2413.

The juvenile was adjudicated delinquent of breaking and entering, trespass and injury to real property. During the adjudication hearing, the juvenile was also charged with intimidation of a witness. After adjudication was entered on the first set of charges, the court continued disposition for a week and ordered the juvenile to be placed in secure custody pending the hearing on the intimidation of a witness charge.

The juvenile appealed, arguing that the district court erred in continuing the disposition hearing and ordering the juvenile into secure custody. The juvenile’s first argument was that because the court counselor had prepared the disposition report, the court was required to proceed to the disposition hearing per N.C.G.S. § 7B-2413 (“The court shall proceed to the dispositional hearing upon receipt of the predisposition report”). The Court of Appeals disagreed, finding that under N.C.G.S. § 7B-2406, the court may continue any hearing for good cause, and that the district court did not abuse its discretion by continuing the matter because the court had to also consider the charge of intimidating a witness before entering disposition on all of the charges.

The juvenile also argued that the trial court erred in placing the juvenile in secure custody pending adjudication of the intimidation of a witness charge. The Court disagreed, holding that the trial court’s finding that the juvenile was adjudicated delinquent and the juvenile should be placed in secure custody pending the disposition was sufficient to support the trial court’s order.

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## In the matter of Allison, 143 N.C. App. 586, 547 S.E.2d 169 (2001), 2001 N.C. App. LEXIS 329

Rule(s): Time spent in detention pending disposition may not be credited towards multiple commitment periods.

The juvenile had been committed to training school, released on conditional release status, and violated the requirements of the conditional release, as well as being alleged to have committed new criminal offenses. After admitting the violation and being adjudicated delinquent of the charges, the juvenile remained in a detention center while pending disposition. The trial court ordered that the juvenile be re-committed for violating the conditions of conditional release, and receive a new commitment for the adjudication on the criminal charges.

The juvenile appealed, arguing that she should have received credit against her commitments for the time spent in detention pending disposition. The Court of Appeals found that the time spent in detention pending the re-commitment to training school could be counted against the remaining time to be served on the original commitment, but under N.C.G.S. § 15A-196.1, she was not able to receive credit against her new commitment.

# DISABILITY

Rules concerning testing for disabilities and the admissibility of evidence thereof.

## In the matter of P.J.R., 151 N.C. App. 733, 567 S.E.2d 227 (2002), 2002 N.C. App. LEXIS 855

Rule(s): Psychiatric/psychological evaluators may base their findings partly on previous evaluations, as long as other factors are considered.

The juvenile was adjudicated of assault with a deadly weapon with intent to kill inflicting serious injury, robbery with a dangerous weapon, and felonious larceny.

The juvenile appealed, arguing that the trial court erred in finding him capable to proceed. The juvenile had three evaluations, two of which had been performed at Dorothea Dix hospital. The third and final evaluation was performed by the chief of psychiatry, who based his findings in part on the first evaluation, performed by a doctor under his supervision. The juvenile argued that the third evaluation should have been performed independently without any affiliation with the other evaluations. Upholding the lower court, the Court of Appeals found the third evaluation reliable and unbiased, stating that the first evaluation was only one of several factors used by the third evaluator in determining the juvenile capable of proceeding.

# DISORDERLY CONDUCT

Rules concerning what does and does not constitute disorderly conduct at school. This matter is highly fact-sensitive.

## In the Matter of T.K. \_\_\_ N.C. App. \_\_\_\_ (May 16, 2017); No. COA16-1047 (published)

Rule(s): (1) A petition in a juvenile delinquency case must have the signature of a juvenile court counselor (or other appropriate representative of the State), and the words “Approved for Filing” in order for a district court to have subject matter jurisdiction over the petition.

After an altercation at school, a petition was filed against the juvenile for simple affray which was signed by a juvenile court counselor and marked “Approved for Filing”, before being filed with the district court. On the day of the hearing, the school resource officer signed a second petition for the same incident, alleging that the juvenile was also delinquent for disorderly conduct. The second petition was not signed by a court counselor, nor was it marked “Approved for Filing”, but it was still filed with the district court. Prior to the hearing, the State dismissed the simple affray charge, and the court adjudicated the juvenile delinquent for disorderly conduct. The Juvenile Code imposes specific requirements that must be satisfied before the court obtains jurisdiction (N.C.G.S.§7B-1703(b)). No prior cases have addressed whether the signature of the court counselor and the “Approved for filing” language are prerequisites for jurisdiction in delinquency cases. However, prior case law determined that the trial court lacked subject matter jurisdiction in an abuse and neglect case when the petition was not signed and verified by the petitioner as required by the Juvenile Code. The court found the petition fatally defective based upon this precedent and ruled the court did not have subject matter jurisdiction. The adjudication was vacated and dismissed.

This ruling does not extend the holding in In re D.S. (364 N.C. 184 (2010) where the NC Supreme Court held that the timelines imposed by N.C.G.S.§7B-1703(b) are not jurisdictional.

In a concurring opinion, Judge Stroud found that even if the petition was not fatally defective, the adjudication and disposition orders would need to be reversed because there was no evidence of disorderly conduct.

http://appellate.nccourts.org/opinions/?c=2&pdf=35240

## In the matter of M.J.G., 2014 N.C. App. LEXIS 611 Rule(s):

1. Where the court indicates that relevant facts have been proven beyond a reasonable doubt and states that it “concludes as a matter of law, that in regard to the allegations in the petition(s) before the Court” the juvenile is delinquent, P.9, this satisfies the requirement (under N.C.G.S. § 7B-2411) that the court indicate having found the juvenile to have been adjudicated delinquent beyond a reasonable doubt.
2. While witness testimony regarding a person’s intent is inadmissible, testimony as to the person’s demeanor is admissible.
3. “[T]he court is empowered to assign weight to the evidence presented at the trial as it deems appropriate . . . .” P.14 (citations omitted).
4. Where “[t]he juvenile’s conduct merit[s] intervention by several teachers, the assistant principal, as well as the school resource officer,” P.19, the behavior may constitute substantial interference with the operation of a school (for purposes of review for insufficiency of evidence).
5. The fact that a dispositional hearing lasting 12 minutes does not necessarily suggest any impropriety on the court’s part.
6. Where the juvenile’s parent may not have spoken until after the court has issued a disposition and the parent agrees with the court’s opinion, the ostensible breach of N.C.G.S. § 7B-2501 is harmless.

In May 2013 two petitions were filed alleging misdemeanor assault and disorderly conduct related to circumstances that occurred at a fundraiser volleyball game held in the gymnasium of an elementary school. The juvenile was seen sitting next to two boys that were assumed to be “getting ready to fight” by having their “fists clenched.” A teacher testified that when the juvenile was asked to come off the bleachers the juvenile became angry and stormed off the bleachers and “right over [a parent]…and pushed out the gym door.” The teacher testified that the juvenile began shouting, cursing and put his finger less than an inch away from the teacher’s face. The aforementioned parent also testified about her contact with the juvenile stating that “she had to take three or four steps back to keep from falling” as he came off the bleachers. The parent also testified that “the look on [the juvenile’s] face was very defiant.” The school resource officer testified that he “had to put [his] hands on [the juvenile] to remove him from the hallway.” The juvenile was adjudicated delinquent of both offenses and placed on probation for 12 months.

The juvenile appealed first arguing that the trial court erred by failing to find that he was delinquent of the offense of misdemeanor assault beyond a reasonable doubt. Relying on In re J.V.J., 209 N.C. App.737, 707 S.E.2d 636 (2011), the juvenile argues that the adjudication order does not include the conclusion of law that he committed assault beyond a reasonable doubt nor does it include findings of fact inferring such a conclusion. The Court found that in J.V.J., the trial court failed to address any of the allegations set out in the juvenile petition. It even failed to summarily aver that “the allegations in the petition [had] been proved.” In the present case, however, the Court determined that the “Juvenile Adjudication Order” stated that the “[trial] Court concludes as a matter of law, that in regard to the allegations in the petition(s) before the Court” the juvenile is delinquent. Also, the petition for misdemeanor assault alleged that the juvenile committed simple assault by “forcefully hitting the victim in her shoulder, breast, and chest area with his shoulder, causing the victim to move back a few steps.” Accordingly, the Court rejected the juvenile’s argument that the trial court failed to find that he had committed misdemeanor assault beyond a reasonable doubt.

Next, the juvenile asserted that the trial court erroneously allowed the parent to testify that the juvenile’s expression was ‘defiant’. State v. Sanders, 295 N.C. 361, 245 S.E.2d 674 (1978) states that “a witness’s opinion of another person’s intention on a particular occasion is generally held to be inadmissible.” Here, however, the Court believed that the parent’s testimony was more appropriately characterized as describing the juvenile’s demeanor. The Court cited State v. Stager, 329 N.C. 278, 406 S.E.2d 876 (1991), which provides that “opinion evidence as to the demeanor of a criminal defendant is admissible into evidence. Further, State v. Moore, 276 N.C. 142, 171 S.E.2d 453 (1970) states that “the appearance of a man, his actions, his expression, his conversation – a series of things – go to make up the mental picture in the mind of the witness which leads to a knowledge which is as certain, and as much a matter of fact, as if he testified, from evidence presented to his eyes, to the color of a person's hair, or any other physical fact of like nature.” The Court found that the parent’s testimony that the juvenile’s “look on his face” was ‘very defiant” related to her perception of the juvenile shortly after the alleged incident. Because the testimony stemmed from the parent’s personal experience combined with her observation of the juvenile, it was admissible to shed light upon the circumstances surrounding the alleged incident, and thus, was relevant and admissible. Therefore, the Court rejected the argument.

Alternatively, the juvenile contended that the trial court should have granted his motion to dismiss because there was no other evidence to indicate that his act was intentional. The Court found that argument unpersuasive, holding that a thorough review of the record demonstrated that the parent’s testimony was not the only evidence to establish that the juvenile acted with intent. The Court further stated that in a juvenile adjudication hearing, “the [trial] court is empowered to assign weight to the evidence presented at the trial as it deems appropriate. Reviewing the evidence in the light most favorable to the state, the Court held that there was sufficient evidence for the trial court to determine that the juvenile’s actions were intentional.

Next, the juvenile argued that his actions did not amount to disorderly conduct because there was insufficient evidence that the his actions amounted to a disturbance of the peace, order, or discipline at the school when no students, classes, or programs were in any way affected and his actions minimally affected the staff’s activities. The juvenile cites In re Eller, 331 N.C. 714, 417 S.E.2d 479 (1992) as providing guidance for identifying behavior which constitutes a violation of N.C.G.S. § 14-288.4(a)(6). In Eller, the N.C. Supreme Court did not find a substantial interference where the “students were only modestly interrupted from their work and returned to their lesson upon being instructed to do so by their teacher.” The Eller court cited two cases to support its conclusion, including State v. Midgett, 8 N.C. App. 230, 174 S.E.2d 124 (1970). In Midgett the Court of Appeals affirmed the denial of a motion for nonsuit when student-defendants entered a school office with the expressed intention of interrupting the school day. Because of the studentdefendants’ actions, the secretary, the principal and another teacher were kept from performing their official duties and the school was dismissed early. As such, the Court held that there was ample evidence to support all of the elements of disorderly conduct.

In the present case, the juvenile argued that his circumstances are more similar to those found in Eller and distinguishable from the facts found in Midgett. This Court disagreed, finding that the circumstances of the present case comparable to the facts found in Midgett. The juvenile’s conduct merited intervention by several teachers, the assistant principal, as well as the school resource officer. Therefore, the Court found that the trial court did not err by denying the juvenile’s motion to dismiss the charge of disorderly conduct.

In his final argument, the juvenile contended that the several errors occurred at his disposition hearing. Specifically, he asserted that the fact that his dispositional hearing was twelve minutes long thus resulting in a “sham” hearing. The juvenile did not cite any authority to support the assumption. Furthermore, the Court found the assertion unpersuasive as the trial court judge did not sign the disposition order until two days following the day of the hearing. Finally, the juvenile argued that the trial court erred by allowing his mother to be heard only subsequent to the trial court entering the disposition. The Court disagreed holding that even if the trial court decided the terms of the juvenile’s disposition prior to allowing the juvenile’s mother to be heard, the error would be harmless based on the fact that the juvenile’s mother did not object to a condition of attending a court ordered class but effectively agreed with the trial court when she was heard. Accordingly, the trial court adjudication and disposition orders were affirmed.

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## In the matter of A.B., 681 S.E.2d 565, 2009 N.C. App. LEXIS 1758 (unpublished opinion)

Rule(s):

1. A “Critical History Information Sheet” (containing sections on social summary; family history; school history; problem behaviors; and concerns to be addressed by the court) suffices as a “predisposition report” for purposes of including findings of fact in compliance with N.C.G.S. § 7B-2512.
2. Where a juvenile is adjudicated of disorderly conduct at school for verbal altercations and school administrators are called away from their duties, the behavior may constitute substantial interference with the operation of a school (for purposes of review for insufficiency of evidence).

The juvenile was adjudicated of disorderly conduct, and a Level 1 disposition was entered.

Juvenile appealed, arguing that the trial court (1) failed to provide appropriate findings of fact and conclusions of law in writing pursuant to N.C.G.S. § 7B-2512 and (2) erred in failing to grant its motion to dismiss the charge of disorderly conduct due to insufficient evidence.

The juvenile argued that on the disposition order, the court checked “received and considered the predisposition report” and “incorporates the contents,” but failed to attach the report to the order as required. The record indicated that the clerk claimed that the judicial district uses a document titled “Critical History Information Sheet,” incorporates it to the disposition order after an adjudication, and references it as the “predisposition report.” The Court of Appeals found that the trial court’s incorporation of the “predisposition report” or the “Critical History Information Sheet” (containing sections on social summary; family history; school history; problem behaviors; and concerns to be addressed by the court) into the findings of fact in the order complied with N.C.G.S. § 7B-2512.

Regarding the juvenile’s second argument, the Court of Appeals found that there was substantial evidence of disorderly conduct and that the juvenile was the perpetrator of the offense as the juvenile engaged in a verbal altercation using vulgar language, and school administrators were called away from their duties to handle the incident.

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## In the matter of S.M., 190 N.C. App. 579, 660 S.E.2d 653 (2008), 2008 N.C. App. LEXIS 992

Rule(s): Where a juvenile is adjudicated of disorderly conduct at school for giggling and running in the hall, requiring the school resource officer to chase the juvenile briefly to stop him, the evidence cannot support the standard of substantial interference with the operation of a school.

The juvenile was adjudicated delinquent of disorderly conduct at school.

The juvenile appealed, arguing that the trial court erred by not granting the juvenile’s motion to dismiss for lack of sufficient evidence. The Court of Appeals reviewed prior case law, and based on the juvenile’s conduct, which consisted of walking in the hall during class time, giggling and running down the hall when asked to stop, being stopped by the school resource office after a brief chase down the hall, and minimal observation by students and teachers as the juvenile was being taken to the office, the Court determined there was insufficient evidence that classes or the school was substantially interrupted.

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## In the matter of Q.P.W., 2007 N.C. App. LEXIS 895 (unpublished opinion)

Rule(s): Where a juvenile is adjudicated of disorderly conduct at school for loud swearing in a hallway, causing two principals to respond to the incident, the behavior may constitute substantial interference with the operation of a school (for purposes of review for insufficiency of evidence).

The juvenile was adjudicated delinquent for disorderly conduct. The facts at trial indicated that the juvenile was acting loud and belligerent in a school hallway in the middle of a school day, as well as using profanity. Two principals responded to the incident.

The Court of Appeals first noted that under prior case law, disorderly conduct in school must cause a substantial interference with, disruption of, and confusion of the operation of the school in its program of instruction and training of students there enrolled, and that the evidence does not need to show an actual disruption of classroom instruction. The Court held that given the volume, duration, and profane nature of the disturbance, as well as the time and location of the disturbance and the number of school personnel who needed to address it, the evidence was sufficient to establish substantial interference with the school's operation.

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## In the matter of K.F., 2005 N.C. App. LEXIS 40 (2005) (unpublished opinion)

Rule(s): Where a student is charged with disorderly conduct for behavior that does not disrupt course instruction and does not cause a teacher to leave other students, the evidence cannot support the standard of substantial interference with the operation of a school.

The juvenile was adjudicated of disorderly conduct at school. The juvenile appealed, arguing that the court lacked sufficient evidence to adjudicate the case. The Court of Appeals stated that the standard for a finding of disorderly conduct at school is proof of "substantial interference with the operation of the school." Reviewing previous opinions, the Court reversed the trial court's decision. The Court found that the juvenile's conduct, which included talking loudly and cursing in the assistant principal’s office and in the hallway, did not constitute a "substantial interference with the operation of the school." The Court determined that since no teacher had to leave other students to deal with the behavior, and that the students were changing classes when the disruptions occurred, no course of instruction was interrupted, and therefore no “substantial interference” was created.

## In the matter of C.C.M., 165 N.C. App. 543, 600 S.E.2d 901 (2004), 2004 N.C. App. LEXIS 1389 (unpublished opinion)

Rule(s): Where a juvenile is adjudicated of disorderly conduct at school for behavior that causes a teacher, assistant principal, and resource officer to stop performing their respective duties, the behavior may constitute substantial interference with the operation of a school (for purposes of review for insufficiency of evidence).

The juvenile was adjudicated of disorderly conduct at school, as well as resisting, delaying or obstructing an officer.

The juvenile appealed, arguing that the court lacked sufficient evidence to adjudicate the case. In reference to the disorderly conduct charge, the Court Appeals stated that the standard for a finding of disorderly conduct at school is proof of "substantial interference with the operation of the school." Reviewing previous opinions, the Court affirmed the trial court's decision. The Court found that the juvenile's conduct, which included shouting profanities in the assistant principal's office, disrespecting the school resource officer, throwing a telephone on a desk, and struggling with the officer, constituted a "substantial interference with the operation of the school." The Court noted that these actions caused a teacher, assistant principal, and resource officer to stop performing their respective duties and therefore substantially interfered with the operation of the school.

## In the matter of T.S.B., 165 N.C. App. 543, 600 S.E.2d 900 (2004), 2004 N.C. App. LEXIS 1377 (unpublished opinion)

Rule(s): Where a student causes three disruptions spread over a two-hour period, causing one teacher to leave a class unattended for several minutes, and does not comply with the school resource officer, the behavior may constitute substantial interference with the operation of a school (for purposes of review for insufficiency of evidence).

The juvenile was adjudicated of disorderly conduct at school.

The juvenile appealed, arguing that the court lacked sufficient evidence to adjudicate the case. The Court of Appeals stated that the standard for a finding of disorderly conduct at school is proof of "substantial interference with the operation of the school." Reviewing previous opinions, the Court affirmed the trial court's decision. The Court found that the juvenile's conduct, which included three separate disruptions over a two hour period, causing one teacher to leave her class unattended for several minutes, and not complying with the school resource officer, constituted a "substantial interference with the operation of the school."

## In the matter of M.G., 156 N.C. App. 414, 576 S.E.2d 398 (2003), 2003 N.C. App. LEXIS 130

Rule(s): Where a juvenile is adjudicated of disorderly conduct at school for cursing loudly, taking a teacher “away from his assigned duties for at least several minutes,” the behavior may constitute substantial interference with the operation of a school (for purposes of review for insufficiency of evidence).

The juvenile was adjudicated of disorderly conduct at school. The juvenile’s actions consisted of cursing loudly at a group of students in the hallway. A physical education teacher, who was on his way to lunch duty in the cafeteria, heard the juvenile and escorted him to the school detention center.

The juvenile appealed, arguing that the court lacked sufficient evidence to adjudicate the case. The Court of Appeals affirmed, in part relying on In Re Pineault, holding that because the physical education teacher was away from his assigned duties “for at least several minutes,” that the juvenile’s conduct

“substantially interfered with the operation of the school.”

## In the matter of C.B., 150 N.C. App. 127, 562 S.E.2d 583 (2002), 2002 N.C. App. LEXIS 401

Rule(s): Where a juvenile is charged for disorderly conduct at school for talking during a quiz, slamming a door in a teacher’s face, refusing to follow instructions, and attempting to keep the teacher from taking a referral slip to an administrative office, the evidence cannot support the standard of substantial interference with the operation of a school.

The juvenile was adjudicated of disorderly conduct at school. The juvenile's actions consisted of talking during a quiz, refusing to follow instructions, shutting a door in the teacher's face, and attempting to keep the teacher from taking the juvenile to the office.

The Court of Appeals reversed the trial court’s ruling, finding that these actions did not amount to a substantial interference with the operation of the school in its instruction of the other students. The Court noted, "[b]ut if we were to hold that the present actions are of such gravity that they warrant conviction of disorderly conduct, every child that is sent to the office for momentary lapses in behavior could be convicted after such precedent."

## In the matter of P.B., 152 N.C. App. 196, 566 S.E.2d 854 (2002), 2002 N.C. App. LEXIS 896

Rule(s): Where a juvenile is adjudicated of disorderly conduct at school for behavior that causes a teacher to leave class to transport the juvenile to the office and the juvenile’s actions require attention from several school officials, the behavior may constitute substantial interference with the operation of a school (for purposes of review for insufficiency of evidence).

The juvenile was adjudicated of two counts of disorderly conduct at school, as well as one count of injury to real property. The juvenile's actions consisted of cursing several times at the teacher, refusing to follow directions of the principal, and resisting the principal's physical restraints.

The juvenile appealed, arguing that the incidents did not rise to a substantial interference with the operation of the school in its instruction of the other students. The Court of Appeals affirmed, finding that the teacher having to leave class to transport the juvenile to the office and the juvenile's actions requiring attention from several school officials was sufficient evidence of substantial interference with the operation of the school.

## In the matter of D.S.E.; in the Matter of N.L.G., 331 N.C. 714, 417 S.E.2d 479 (1992), review or rehearing granted by In re Eller, 330 N.C. 195, 412 S.E.2d 54 (1991), reversed by In re Eller, 331 N.C. 714, 417 S.E.2d 479 (1992), 1992 N.C. LEXIS 425

Rule(s): Where the juvenile is charged with disorderly conduct at school and class is “not interrupted for any appreciable length of time or in any significant way, and the student’s actions merited only relatively mild intervention by their teacher,” and the class was without a teacher for only “several minutes,” the evidence cannot support the standard of substantial interference with the operation of a school.

The juvenile was adjudicated of two counts of disorderly conduct at school. The juvenile’s actions in the first case consisted of juvenile “making a move” toward a student in class causing the other student to “dodge” the move. Upon the teacher’s request, the juvenile revealed a carpenter’s nail in the juvenile’s hand. The second case involved the juvenile striking a radiator in class “more than two or three times” causing a noise that diverted the attention of the students and causing the teacher to cease her lecture for fifteen to twenty seconds each time. Each instance occurred in a basic special education class.

The juvenile appealed, arguing that the incidents did not rise to a substantial interference with the operation of the school in its instruction of the other students. The Court of Appeals upheld the trial court ruling, but one judge dissented, sending the case to the Supreme Court as a matter of right.

The Supreme Court reversed the lower decisions, holding that, compared with earlier cases heard by the Court; the classes “were not interrupted for any appreciable length of time or in any significant way, and the student’s actions merited only relatively mild intervention by their teacher.”

## In the Matter of T.T.E., \_\_\_\_ N.C. \_\_\_\_ , No. 238A18, (August 16, 2019)

Rule(s):

1. The court has subject matter jurisdiction when the petition closely tracks the language of the statute. By tracking the language of the statute regarding disorderly conduct (N.C.G.S. §14-288.4) the juvenile was clearly apprised of the charges against him.
2. The State provided sufficient evidence of every element of the disorderly conduct offense to withstand a motion to dismiss the charge of disorderly conduct.

Note: This appeal reversed a Court of Appeals decision (818 S.E.2d 324 (2018)) vacating the adjudication and disposition orders relating to the disorderly conduct offense. The Court of Appeals decision to vacate the adjudication and disposition orders entered in regard to the charge of resisting a public officer remains undisturbed.

The juvenile was alleged to have thrown a chair in the school cafeteria during a period when students can receive tutoring and hang out in the cafeteria. The chair did not hit anyone or damage any property. The School Resource Officer (SRO) was in the cafeteria and witnessed the event. The juvenile ran out of the cafeteria and the SRO followed him and grabbed him from behind and instructed the juvenile to come with him. The juvenile told the SRO “no” but the SRO then brought him to the school lobby and searched him, at which time the juvenile cursed at the SRO and was subsequently handcuffed. Other students began to get involved, yelling at the SRO. The juvenile subsequently told the SRO that he had thrown the chair at his brother in the course of playing. He was originally charged and adjudicated delinquent for disorderly conduct and resisting a public officer. As noted above, the Court of Appeals overturned both adjudications and dispositions.

The Supreme Court began its analysis by noting that the “true and safe rule” for prosecutors in drawing indictments is to follow strictly the precise wording of the statute. So long as the petition tracks the statutory language with sufficient specificity to clearly apprise the juvenile of the offense with which he was charged, the district court was properly cloaked with subject-matter jurisdiction over this alleged offense. The petition in this matter satisfied the “true and safe rule.”

In determining whether the evidence was sufficient to withstand a motion to dismiss the charge of disorderly conduct, the Court must view the evidence in the light mist favorable to the State and give the State the benefit of every reasonable inference. Under this standard of review, substantial evidence was presented that the juvenile perpetrated an “annoying, disturbing, or alarming act…exceeding the bounds of social toleration normal for” the school through a public disturbance by “engaging in violent conduct” by “throwing a chair toward another student in the school’s cafeteria.” The evidence included that: (1) the juvenile threw a chair at his brother across the cafeteria where other students were present, (2) the juvenile then ran through the school’s hallways, (3) the behavior occurred at a time when other students were able to observe the hallway interaction between the juvenile and the SRO, (4) the juvenile cursed while being searched, (5) other students became involved in yelling and cursing at the SRO, to the point that another student was also handcuffed and arrested, (6) the SRO considered the act of throwing the chair to be conduct that disrupted or disturbed the school, and (7) another school faculty member described the circumstances as a significant safety issue as other students gravitated to the situation.

The Supreme Court only addressed the evidence with regard to the juvenile’s motion to dismiss. As a result, when viewed in the light most favorable to the State, the evidence presented was sufficient to deny a motion to dismiss regarding adjudication for disorderly conduct. Thus, the Court of Appeals decision was vacated.

**Dissent**: Judge Earls issued a lengthy dissent.

The evidence was not sufficient to support an adjudication for disorderly conduct. In order to be sufficient, the evidence, when considered in the light most favorable to the State, must be substantial evidence from which a rational trier of fact could find *beyond a reasonable doubt* that the juvenile *intentionally* caused a public disturbance by engaging in *violent* conduct.

The petition alleged that the juvenile engaged in disorderly conduct by throwing a chair toward another student in the cafeteria. The only evidence specific to the throwing of the chair was the SRO’s testimony and he testified that the juvenile stated that the chair was thrown “at his brother because they were playing or something.” Viewed in the light most favorable to the State, the SRO’s testimony can be fairly said to raise a suspicion that the juvenile engaged in violent conduct. However, based on the evidence presented specifically about throwing the chair, any rational trier of fact could not find beyond a reasonable doubt that the juvenile intentionally threw a chair in a manner that constituted violent conduct in order to cause a public disturbance. The evidence regarding events after the chair was thrown is relevant to the adjudication of resisting a public officer, which was the juvenile engaged in disorderly conduct--intentionally causing a public disturbance by engaging in violent conduct by throwing a chair toward another student in the cafeteria.

<https://appellate.nccourts.org/opinions/?c=1&pdf=384>

# DISPOSITIONS: ALTERNATIVES

Rules concerning the requisite preconditions and permissibility of alternative dispositions, as well as what factors a judge may consider in such dispositions.

## In the matter of S.J.E., 2008 N.C. App. LEXIS 1860 (unpublished opinion)

Rule(s):

1. Where the court excludes a lab report concerning substance identification but admits a field test and expert testimony, the evidence is sufficient to defeat a motion to dismiss.
2. A court may not delegate the authority to determine whether a juvenile will enter a treatment program.
3. When a clerical error, including checking the incorrect box on a form, is discovered in a judgment or order, it is appropriate to remand for correction.

The juvenile was adjudicated delinquent of possession of crack cocaine, and the court entered a Level 2 disposition.

The juvenile appealed, challenging the sufficiency of the evidence to prove that the substance retrieved from his pocket was crack cocaine. The juvenile argued that after the court excluded from evidence a lab report identifying the substance as cocaine, the court should have allowed his motion to dismiss. The Court of Appeals disagreed, and found that there was evidence indicating that a field test resulted in a positive result for crack cocaine. Additionally, the Court of Appeals cited State v. Fletcher, 92 N.C. App. 50, 56, 373 S.E.2d 681, 685 (1988), and found that the expert testimony of the arresting officers identifying the substance as crack cocaine was sufficient to defeat the motion to dismiss.

The juvenile also argued that the court’s order improperly delegated its authority to the juvenile court counselor to decide whether he should be required to enter a treatment program. The Court of Appeals cited N.C.G.S. §7B-2506, which provides the court with the power and discretion to order appropriate dispositional alternatives, and In re Hartsock, 158 N.C. App. 287, 580 S.E.2d at 395 (2003), which held that the statute does not state or indicate that the court may delegate its discretion. As a result, the Court of Appeals vacated this portion of the disposition order and remanded for further findings.

Lastly, the Court of Appeals found that based on the transcript, it was clear that the court understood it had discretion to enter either a Level 1 or 2 disposition, but made a clerical error. The Court of Appeals cited State v. Jarman, 140 N.C. App. 198, 202, 535 S.E.2d 875, 878 (2000), indicating that “a clerical error results from a minor mistake or inadvertence” such as inaccurate checking of boxes (In re D.D.J., D.M.J., 177 N.C. App. 441, 444 628 S.E.2d 808, 811 (2006). When such an error is discovered on appeal, it is appropriate to remand the case to the court for correction [State v. Linemann, 135 N.C. App. 734, 738, 522 S.E.2d 781, 784 (1999)].

Consequently, the Court Appeals remanded the case for correction of the error. http://appellate.nccourts.org/opinions/?c=2&pdf=MjAwOC8wNy0xMDQ3LTEucG

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## In the matter of A.C., 2008 N.C. App. LEXIS 1844 (unpublished opinion)

Rule(s):

1. When the court seeks the court counselor’s input regarding intermittent confinement, it does not have to specify a location for commitment or instruct the counselor on what should be considered.
2. Intermittent confinement may possibly be distinguished from placement in a residential treatment facility (pursuant to N.C.G.S. § 7B-2506(14)). The court may seek greater input from the court counselor regarding intermittent confinement than regarding placement in a residential treatment facility.
3. A trial court may defer to the court counselor’s opinion, so long as the court maintains authority by requiring that the counselor’s recommendation be approved by the court.
4. A court’s order that a juvenile not associate with “persons deemed to be a negative influence by parent” is specific enough to be enforced.
5. In determining whether to require restitution as a condition of probation, the court must consider the juvenile’s best interests and the ability to pay.

The juvenile was adjudicated delinquent of larceny and possession of stolen goods after the evidence at trial indicated that the juvenile was found to be in possession of a stolen cell phone.

The juvenile appealed, arguing that the court erred in denying his motion to dismiss because there was insufficient evidence to prove beyond a reasonable doubt that he had possession of the cell phone. The Court of Appeals disagreed, and found that pursuant to the doctrine of possession of recently stolen property, the evidence established that the cell phone was stolen, in the juvenile’s custody and control to the exclusion of others, and that the juvenile possessed the cell phone recently after the larceny.

Additionally, the juvenile argued that the court improperly delegated its authority in proceeding to disposition without the required risk and needs assessments. The Court of Appeals disagreed, and found that the record indicated that the assessments were completed and considered by the court.

Moreover, the juvenile argued that certain conditions of his probation were vague and burdensome. The first condition required intermittent confinement if deemed necessary by the court counselor and approved by the Court. Although the juvenile argued that the condition was not specific as to provide a situation or methodology for determining when intermittent confinement would be necessary, the Court of Appeals disagreed, and found that the requirements of N.C.G.S. §7B2506 (20) were satisfied. N.C.G.S. §7B-2506 (20) provides that the trial court may "[o]rder that the juvenile be confined in an approved juvenile detention facility for a term of up to 14 24-hour periods . . . . The timing of this confinement shall be determined by the court in its discretion."

Furthermore, the juvenile argued that the condition of probation was an improper delegation of the court’s authority. The Court of Appeals disagreed, and found that the court maintained its authority by requiring that the court approve the court counselor’s recommendation of intermittent confinement.

As to the juvenile’s argument that the order requiring that he perform community service was not specific, the Court of Appeals agreed as N.C.G.S. §7B2506 (23) requires that the nature of the work be specified. Consequently, the Court of Appeals remanded for a specific order regarding the nature of the community service.

Regarding the argument that the requirement, that he not associate with persons deemed to be a negative influence by a parent or court counselor, was not specific enough to be enforced, the Court of Appeals disagreed, and overruled this assignment of error.

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## In the matter of J.B., 172 N.C. App. 747, 616 S.E.2d 385, 2005 N.C. App. LEXIS 1800, affirmed by, In re J.B., 360 N.C. 165, 622 S.E.2d 495, 2005 N.C. LEXIS 1324

Rule(s):

1. Probationary conditions of visiting a victim’s grave site, wearing a necklace with the victim’s picture on it, and abstaining from certain school activities neither require the juvenile to publicize his adjudication nor force him to choose between ridicule and isolation. Such conditions do not constitute abuse of discretion.
2. A court need not, and may not, require a therapist’s (or other entity’s) approval of probation conditions.

The juvenile was adjudicated of involuntary manslaughter. At disposition, the court ordered the juvenile to abide by a number of conditions while on probation, including the special conditions of visiting and placing flowers on the victim’s grave site on the anniversary of the victim’s death and birth, wearing a necklace with a picture of the victim on it, and not participating in certain school activities such as sports and school dances.

The juvenile appealed, arguing that the trial court abused its discretion by ordering conditions, which were not related to the juvenile’s best interests. The Court Appeals affirmed the trial court, first noting that the trial court’s requirement of probationary conditions should not be disturbed unless the court so abused it discretion that “it could not have been the result of a reasoned decision.” Distinguishing the instant case from In re M.E.B., 153 N.C. App. 278, 569 S.E.2d 683 (2002), the Court found that the probationary conditions required neither caused the juvenile to publicize his adjudication nor forced the juvenile to choose between public ridicule or removal from public sight.

The Court also determined that the trial court did not fail to utilize certain testimony to fashion the conditions, nor did it fail to take into account the juvenile’s individual needs in determining the condition of visiting the victim’s gravesite without first consulting a therapist. (There was one dissent, which argued that the conditions of wearing the necklace and visiting the gravesite would actually not be in the juvenile’s best interest and adverse to the juvenile’s needs based on the evidence presented at disposition. The case was appealed to the Supreme Court and was affirmed without opinion.)

## In the matter of M.E.B., 153 N.C. App. 278, 569 S.E.2d 683 (2002), 2002 N.C. App. LEXIS 1135

Rule(s): The court may not condition probation on disclosure to the public of the juvenile’s status, including forcing the juvenile to wear a sign that reads, “I am a juvenile criminal” while in public.

The juvenile was adjudicated delinquent of felony breaking and entering and felony possession of burglary tools. One condition of special probation was that the juvenile was to wear a sign stating, "I AM A JUVENILE CRIMINAL" whenever the juvenile was out in public for the rest of the school term.

The Court of Appeals found this condition unlawful, stating that the sign amounted to disclosure to the public of the juvenile's status, which is protected under the Juvenile Code. The Court also found that the juvenile's opportunity not to wear the sign could only occur at home, effectively creating a house arrest situation, which was not authorized under the Code.

## In the matter of J.H., 145 N.C. App. 24, 550 S.E.2d 815 (2001), 2001 N.C. App. LEXIS 577 Rule(s):

1. In determining whether to require restitution as a condition of probation, the court must consider whether payment of restitution is in the juvenile’s best interest and whether the juvenile (and not his parents) has the ability to pay restitution.
2. The amount of restitution ordered must be supported by the evidence presented.

The juvenile was adjudicated delinquent of crime against nature. At disposition, the juvenile was committed to training school, but this sentence was suspended under a number of conditions, including that the juvenile pay restitution in the amount of $1,305.00 to be paid to the North Carolina Victims Compensation Fund.

The juvenile appealed, arguing that the trial court had not made certain findings under N.C.G.S. § 7A-649(2) (now § 7B-2506(4)) necessary to enter a finding of restitution, as well as ordering the parents to pay. The Court of Appeals agreed, holding that the trial court did not find 1) that payment of restitution was in the child’s best interest, 2) that the juvenile had the ability to pay restitution, and 3) that the amount was not supported by any evidence presented. The Court also held that the trial court did not have the authority to hold the parents responsible for paying restitution if the juvenile was unable to pay.

## In the matter of J.S., 143 N.C. App. 461, 546 S.E.2d 407 (2001), 2001 N.C. App.

LEXIS 292

Rule(s):

1. Conditions of probation must be “fair and reasonable, related to the needs of the child, and calculated to promote the best interest of the juvenile . . . .” P.10.
2. While a juvenile may be required to submit to warrantless searches, the requirement must be limited to searches by particular officers.
3. “The court may not . . . require that those with whom the juvenile associates submit to warrantless searches as a condition of the juvenile’s probation. It is unfair and unreasonable to place the success of the juvenile’s probation on the acts of others.” P.10.

The juvenile admitted to one count of misdemeanor breaking and entering. As part of disposition, the trial court ordered the juvenile pay up to $3000.00 restitution, submit to urinalysis, blood or breathalyzer testing if requested by the court counselor or law enforcement officer, and not reside in a home or be present in a vehicle unless the residents have consented to a search for controlled substances.

The juvenile appealed these requirements. In reference to the first condition, the Court found that while the trial court made appropriate findings on the ability of the juvenile to pay restitution, the trial court failed to determine whether the order was fair considering the other juvenile involved was not ordered to pay restitution. The Court then vacated the remaining two conditions, finding the second condition exceeds the authority of the trial judge to set conditions, and the third condition places the juvenile’s success on probation in the hands of a third party and was generally overbroad.

## In the matter of R.M., 138 N.C. App. 143, 530 S.E.2d 334 (2000), 2000 N.C. App.

LEXIS 550

Rule(s):

1. “Compensation of victims should never become the only or paramount concern in the administration of juvenile justice.” P.4 (internal quotations and citations omitted).
2. Evidence as to the ability to make restitution includes the juvenile’s age, indigence, and representation by appointed counsel, as well as the amount of restitution.
3. “N.C.G.S. § 7A-649(2) does not authorize the juvenile court to consider the parents’ ability to make restitution when ordering juveniles to make restitution . . . as a condition of probation.” P.1.

The juveniles were adjudicated delinquent of injury to personal property. As part of disposition, the trial court ordered each juvenile to pay $539.50 in restitution to the victim.

The juveniles appealed, arguing that 1) the court did not consider their best interests and needs in determining the restitution, that 2) the court did not consider whether or not the juveniles had the means to make restitution and could reasonably acquire the means to do so, and 3) the court should not consider whether or not the parents had the ability to pay the restitution. The Court of Appeals agreed, finding that based on the pertinent statute and prior case law, the trial court erred in not considering the juveniles’ best interest or their ability to pay restitution. The Court also found that the statutes do not provide the court with the authority to inquire as to whether the parents have the ability to pay the juveniles’ restitution.

## In the matter of S.M.M., 133 N. C. App. 433, 515 S.E.2d 719 (1999), 1999 N.C. App. LEXIS 515 Rule(s):

1. “Although a defendant’s abstract beliefs, no matter how obnoxious, cannot be considered, those beliefs can be permissibly taken into account when they are relevant to underlying crime or the weighing of aggravating or mitigating circumstances.” P.4.
2. In sentencing, a judge may consider “what factors influenced [a juvenile’s] delinquent conduct and the best way to remove those factors from [the juvenile’s] life,” including where exposure is limited by the type of media, rather than by subject. P.1.

The juvenile was adjudicated delinquent of injury to real property, spraying the message "Charles Manson Rules" on another person's property. Disposition was entered ordering the juvenile not to watch television for one year.

The juvenile argued that this punishment violated the juvenile's First Amendment rights, but the Court of Appeals held the disposition constitutional. The Court found that the punishment was related to the delinquent conduct influenced by television (juvenile stated she saw a show on TV describing the criminal acts of Charles Manson).

# DISPOSITION: APPEALS

Rules concerning release pending appeal, requirements for dispositional orders, and the permissibility of combined hearings.

## In re D.E.P., N.C. App. Lexis, COA16-838, (published opinion)

Rule(s): The trial court is not required by G.S. 7B-2512 to make findings of fact that address each of the G.S. 7B-2501(c) factors and did not abuse its discretion in ordering a Level 3 commitment based on the juvenile’s repeated violations of probation.

After being adjudicated delinquent on several charges, the juvenile violated the conditions of his probation, a Level 2 disposition, twice before the trial court entered an order for a Level 3 disposition, committing the juvenile to training school for a six-month minimum or, at the maximum, until his 18th birthday.

The juvenile appealed, arguing that the trial court erred in its disposition by failing to comply with N.C. G.S. 7B-2501(c) and abused its discretion by entering a Level 3 disposition committing him to training school. Based upon the argument for In re Ferrell, the juvenile stated that in order for a trial court’s findings in a disposition order to constitute the “appropriate” findings of fact required by N.C. G.S. 7B-2512, these findings must reference the specific factors listed in N.C. G.S. 7B-2501(c) and must document the trial court’s consideration of each of these factors. The juvenile also cited difficult family circumstances in his appeal and argued that he did uphold part of the requirements of his probation.

The State argued that neither of the statutes require a written finding of facts from the trial court for each of the criteria under N.C. G.S. 7B-2501(c).

The court found that in the Ferrell case, the juvenile appealed from a specific provision of the disposition, transferring custody of him from the mother to the father, however, the type or level of the disposition itself was never challenged. Because of the fact that the Ferrell case does not address how the court determines the appropriate level of disposition, it would not apply to the decision of the court in this case.

Prior case law states that if the trial court is found to have supported reasons for a dispositional decision, then the decision should be upheld on appeal. The court concluded that the trial court is not required to address all five factors of N.C. G.S. 7B-2501(c) in every case when entering its orders for a disposition, however, the trial court did demonstrate that it had considered each factor before ordering the next level of disposition in this case. The juvenile repeatedly violated the terms of his probation despite being given several chances to remain at a Level 2 disposition. Therefore, the trial court was justified in ordering a disposition at the next highest level. The trial court’s order of a Level 3 disposition is affirmed.

https://appellate.nccourts.org/opinions/?c=2&pdf=35020

## In re J.M.C., 2016 N.C. App LEXIS 1176 (unpublished opinion)

Rule(s):

1. In a motion to dismiss, all contradictions are resolved in favor of the state.
2. A disposition and commitment order must fully comply with all elements of statute N.C. Gen. Stat. § 7B-2501.
3. If an order is not properly appealed, the court has no jurisdiction to review the matter.

The Department of Juvenile Justice and Delinquency Prevention filed a petition against the juvenile which alleged that he willfully injured the personal property of another and a second petition was filed alleging assault with a deadly weapon inflicting serious injury. During the adjudication hearing, the State dismissed the charge of willful injury to personal property, but pursued the charge of assault with a deadly weapon.

A detective testified that he had identified the juvenile as the attacker on a videotape obtained from the location of the assault. During the testimony of the complaining witness, he stated that he had consumed “a few beers” and “about three” tequila shots prior to the attack. The videotape of the assault was shown and the witness identified the juvenile in court as the one who stabbed him, however the assailant’s face was not shown in the footage.

The juvenile motioned to dismiss the charges twice citing unreliable testimony due to the complaining witness being intoxicated, inconsistencies in the witness’ testimony, the fact that he had never met the juvenile prior to the hearing, the testimonies given by alibi witnesses, and insufficient evidence from the videotape. The trial court denied the motions. The trial court adjudicated the juvenile delinquent on the charge of assault with a deadly weapon inflicting serious injury.

The juvenile gave oral notice of appeal.

The trial court entered a disposition and commitment order for the charge and indicated that it had received, considered and incorporated by reference the predisposition report, risk assessment, and needs assessment. The reports were not attached to the disposition and commitment order which provided that the juvenile be committed to a youth development center indefinitely.

The juvenile’s initial notice of appeal was ruled insufficient. The juvenile later filed a writ of certiorari for appellate review of the adjudication, disposition, and commitment orders.

Prior case law states that substantial evidence must be provided for each essential element of the offenses being charged and prove that the juvenile is the perpetrator of the crime. Prior case law also states that failure to follow statutory mandates is a question of law.

The juvenile argued that the trial court erred by denying his motion to dismiss the juvenile petition for insufficient evidence, however the court held that in a motion to dismiss, all contradictions are resolved in favor of the state. As a result, the court ruled that the testimony of the victim and the detective’s identification of the juvenile by videotape were sufficient to show evidence that the juvenile had committed the offense.

The juvenile also argued that the trial court failed to enter its disposition in accordance with N.C. Gen. Stat. § 7B-2501 because the trial court did not address certain factors of the statute. While it did comply with the first section of the statute, the disposition and commitment order fails to address the other sections of the statute. The court held that the trial court erred in failing to provide the requisite finding of facts in its disposition and commitment order and remanded to the trial court for further findings of fact as to the disposition.

The juvenile contended that the trial court failed to either release him pending appeal or enter compelling reasons for denying release. Although the juvenile did petition for a writ of certiorari, there was nothing on the record to indicate that the order was properly appealed, so the appellate court had no jurisdiction to review the matter. Therefore the issue on appeal was dismissed. http://appellate.nccourts.org/opinions/?c=2&pdf=34768

## In the matter of J.J. Jr., 2011 N.C. App. LEXIS 2238 Rule(s):

1. A trial court is not required to hold separate probable cause, transfer, and adjudicatory hearings.
2. The court’s adjudicatory order must indicate the standard of proof met at trial.
3. The court’s disposition order must include written findings of fact.
4. Where the court denies the release of a juvenile whose appeal is pending, the court’s written account of compelling reasons must include findings of fact support by the record.

After the Stated filed a petition alleging that the juvenile committed firstdegree sexual offense on a female child under 13, probable cause was found, and the court moved for the case to be transferred to Superior Court. At the transfer hearing, the trial court retained jurisdiction, and thereafter found the juvenile responsible for attempted first-degree sex offense. The juvenile was adjudicated of attempted firstdegree sexual offense, and committed to a youth development center until his 18th birthday.

The juvenile appealed, arguing that the trial court erred by (1) entering the adjudication and disposition without holding the proper adjudicatory and dispositional hearings and (2) failing to release him during pending the appeal. A week after the juvenile entered appeal, the court entered an adjudication order finding that he committed the attempted first-degree sex offense. Following the Appellant Defender’s office being appointed to represent the juvenile, the trial court failed to indicate whether the juvenile would be released pending appeal, and provided an “NA” in the section reserved for “compelling reasons release is denied.”

As to the juvenile’s first argument, he indicated that his due process rights were violated because the court only held a probable cause and transfer hearing prior to the adjudication and disposition. Furthermore, the juvenile contended that the adjudication and dispositional orders failed to provide requisite written findings of fact to support the order entered. The Court of Appeals disagreed, concluding that no statutes require that the trial court separate the probable cause, transfer, and adjudicatory hearings as long as the juvenile’s statutory and constitutional rights are not violated. The Court found that the juvenile’s rights were not violated as the transcript indicated that he: received written notice of the facts alleged in the juvenile petition; was present at the hearings and provided evidence on his behalf while also cross-examining witnesses; had adequate time to conduct discovery during the seven month period between the first appearance and the hearing in question; had failed to show how he was prejudiced by the manner in which the hearing was conducted as both parties presented evidence and indicated there was no further evidence at the conclusion of the transfer hearing; and the court considered all of the evidence in making its adjudication decision.

The Court, however, held that the trial court failed to include the standard of proof in its written adjudication order as required by law, and therefore vacated the adjudication order and remanded to the trial court to make the necessary findings of fact. Regarding the dispositional hearing, the Court held that although the court was required to, first, conclude the adjudication hearing, next, receive and consider the predisposition report, and then, proceed to disposition, there was nothing in the record to indicate at which point the report was received. Moreover, the Court indicated that although there was no showing of prejudice, the trial court failed to make written findings of fact in the disposition order. Accordingly, the court also vacated the disposition order and remanded the case to the trial court to make the necessary findings of fact.

In reference to the juvenile’s second argument that the trial court erred by failing to release the juvenile pending appeal, the Court of Appeals agreed. The Court reasoned that although release was denied in court, the trial court failed to address release in the Appellate Entries, and provided no compelling reasons indicating why the juvenile should not be released pending appeal. The trial court only indicated direct contempt although nothing in the record supported the finding. Consequently, the Court remanded the case to the trial court to enter written findings of fact in support of the adjudication and dispositional orders, as well as its order denying release during the juvenile’s pending appeal.

http://appellate.nccourts.org/opinions/?c=2&pdf=MjAxMS8xMS0zNDItMS5wZGY

## In the Matter of J.B., \_\_\_\_ N.C. App. \_\_\_\_ , No. 18-1036, (August 20, 2019)

Rule(s):

1. The trial court erred in denying the motion to dismiss as a matter of law when the State presented no evidence that the juvenile wished for the video to be made or that he was the one who distributed it on a petition alleging second-degree sexual exploitation of a minor.
2. The trial court erred in denying the motion to dismiss the petition alleging first-degree forcible sexual offense when the State failed to prove penetration, the central element of this crime.
3. The trial court erred when it accepted the juvenile’s admission to attempted larceny when there was not a factual basis to support the juvenile’s admission of guilt, as required by §7B-2407(c).
4. The out of court statements offered by the State were admitted in violation of the juvenile’s constitutional right to confront and cross-examine witnesses and the error was prejudicial.
5. Despite the dispositions being vacated, the court addressed the following disposition (sentencing) errors –
   1. The court must provide adequate written reasons in the Disposition and Commitment Order to support its findings using the factors required by §7B-2501(c).
   2. The court must find compelling reasons to deny release to the juvenile pending appeal when commitment to YDC is ordered according to §7B-2605.

This case arises from sexual misconduct by the juvenile toward a friend (Z) who was attending a sleepover at his house with the juvenile and two of the juvenile’s cousins. The evidence tended to show that sometime during the night, Z woke up to find his pants pulled down and the juvenile behind him. The friend believed someone was holding his legs. Z testified that he “felt [the juvenile’s] privates on his butt” but that he did not feel them “go into his butt.” One of the cousins filmed much of the incident. In the video the juvenile can be heard saying “do not record this.” The video ended up on Facebook.

At the hearing, the State presented statements to the police from the juvenile’s cousins, neither of whom testified at trial. The juvenile’s motions to dismiss at the end of the state’s evidence and at the close of all evidence was denied and the court adjudicated the juvenile responsible for first-degree forcible sexual offense and second-degree exploitation of a minor. The court continued disposition until the juvenile could be assessed by Children’s Hope Alliance (CHA).

At the disposition hearing, the judge was presented with the CHA report indicating that the juvenile’s risk for sexually harmful behaviors were in the low to low-moderate range. The court counselor recommended a level 2 disposition.

Prior to the disposition, the juvenile admitted to an attempted larceny of a bicycle. After considering the juvenile’s assessments and his admission to attempted larceny, the trial court entered a level 3 order, committing the juvenile to a YDC indefinitely. The juvenile appealed and requested his release pending disposition of the appeal. A subsequent hearing was held on the question of his release and the trial court entered an order concluding the juvenile would remain in YDC.

Issue 1 (Second degree sexual exploitation of a minor):

The court found that the trial court erred as a matter of law due to the evidence being insufficient to support the charge. The charge requires the defendant take an active role in the production or distribution of child pornography. The court found that the state presented no evidence that the juvenile wished for the video to be made or that he was the one who distributed it. In fact, the court concluded that it was clear that the juvenile did not want to be filmed, as he explicitly told the cousin to stop recording. The court also rejected the state’s contention that there was a common plan or purpose of humiliating the victim, stating there was nothing in the record to support that contention. As a result, the court vacated the adjudication.

Issue 2 (First degree Forcible Sexual Offense):

An essential element of the charge is that a “sexual act” must take place. A “sexual act” is defined by statute (§14-27.20(5)). In order to have a sexual act, there must be “penetration, however slight by any object into the genital or anal opening of another person’s body.” (§14-27.20(4)).

In this case, the victim’s statement is not ambiguous. Z specifically states in his testimony that penetration did not occur. To support its contention that penetration occurred, the state relies upon the video. The court found that at most the video showed no more than “sexual contact” which is sexual battery (§14-27.33)). Responding to the dissent, the majority asserted that circumstantial evidence cannot be used to overcome a victim’s direct testimony that no penetration occurred. As a result, the state has failed to prove penetration, the central element of this crime. The court ruled that the trial court erred in denying the juvenile’s motion to dismiss and vacated the adjudication.

Issue 3 (Attempted Larceny Admission):

There must be a sufficient factual basis for a juvenile’s admission of guilt before accepting the admission and the factual basis may be based on statements presented by the attorneys (§7B-2407(c)). The facts presented do not support the juvenile’s admission of guilt.

The facts presented indicated a bicycle was stolen by two black males (the juvenile is a black male). The juvenile was found by officers biking down the road with two others who also matched the description. The juvenile was described by the prosecutor as “kind of off on his own” from the other two. Officers asked all the youth to stop and of the three, only the juvenile stopped. He told the officers that he had not stolen the bike, that he knew who had, and admitted to having bolt cutters in his back pack. The juvenile’s attorney argued that the juvenile had loaned his book bag to someone, who then placed the bolt cutters inside it and left to “do their deed.” The state presented no evidence as to where or from whom the bike was recovered.

Because the state failed to present sufficient evidence that the juvenile took affirmative steps, but did not succeed, to take another’s property with no intent to return it, (elements of attempted larceny) there was insufficient evidence upon which the trial court should have accepted the juvenile’s admission of guilt. The adjudication for attempted larceny should be vacated.

Issue 4 (Right of Confrontation):

The state offered out-of-court statements from the two cousins which tended to support the charges against the juvenile. Errors affecting constitutional rights are presumed to be prejudicial unless the state can prove that the error was harmless beyond a reasonable doubt. The state’s contention that the evidence was overwhelming (the video and the victim’s testimony) and the numerous references to the cousin’s statements in the closing cannot overcome the fact that the evidence was ambiguous at best and that this additional evidence of penetration was not prejudicial. Therefore, the state failed to prove these statements were harmless beyond a reasonable doubt.

Issue 5 (a) (Level 3 commitment):

The trial court failed to adequately support the statutorily required factors for committing a juvenile to YDC as required by §7B-2501(c).

The assessment provided by CHA found the juvenile’s risk factors for sexually harmful behaviors were in the low to low-moderate range. The juvenile’s evaluation from the court counselor indicated he “is a low/moderate risk for reoffending” and recommended a level 2 disposition. The recommended terms that were recommended as part of the juvenile’s probation included therapy, curfew, no sleepovers, monitoring of electronic devices, not being used as a babysitter, maintain passing grades at school and no contact with the victim. The report from CHA indicated the juvenile had a stable home life and that his family relationships are close and supportive. The court found that when taking into account the evaluations by the court counselor and CHA and their recommendations, the trial court’s failure to explain its reasoning and basis for some findings that conflicted with the evidence presented did not satisfy the requirements of §7B-2501(c).

Issue 5 (b) (Confinement pending appeal):

§7B-2605 requires the release of the juvenile, with or without conditions, should issue in every case unless the court orders otherwise *and* if the court enters a temporary order affecting the custody or placement of the juvenile the court *must* find compelling reasons and state the reasons in writing.

The trial court failed to list anything under “[c]ompelling reasons release is denied” on the Appellate Entries form and in a separate order with Findings of Facts and Conclusions of Law the trial court’s supporting reasons were phrased as contentions of defense counsel and the state. The trial court did not list independent compelling reasons and as such violated §7B-2605.

The court concluded that it was especially disturbing that the trial court ignored the requirements of the statute thus causing the juvenile to be held in detention for a period of 17 months when his convictions were improper.

**Dissent**:

The dissent would have affirmed all of the trial court’s rulings and orders. The dissent asserts that while there was strong evidence suggesting the juvenile did not commit these offenses, it is the trial judge in juvenile delinquency proceedings who resolves any conflicts in the evidence, not the Court of Appeals. Additionally, when the evidence is viewed in the light most favorable to the state, the dissent would have found that the state met its burden on each of the adjudications.

The dissent also found that the recitation of the facts was sufficient to show that the juvenile directly participated, or at least acted in concert, in the commission of the attempted theft of the bike.

With regard to the level 3 order, the dissent would have found that the trial judge’s findings of fact were sufficient and “appropriate” under §7B-2501 and despite the fact that the trial court *could* have imposed a level 2 disposition, its decision to impose a level 3 disposition was not unreasonable.

While confinement pending appeal requires compelling reasons, the court need not be verbose. The dissent concluded that the trial court’s order sufficiently noted compelling reasons for continued confinement pending his appeal.

<http://appellate.nccourts.org/opinions/?c=2&pdf=37905>

# DISPOSITIONS: SENTENCING

Rules concerning release pending appeal, dispositional factors, requirements for dispositional orders, modification of sentences, and notice.

## In the Matter of E.M., No. COA18-685; Filed 15 January 2019

Rule(s):

(1) When faced with any amount of evidence of mental health/developmental disabilities/substance abuse, the trial court has a statutory duty to refer a juvenile to the area mental health services director for a multidisciplinary evaluation.

The juvenile was adjudicated delinquent for conspiracy to commit common law robbery and the court entered a level 2 disposition and placed the juvenile on 12 months’ probation. Subsequent to being placed on probation, a motion for review was filed alleging a probation violation. After admitting to the probation violation, the court entered a level 3 disposition and committed the juvenile to a youth development center (YDC) for a minimum of six months and placed him in the custody of the Department of Social Services (DSS). The juvenile appealed, arguing that the trial court erred by failing to refer him to the area mental health services director after being presented with substantial evidence that the juvenile did have mental illness as required by the statute, making a finding that he had been involved in criminal activity while on probation without evidence to support the finding, and placing him into DSS custody.

Based on the G.S. 7B-2502(c), the trial court is required to refer the juvenile to the area mental health director for an evaluation when evidence of mental health issues is presented. The statute also indicates that the area mental health services director is required to participate in creating an appropriate disposition for a juvenile with mental health needs to ensure that they receive proper treatment. Based on this, the Court vacated the juvenile’s disposition and remand for a new dispositional hearing that includes a referral to the area mental health services director. The other two assignments of error were not addressed in the Court’s decision.

As of February 1, 2019, this decision has been stayed pending the State’s petition for discretionary review.

<https://appellate.nccourts.org/opinions/?c=2&pdf=37486>

## In re D.E.P., 2017 N.C. App. Lexis, COA16-838, (published opinion)

Rule(s): The trial court is not required by G.S. 7B-2512 to make findings of fact that address each of the G.S. 7B-2501(c) factors and did not abuse its discretion in ordering a Level 3 commitment based on the juvenile’s repeated violations of probation.

After being adjudicated delinquent on several charges, the juvenile violated the conditions of his probation, a Level 2 disposition, twice before the trial court entered an order for a Level 3 disposition, committing the juvenile to training school for a six-month minimum or, at the maximum, until his 18th birthday.

The juvenile appealed, arguing that the trial court erred in its disposition by failing to comply with N.C. G.S. 7B-2501(c) and abused its discretion by entering a Level 3 disposition committing him to training school. Based upon the argument for In re Ferrell, the juvenile stated that in order for a trial court’s findings in a disposition order to constitute the “appropriate” findings of fact required by N.C. G.S. 7B-2512, these findings must reference the specific factors listed in N.C. G.S. 7B-2501(c) and must document the trial court’s consideration of each of these factors. The juvenile also cited difficult family circumstances in his appeal and argued that he did uphold part of the requirements of his probation.

The State argued that neither of the statutes require a written finding of facts from the trial court for each of the criteria under N.C. G.S. 7B-2501(c).

The court found that in the Ferrell case, the juvenile appealed from a specific provision of the disposition, transferring custody of him from the mother to the father, however, the type or level of the disposition itself was never challenged. Because of the fact that the Ferrell case does not address how the court determines the appropriate level of disposition, it would not apply to the decision of the court in this case.

Prior case law states that if the trial court is found to have supported reasons for a dispositional decision, then the decision should be upheld on appeal. The court concluded that the trial court is not required to address all five factors of N.C. G.S. 7B-2501(c) in every case when entering its orders for a disposition, however, the trial court did demonstrate that it had considered each factor before ordering the next level of disposition in this case. The juvenile repeatedly violated the terms of his probation despite being given several chances to remain at a Level 2 disposition. Therefore, the trial court was justified in ordering a disposition at the next highest level. The trial court’s order of a Level 3 disposition is affirmed.

https://appellate.nccourts.org/opinions/?c=2&pdf=35020

## In the matter of C.J.J., 2015 N.C. App. Lexis 471 (unpublished opinion) Rule(s): Judge can impose the maximum term of imprisonment equal to an adult sentence in the aggravated range if the court finds that the term is the best plan for the juvenile and in the interest of the State.

The State filed a petition alleging the juvenile committed larceny from the person and common law robbery. The juvenile admitted that he committed larceny from the person, and the State dismissed the other petition for common law robbery. The trial court entered a level three disposition and committed the juvenile to a youth development center (YDC) for a minimum of six months to a maximum of 39 months.

The juvenile appealed first arguing the trial court violated N.C.G.S. § 7B2513(a) by committing him to a maximum of 39 months for the larceny from the person adjudication, which was an amount more than the presumptive sentence that an adult could receive for committing the same Class H felony. Specifically, the juvenile asserted that because N.C.G.S. 7B-2513 references structured sentencing, and N.C.G.S. 15A-1340.13 refers to an aggravated sentence as a “deviation” from presumption sentencing, “maximum term of imprisonment” should be interpreted to mean only the maximum in the presumptive range.

The Court disagreed holding that “the maximum term of imprisonment” could include a placement term equal to an adult sentence in the aggravated range for that class of felony offense with a prior record level of VI, if the court finds that the term would be the best plan for the juvenile and best interests of the State.

While the issue wasn’t raised at trial, the juvenile also argued for the application of Blakely v. Washington, which held that it was a violation of a defendant’s Sixth Amendment right to enhance a criminal sentence by aggravating factors without first submitting them to a jury and having that jury find them beyond a reasonable doubt. The Court overruled the argument noting that Blakely has only been applied to criminal proceedings involving juveniles tried as adults but not juvenile adjudications, dispositions and commitments.

Next, the juvenile contended that the trial court abused its discretion in committing him to a youth development center because the findings of fact show that his rehabilitation and treatment needs did not support the conclusion that commitment was warranted.

N.C.G.S. § 7B-2501 states that “in choosing among statutorily permissible dispositions, the court shall select the most appropriate disposition both in terms of kind and duration for the delinquent juvenile” and sets forth five factors that the court must consider in selecting a disposition. In the present case, the Court determined that the trial court made findings pursuant to the aforementioned factors in the written order and at the hearing. The Court found that while it was true that the court counselor recommended the juvenile receive treatment in the community and a level 2 disposition, it was within the trial court’s discretion to reject the recommendation. Accordingly, the disposition order was affirmed.

https://appellate.nccourts.org/opinions/?c=2&pdf=32651

## In the matter of A.F., 2014 N.C. App. LEXIS 387 (unpublished opinion)

Rule(s): A juvenile’s “history of AWOL behavior” constitutes a compelling reason to deny release pending appeal.

In September 2011 the juvenile was adjudicated delinquent after admitting to three class H felonies and a misdemeanor and placed on probation. The juvenile's court counselor filed a motion for review in May 2012 alleging that the juvenile had violated the terms and conditions of his probation by leaving his foster home without cause or permission and being suspended from school. The juvenile admitted to the violations and the trial court entered an adjudication order finding that the juvenile had violated the terms of his probation, but the court continued the disposition in order to monitor the juvenile's behavior. At a motion for review hearing in October 2012 the trial court imposed a level three disposition and committed the juvenile to a youth development center.

The juvenile gave oral notice of appeal, but did not request release pending appeal. The trial court filed an amended disposition order stating that the juvenile had been adjudicated delinquent in September 2011 for felony breaking and entering and indicated that this constituted a violent or serious offense for which a level three disposition was authorized under N.C.G.S. § 7B-2508 (2013). The court ordered that the juvenile be committed to a youth development center.

The juvenile appealed arguing that the trial court did not make sufficient findings regarding why the juvenile's release was denied pending appeal as set out in N.C.G.S. § 7B-2605. The record showed that the judge marked box number three on the Appellate Entries Form indicating that “release of the juvenile pursuant to N.C.G.S. § 7B-2605 is denied.” In the space provided to note “compelling reason,” the judge wrote “juvenile has a history of AWOL behavior.” The juvenile contended that the “AWOL behavior” does not constitute a “compelling reason” sufficient to justify his commitment pending his appeal. Citing In re J.J., 216 N.C. App. 366, 717 S.E.2d 59 (2011), the juvenile argued that “AWOL behavior” amounts to nothing more than a finding of direct contempt, which is not a “compelling reason” under N.C.G.S. § 7B-2605.

The Court disagreed with the juvenile’s interpretation of the holding of In re J.J., noting that the Court did not address whether direct contempt would suffice as a compelling reason because there was no evidence in the record to support a finding of direct contempt, thus, the order was vacated because the sole finding – direct contempt – was not supported by the record. In the present case, the record supports, nor did the juvenile challenge, the finding that the he had a history of AWOL behavior. Consequently, given the circumstance outlined in the record, the Court could not say that the juvenile’s history of AWOL behavior was not a compelling reason to deny the juvenile’s release pending his appeal. Accordingly, the order was affirmed.

http://appellate.nccourts.org/opinions/?c=2&pdf=30945

## In the matter of A.F., 2013 N.C. App. LEXIS 1316 Rule(s):

1. While a trial court may modify a juvenile’s probationary period within a reasonable amount of time after its expiration, it does not have “the authority to determine on a retroactive basis that it had extended a juvenile’s probation and, based upon that determination, to assign additional delinquency history points for the commission of an offense during the retroactively extended probationary period.” P.15.
2. Denial of a motion to modify based on unfounded assignment of delinquency points is reversible error.

In 2010 the juvenile was adjudicated delinquent for committing misdemeanor breaking and entering and ordered to comply with specific conditions of probation, such as attending school. In June 2011 the juvenile admitted to allegations contained in a motion for review and the trial court imposed a Level 2 disposition, extending the juvenile’s probationary period for an additional six months. In August 2011 the juvenile admitted to another probation violation and the trial court entered a disposition order in which the period for which the juvenile was required to remain on probation was extended for an additional six months ending in June 2012.

In March 2012 the juvenile’s court counselor filed another motion for review alleging a probation violation. The juvenile failed to attend the hearing and the trial court entered an order directing that the juvenile be placed in secure custody pending a hearing on the motion for review. Another petition was filed alleging that the juvenile committed the offenses of felonious breaking and entering and felonious larceny. At the adjudicatory hearing the juvenile admitted that he had violated the terms of his probation as alleged in March 2012 motion for review and that he had committed the offense of felonious breaking and entering. Based on the juvenile’s delinquency history, the trial court determined that a Level 3 disposition order should be entered and ordered that the juvenile be committed to a youth development center for an indefinite period not to extend past his eighteenth birthday.

In November 2012 the juvenile filed a motion for modification asserting that in light of the fact that he was not on probation when he committed the offense of felonious breaking or entering in August 2012, the trial court had erroneously assigned the two additional points associated with the commission of an offense while on probation in calculating his delinquency history level. After a hearing held in November 2012, the trial court entered an order denying the juvenile’s modification motion.

The juvenile appealed arguing that the trial court erroneously assigned him two additional delinquency history points based upon the incorrect assumption that he was still on probation at the time that he committed the offense underlying the challenged disposition order and, in the absence of the assignment of these additional delinquency history points, he would not have been subject to the imposition of a Level 3 disposition.

The Court agreed finding that the trial court never actually extended the juvenile’s probation in the case. At the hearing for the purpose of considering the juvenile’s modification motion, the trial court acknowledged that it had awarded the challenged delinquency history points to the juvenile without having specifically extended his probation. The Court concluded that “Aside from the fact that the extension of [the juvenile’s] probation upon which the State relies was, at best, implicit, the State [did] not cite, and [the Court] did not during [its] own research identified, any authority supporting a conclusion that a trial judge has the authority to determine on a retroactive basis that it had extended a juvenile’s probation and, based upon that determination, to assign additional delinquency history points for the commission of an offense during the retroactively extended probationary period.” As a result, given that the trial court failed to correct an unlawfully entered disposition order, we hold that the trial court erred by denying the juvenile’s modification motion. Accordingly, the trial court’s order should be reversed and remanded for further proceedings not inconsistent with this opinion.

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## In the matter of E.M., 745 S.E.2d 374, 2013 N.C. App. LEXIS 600 (unpublished opinion)

Rule(s):

1. A court may not hold a juvenile in contempt without giving summary notice of contempt allegations and a summary opportunity to respond.
2. Dispositional orders must include written findings of fact pursuant to

N.C.G.S. § 7B-2501(c). Deficient orders will be remanded.

1. Electronic monitoring may not be imposed on juveniles subject to only Level 1 dispositions.
2. Disposition orders must be stated both orally and in writing.

A juvenile petition was filed alleging possession of marijuana. At the adjudicatory hearing the juvenile admitted to possession, a Class 3 misdemeanor. Following the admission, the trial court asked the juvenile a question that the juvenile declined to answer. The trial court went on to enter an order for secure custody/detention finding that “the juvenile is held in contempt for 24 hours as a direct result of the juvenile refusing to answer a direct question from the Judge.” The trial court also entered a Level 1 disposition order and placed the juvenile on probation for a period of six months under certain conditions.

The juvenile appealed first arguing that the trial court erred by entering the contempt order against juvenile pursuant to N.C.G.S. § 5A-32. Based on the circumstances surrounding the juvenile’s conduct and because the juvenile refused to answer the trial court’s question, the conditions for a finding of direct contempt listed under N.C.G.S. § 5A-31(b) were fulfilled. However, N.C.G.S. § 5A-32(a) states that before imposing measures summarily, the judicial official shall do all the following:

* 1. Give the juvenile summary notice of the contempt allegation and a summary opportunity to respond.
  2. Appoint an attorney to represent the juvenile and allow time for the juvenile and attorney to confer.
  3. Find facts supporting the summary imposition of measure in response to contempt by a juvenile. The facts shall be established beyond a reasonable doubt.

Upon reviewing the record, the Court determined that the trial court failed to comply with the mandate of N.C.G.S. § 5A-32(a) as the juvenile was not given summary notice of the contempt allegations and a summary opportunity to respond. Therefore, the judgment of the trial court on direct contempt was fatally deficient and the trial court’s order for secure custody/detention based on direct contempt was vacated.

The juvenile also contended that the trial court erred by entering a disposition order and failing to make findings of fact in violation of N.C.G.S. § 7B-2501(c). It is well established that “[t]he trial court is required to make findings demonstrating that it considered the N.C.G.S. § 7B-2501(c) factors in a dispositional order entered in a juvenile delinquency matter.” In the instant case, the Court determined that the trial court’s dispositional order does not contain the applicable findings. Consequently, the trial court’s dispositional order was vacated and remanded for a new dispositional hearing.

The juvenile then argued that the trial court erred by requiring the juvenile to cooperate with electronic monitoring at the discretion of the chief court counselor as a condition of his probation. N.C.G.S. § 7B-2510(b) states that the trial court may “order the juvenile to comply, if directed to comply by the chief court counselor . . . [to] [c]ooperate with electronic monitoring[.]” However, it further provides that electronic monitoring may only be imposed as a condition of probation to a juvenile who is subject to Level 2 disposition. Further, N.C.G.S. § 7B-2510 states that “the dispositional order shall be in writing” and the precise terms of the disposition order should be stated with particularity, both orally and in writing. Because the written disposition order does not require this condition of probation, the oral order is not valid and does not apply to the juvenile.

Next the juvenile argued that the trial court also violated N.C.G.S. § 7B-2510 by impermissibly delegating its authority to another person or authority as a condition of the juvenile’s probation. The Court determined that the conditions of the juvenile’s probation in the instant case do not vary substantially from those allowed per statute in N.C.G.S. § 7B-2510(a)(6), which authorizes the court to “impose conditions of probation that are related to the needs of the juvenile and that are reasonably necessary to ensure that the juvenile will lead a law-abiding life…” Accordingly, the Court held that the trial court did not err in imposing these conditions of probation.

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## In the matter of R.V.G., JR., 2012 N.C. App. LEXIS 632 (unpublished opinion)

Rule(s): The court must consider the dispositional factors listed in N.C.G.S. § 7B2501(c) in selecting the disposition, and the dispositional order must include findings of fact pertaining to those factors.

• But see *In the Matter of: D.M.*, 2008 N.C. App. LEXIS 189.

In October 2009 the juvenile admitted committing the offenses of breaking and entering and possession of stolen property. The trial court imposed a Level 2 disposition and placed the juvenile on nine months of supervised probation. At a hearing to address a motion for review alleging that the juvenile violated the conditions of probation, the trial court specified what the juvenile was required to do in order to avoid being committed to a youth detention center. The court’s written order explicitly stated that “[t]he juvenile has been informed that if he does not complete the conditions of this order by the next hearing, he will go to Training School.” At a subsequent hearing the trial court found that the juvenile violated the conditions of probation and imposed a Level 3 dispositional order, committing the juvenile to a youth development center for a minimum term of six months with the maximum commitment extending to his 18th birthday.

The juvenile appealed arguing that the trial court did not make adequate findings in its disposition order under N.C.G.S. § 7B-2501. In evaluating the dispositional order, the Court found that the trial court’s detailed findings of fact demonstrated that it considered the dispositional options outlined in N.C.G.S. § 7B2508. Accordingly, the Court affirmed the dispositional order.

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## In the matter of K.L.D., 210 N.C. App. 747; 709 S.E.2d 409; 2011 N.C. App. LEXIS 598

Rule(s): Choosing between two appropriate dispositional levels is within the trial court’s discretion. (“The decision to impose a statutorily permissible disposition is vested in the discretion of the juvenile court and will not be disturbed absent clear evidence that the decision was manifestly unsupported by reason.” P.5.)

The juvenile was adjudicated delinquent of sexual battery and simple assault, and placed on a Level 2 disposition.

The juvenile appealed, arguing that the trial court erred in concluding that it was mandated to enter a Level 2 intermediate disposition without first taking into consideration a Level 1 community disposition. The Court of Appeals disagreed, citing In re N.B., 167 N.C. App. 305, 605 S.E. 2d 488 (2004), which held that “The decision to impose a statutorily permissible disposition is vested in the discretion of the court, and will not be disturbed absent clear evidence that the decision was manifestly unsupported by reason.” Upon reviewing the juvenile’s prior delinquency history, the Court held that the trial court was authorized to enter either a Level 1 or Level 2 disposition because the juvenile was adjudicated of a serious offense (sexual battery), and had a delinquency level of low due to prior delinquency history. As the court’s decision was not “manifestly unsupported by reason, and within the court’s discretion, the Court of Appeals affirmed the trial court’s decision.

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## In the matter of J.S.W., 211 N.C. App. 620; 711 S.E.2d 471; 2011 N.C. App. LEXIS 839

Rule(s):

1. Under § 7B-2513(g), the court maintains continuing jurisdiction over a juvenile upon committing the juvenile for placement in a youth development center.
2. Under N.C.G.S. § 7B-2600(a), “the court may modify or vacate the order in light of changes in circumstances or needs of the juvenile.”
3. The court must consider the dispositional factors listed in N.C.G.S. § 7B2501(c) selecting the disposition, but is not limited to those factors.

In 2007, the juvenile was adjudicated delinquent of first-degree rape, and the court entered a Level 3 disposition committing the juvenile to a youth development center (YDC) for a minimum period of six months and for a total period of commitment that was indefinite. The court also ordered that the juvenile remain in YDC for the maximum time allowed by law. Approximately two years later in 2009, at a motion for review to extend the juvenile’s commitment, the court ordered that the juvenile remain in YDC until his 21st birthday as originally ordered, and held that it would entertain an earlier release upon successful completion of the sex offender specific treatment it ordered in 2007. In 2010, following a motion for review, the court found that the juvenile had completed the sex offender specific treatment, and ordered that the juvenile remain in YDC until his 21st birthday. A month later, another motion for review was filed seeking clarification as to whether the juvenile could participate in an off-campus job and home visits. Following the hearing, the court held that the juvenile could work off campus if he was not around anyone 25 years of age or younger; that he could not participate in home visits; and that he could participate in outings with the YDC if there was direct supervision.

The juvenile appealed, arguing that the court erred by ordering that he have no home or overnight visits and by ordering that he can only work off campus if he is not around anyone 25 years of age or younger because the conditional language prevented him from working off campus entirely. Specifically, the juvenile argued that because the Department of Juvenile Justice and Delinquency Prevention (Department) had authority over services, privileges, or punishments he should receive while in custody, the court lacked subject matter jurisdiction to make decisions addressing services, privileges, or punishments. The Court of Appeals disagreed, pointing at North Carolina statutory law such as “The court has exclusive, original jurisdiction over any case involving a juvenile who is alleged to be delinquent.” (N.C.G.S. § 7B-1601(a)); When committed to the Department for placement in a YDC “for an offense that would be…first-degree rape pursuant to N.C. Gen. Stat 14-27.2 …if committed by an adult, jurisdiction shall continue until terminated by the order of the court or until the juvenile reaches the age of 21 years, whichever occurs first.” (N.C.G.S. § 7B-1602(a)); “Commitment of a juvenile to the Department for placement in a YDC does not terminate the court’s continuing jurisdiction over the juvenile and the juvenile’s parent, guardian, or custodian” (N.C.G.S. § 7B-2513(g)); “Commitment of a juvenile to a YDC transfers only physical custody of the juvenile.” (N.C.G.S. § 7B-2513(g)); and Upon a motion for review and “after notice, the court may conduct a review hearing to determine whether the order of the court is in the best interests of the juvenile, and the court may modify or vacate the order in light of changes in circumstances or needs of the juvenile.” (N.C.G.S. § 7B-2600(a)). Furthermore, the Court also noted that the Supreme Court had previously held that “The North Carolina Juvenile Code patently provides for jurisdiction to lie exclusively in the district court between the stages of allegation and the final release of the juvenile” (In re Doe, 329 N.C. 743, 748, 407 S.E.2d 798, 801 (1991).

The juvenile’s next argument was that the district court abused its discretion by considering punishment as a purpose of the Juvenile Code rather than the mandated factors under N.C.G.S. § 7B-2501(c). The Court of Appeals disagreed, finding that the court considered the mandated factors based upon the court’s statement about the juvenile’s rehabilitation and punishment. Accordingly, the Court found no error.

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## In the matter of J.D.S., 714 S.E.2d 275, 2011 N.C. App. LEXIS 1590 (unpublished opinion)

Rule(s):

1. The court does not need parental consent for out-of-home placement, and the court’s disposition need not be consistent with the parent’s view concerning the child’s best interests.
2. In fact, under N.C.G.S. § 7B-2703(b) and 7B-2706, the court has authority to order a parent to assist the juvenile in complying with the court orders or probationary conditions.
3. The court may consider the purpose of a party’s appeal when determining whether there are compelling reasons for temporary custody pending appeal.

Following a motion for review for a probation violation, the juvenile’s probation was extended for seven months and he was placed in Level 2 therapeutic foster care. The court also ordered that the juvenile’s mother sign the necessary papers to enter therapeutic treatment as she had originally declined to do so when asked by the juvenile’s court counselor. After the juvenile entered notice of appeal, a hearing was held to determine if “compelling reasons” existed for the court to enter a temporary custody order pending the appeal. The court found that there were compelling reasons to order placement pending appeal.

On appeal, the juvenile raised two issues: (1) whether the court properly ordered the parent to sign papers for a juvenile adjudicated delinquent and (2) whether the court should have considered the purpose of the appeal when considering the “compelling reasons” inquiry related to his placement pending the appeal.

Regarding the juvenile’s first argument that the court exceeded its authority by ordering his mother to consent to the therapeutic placement that she did not believe to be in his best interest, the Court of Appeals disagreed. The Court held that there was no authority requiring that a parent consent to an out-of-home placement ordered by the court, or any requirement that the court’s disposition be consistent with the parent’s view concerning the child’s best interests. The Court further noted that it could not assess the paperwork referenced, as it was not a part of the record. Furthermore, the Court pointed to N.C.G.S. § 7B-2703 (b) and N.C.G.S. § 7B-2706 to show that the court has authority to order a parent, guardian, or custodian to assist the juvenile in acting in accordance with the terms and conditions of probation or other court orders. Last, the Court noted that the juvenile failed to show any prejudice caused by the order requiring the mother to sign the necessary paperwork, and that there was nothing in the record that indicated that her failure to sign the paperwork precluded the court-ordered therapeutic placement.

As to the juvenile’ second argument, the juvenile specifically argued that the finding that the purpose of the appeal was “to thwart what is in the best interests of [Juvenile] as it is clear the decision to appeal is based on the type of placement and not the placement itself” was not a proper consideration in determining whether there were compelling reasons not to release him pending the appeal. The Court disagreed, holding that it was not an improper consideration as appellate rules allow for imposition of sanctions for frivolous appeals and N.C.G.S. § 7B-2605 protects against parties frustrating the court’s efforts to address best interests by entering notice of appeal. The Court noted that even if the finding was not compelling, the court’s findings indicate an urgent need to remove the juvenile from his mother’s home. Accordingly, the court affirmed the decision.

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## In the matter of C.J.M., 209 N.C. App. 753; 710 S.E.2d 709; 2011 N.C. App. LEXIS 421 (unpublished opinion)

Rule(s): When the court orders a Level 3 disposition based on erroneous findings regarding the juvenile’s history of delinquency, this constitutes reversible error.

The juvenile was adjudicated of violating probation, and committed to a youth development center after the trial court found that he had four or more prior offenses of delinquency pursuant to N.C.G.S. § 7B-2508(g).

The juvenile appealed, arguing that the adjudication and disposition orders be vacated because the trial court erroneously found that he had been adjudicated delinquent of four or more prior offenses when he was placed on probation. The State conceded that there was an error as at the time that the juvenile was placed on probation in 2010, he only had two prior adjudications. Moreover, the Court held that commitment was not an option for disposition as the juvenile was adjudicated of two minor offenses prior to the disposition leading to commitment. Accordingly, the Court reversed the disposition and commitment order, and remanded the case for entry of a Level 2 disposition order.

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## In the matter of J.K.L., 2011 N.C. App. LEXIS 1667 (unpublished opinion)

Rule(s):

1. N.C.G.S. § 7B-2513 mandates a statutory minimum of six months of commitment, but may commit the juvenile for no longer if that term would exceed the maximum sentence for an adult convicted of the same offense.
2. N.C.G.S. § 7B-2501(c) does not require a court to consider a juvenile’s risk and needs assessment upon ordering a Level 3 disposition.

Where the juvenile violates probation associated with an A1 misdemeanor

The juvenile was committed to a youth development center for a maximum term until her 18th birthday following a motion for review finding that she violated conditions of probation associated with her adjudication for assault on a government officer or employee.

The juvenile appealed, arguing that the trial court erred by committing her to a youth development center until her 18th birthday and by ordering that she be committed to a youth development center without a risk and needs assessment as required by N.C.G.S. § 7B-2501.

The Court agreed with the juvenile’s first argument regarding the maximum term of her commitment. The Court held that because the juvenile was committed for violating the conditions of probation associated with the adjudication for assault on a government officer or employee, an A1 misdemeanor, the maximum term of commitment should have been six months pursuant to N.C.G.S. § 7B-2513(1)(3). Therefore, the Court vacated the trial court’s disposition and commitment order and remanded it for a disposition order consistent with N.C.G.S. § 7B-2513(1)(3).

As to the juvenile’s second argument that the court erred by failing to consider her risk and needs assessment, the Court of Appeals disagreed. The Court noted the five enumerated factors for consideration in selecting a disposition under N.C.G.S. § 7B-2501(c), and that the fifth factor, consideration of the rehabilitative and treatments needs as indicated by the risk and needs assessment, was only required for Level 1 or Level 2 dispositions. As the court ordered a Level 3 disposition (commitment to a youth development center), the Court found the juvenile’s argument to be without merit.

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## In the matter of D.A.Q., 2011 N.C. App. LEXIS 1755

Rule(s):

1. “An order of restitution must be supported by the record, which demonstrates that the condition is fair and reasonable, related to the needs of the child, and calculated to promote the best interest of the juvenile in conformity with the avowed policy of the State in its relation with juveniles.” P.4 (citations omitted).
2. The findings of fact must support both the order to pay restitution at all and the amount ordered.
3. Under N.C.G.S. § 7B-2506(4), joint and several liability applies where the juvenile acted with others.

The juvenile was adjudicated of two counts of feloniously breaking and entering a motor vehicle, and among other conditions, ordered to pay restitution of $242.58 for damages estimated at $265.00.

The juvenile appealed, arguing that: (1) the trial court failed to make adequate findings of fact to supports its order of restitution in the amount of $242.58 and (2) he and the co-respondent should have been held jointly and severally liable for the restitution payment.

As to the first argument, the Court of Appeals agreed, holding that the trial court failed to consider whether the condition of restitution (1) was fair and reasonable, (2) related to the needs of the juvenile, and (3) would serve to promote the best interest of the juvenile. Specifically, the Court held that the trial court based its decision on avoiding injustice to the victim who had suffered financial loss, and not on whether it was in the either in the juvenile’s best interest or fair to him.

Regarding the juvenile’s second argument, the Court of Appeals first noted that both the juvenile and the State were mistaken as to the meaning of joint and several liability. The Court noted that both the juvenile and the State seemed to think that joint and several liability referred to the parties being equally responsible for the obligation when it in fact meant, “each party is individually responsible for the entire obligation.” Therefore, although the trial court ordered the restitution after considering that the co-respondent was already responsible for restitution to several other persons, the Court found that any lack of findings regarding joint and several liability was not prejudicial to the juvenile as he could have been liable for the entire amount of damages. Consequently, the Court reversed the order of restitution and remanded the case for further findings regarding whether the restitution order was in the juvenile’s best interest and fair to the juvenile.

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## In the matter of D.T.F., 2011 N.C. App. LEXIS 1957 (unpublished opinion)

Rule(s):

1. Where the court checks a box on the disposition form indicating that the juvenile was found to have violated probation and makes oral findings to the same, the court has satisfied N.C.G.S. §7B-2510(e).
2. The court must consider the dispositional factors listed in N.C.G.S. § 7B2501(c) in selecting the disposition, and the dispositional order must include findings of fact pertaining to those factors.

• But see *In the Matter of D.M.*, 2008 N.C. App. LEXIS 189.

In September 2009, the juvenile was adjudicated of breaking and entering, larceny of a firearm, larceny after breaking and entering, and misdemeanor larceny, and the court entered a Level 2 disposition, and placed the juvenile on probation for 12 months. In December 2009, a motion for review of the juvenile’s probation was filed. During the motion for review hearing in 2010, the State amended the motion for review to include additional probation violations, and the juvenile was found to have violated probation. Subsequently, the court entered a Level 3 Disposition and Commitment Order based on the probation violation for a maximum period not to exceed his 18th birthday. The order indicated that the juvenile had previously been placed on a Level 2 disposition, had violated conditions of probation, and had been adjudicated of a violent or serious felony, that a Level 3 disposition was authorized, and only provided pre-printed findings.

The juvenile appealed, arguing that the trial court erred by (1) revoking his probation because it failed to make sufficient findings of fact to support the conclusion that the juvenile had violated probation, (2) using an incorrect form during the hearing; and (3) committing him to a youth development center because the court failed to make sufficient findings of fact to indicate that a Level 3 disposition was warranted.

As to the juvenile’s first and second arguments, the Court of Appeals disagreed. The Court found it unnecessary to remand the case to address those arguments as the court made oral findings that the juvenile violated probation when he removed his electronic monitoring device, left his residence, as well as two therapeutic foster homes thereafter. Therefore, the Court held that although there was no separate written order regarding the violation of the terms of probation, the oral statements and statement on the Disposition and Commitment Order were sufficient.

Regarding the juvenile’s last argument that the court failed to make sufficient findings of fact to warrant a Level 3 disposition, the Court agreed. The Court found that the trial court had failed to consider the factors enumerated under N.C.G.S. § 7B-2501(c) as there were no written findings of fact in the dispositional order. Instead, the court only used pre-printed findings (indicating that the juvenile was on probation, had violated conditions of probation, had been adjudicated of a violent or serious offense, and that a Level 3 disposition was authorized). Furthermore, the court also failed to provide any additional information in the “Other Findings” area of the order. Accordingly, as there were insufficient findings of fact, to determine whether the trial court considered the factors required under N.C.G.S. § 7B-2501(c), the Court of Appeals vacated and remanded the case for a new dispositional hearing. http://appellate.nccourts.org/opinions/?c=2&pdf=MjAxMS8xMS0yNTctMS5wZGY

## In the matter of W.L.M., 2011 N.C. App. LEXIS 169 (unpublished opinion)

Rule(s): Because N.C.G.S. § 7B-2512 requires that the duration of the ordered disposition be stated “with particularity, both orally and in written order of disposition,” the court must state the length of the commitment in open court.

The juvenile admitted to felonious breaking and entering, misdemeanor larceny, and possession of stolen goods, and a Level 2 disposition was entered. A subsequent motion for review alleging probation violations was filed. The trial court then committed the juvenile to a youth development center for a minimum of six months, and thereafter until his eighteenth birthday. In open court, the trial court stated: “I’m going to adopt the recommendations of DJJ. I’m going to sentence him as a Level 3. Going to go ahead and send [W.L.M.] to training school…And when [W.L.M.] comes out, then [W.L.M.] you will no longer be under our jurisdiction, okay.” The trial court’s written orders were not clear, appearing to be modified, and then setting the duration of the commitment to be the juvenile’s eighteenth birthday.

The juvenile appealed, arguing that the trial court erred by failing to state the length of the commitment in open court and then amending the order to add a maximum term in violation N.C.G.S. § 7B-2512. The Court of Appeals agreed with the juvenile, holding that the specific statutory mandate contained in N.C.G.S. § 7B2512 requires that the duration of the ordered disposition be stated “with particularity, both orally and in written order of disposition.” The disposition portion of the order was vacated and remanded for a new hearing.

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## In the matter of S.B., 2010 N.C. App. LEXIS 2021

Rule(s): A juvenile may not be committed upon a violation of probation for a minor offense, even if the minor offense was the four or more adjudication.

The juvenile was adjudicated delinquent of violating probation and placed on a Level 3 disposition after a motion for review was filed alleging that she had violated probation by assaulting a staff member at Old Vineyard, damaging property, and possessing marijuana. The trial court entered a Level 3 disposition based on its findings that the juvenile had four or more prior offenses when she was adjudicated for the offense for which she was on probation.

Juvenile appealed, arguing that the trial court violated N.C.G.S. § 7B-2510(e) and (f) by entering a Level 3 disposition because the underlying offense was a minor offense. Specifically, the juvenile argued that N.C.G.S. § 7B-2510(f) precluded a court from ordering a Level 3 disposition when a juvenile violated probation for a minor offense, unless subject to N.C.G.S. § 7B-2510(g), the juvenile had been adjudicated of four or more prior offenses. The Court of Appeals agreed, reasoning that commitment was precluded because the juvenile was on probation for a minor offense, and had not been adjudicated of another subsequent minor offense. Accordingly, the case was reversed and remanded to district court for entry of a Level 2 disposition.

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## In the matter of D.M.B., 676 S.E.2d 66, 2009 N.C. App. LEXIS 524

Rule(s):

1. N.C.G.S. § 15A-1222 does not apply when the judge’s comments are not made in the presence of the jury.
2. Review for plain error is reserved for jury instructions and admissibility of evidence, but not sufficiency of evidence.
3. “[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.” P.5 (citations omitted).

The juvenile was adjudicated of assault causing serious bodily injury after he admitted to hitting another juvenile, and causing two broken jaws and a facial fracture. The juvenile was ordered to pay $1000 in restitution, to serve 72 hours of community services, to serve 12 hours of supervised probation, and to not associate with the victim or witnesses.

The juvenile appealed, arguing that (1) the trial court was not fair and impartial as it made improper comments during the disposition; (2) the trial court should have dismissed the charge because there was not sufficient evidence of serious bodily injury; and (3) the trial committed reversible error when it failed to make findings of fact to support the restitution order. The Court of Appeals disagreed with the first two assignments of error.

As to the juvenile’s first argument, the Court relied upon N.C.G.S. § 15A-1222, which prohibits a trial judge from expressing any opinion on a question of fact to be decided by the jury. However, in this case, the Court pointed out that there was no jury. The Court also noted that if it reviewed the judge’s comments (explaining that he was required to enter a Level One or Two disposition despite an inclination to enter a harsher disposition) using a totality of the circumstances test, there was no indication that the judge was not impartial.

As to the juvenile’s second argument, the Court noted that the issue of sufficiency of evidence was not preserved for review, and that there was no basis for the case to be reviewed under the plain error doctrine.

Lastly, regarding the juvenile’s last argument, the Court agreed with the juvenile’s assignment of error, holding that requiring a juvenile to pay 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” (quoting In re Berry, 33 N.C. App. 356, 360, 235 S.E.2d 278, 280-281 (1977)). Accordingly, the Court remanded the case to the lower court for further action.

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## In the matter of J.C., 2009 N.C. App. LEXIS 278 (unpublished opinion)

Rule(s): “A dispositional order must contain appropriate findings of fact encompassing the five factors set forth in N.C.G.S. § 7B-2501(c).” P.1.

The juvenile was adjudicated delinquent of involuntary manslaughter, and the court entered a Level 3 disposition committing the juvenile to a youth development center (“YDC”) until his 18th birthday.

The juvenile appealed, arguing that the court failed to make sufficient findings of fact to support the disposition order as required by N.C.G.S. § 7B-2512, which mandates that dispositional order shall be writing and contain findings of fact and conclusions of law and that court should specify orally and in the written order the particular terms of disposition. The Court of Appeals agreed, finding that the trial court’s findings of fact in the disposition and commitment order failed to provide a rationale for why the court chose a Level 3 disposition. The order only provided information relating to the nature of the offense, the juvenile’s delinquency history, evidence, the juvenile’s progress in a current program, and placement for the juvenile’s commitment, when the court should have considered factors pursuant to N.C.G.S. § 7B-2501(c) (which include the seriousness of the offense; the need to hold the juvenile accountable; the importance of protection public safety; the degree of culpability indicated by the circumstances of the particular case; and the rehabilitative and treatment needs of the juvenile indicated by a risk and needs assessment). The Court of Appeals remanded the case for entry of an order with appropriate findings of fact pursuant to N.C.G.S. § 7B-2501 (c) and N.C.G.S. § 7B2512.

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## In the matter of M.S., 2009 N.C. App. LEXIS 288 (unpublished opinion)

Rule(s):

1. “According to N.C.G.S. § 7B-2508(f), where a juvenile has a high delinquency history and has committed a violent offense, the trial court is required to impose a Level 3 disposition.” P.4.
2. “Under N.C.G.S. § 7B-2508(e), “[a] trial court exercising jurisdiction over a juvenile who has been adjudicated delinquent under a Level 3 disposition ‘shall commit the juvenile to the Department for placement in a youth development center.’” . . . . . It is only when the trial court makes specific written findings substantiating the extraordinary needs on the part of the offending juvenile that the trial court may use its discretion and impose a Level 2 disposition instead.” Id.

The juvenile was adjudicated of robbery with a dangerous weapon, and the court entered a Level 3 disposition committing the juvenile to a youth development center (“YDC”) until his 18th birthday.

The juvenile appealed, arguing that (1) the trial court failed to use its discretion in sentencing and instead chose commitment because the offense was an armed robbery; (2) the trial court erred in proceeding with the hearing where the summons issued no service; and (3) counsel was ineffective in failing to object to the lack of service of the summons. The court disagreed with the juvenile’s first argument, finding that the court was required to enter a Level 3 disposition due to the juvenile’s high delinquency history and the fact that he committed a violent offense. Additionally, the court indicated that the court considered the required statutory factors (which include the seriousness of the offense; the need to hold the juvenile accountable; the importance of protection public safety; the degree of culpability indicated by the circumstances of the particular case; and the rehabilitative and treatment needs of the juvenile indicated by a risk and needs assessment), and made a specific finding of fact regarding the gravity of the offense.

Regarding the juvenile’s second argument, the Court disagreed, finding that the juvenile waived the lack of personal jurisdiction by appearing and participating in the hearing without objecting.

Lastly, the court found that counsel’s performance did not fall below and objective standard of reasonableness and did not prejudice the juvenile.

Consequently, the court affirmed the trial court’s order.

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## In the matter of M.B., 2009 N.C. App. LEXIS 324 (unpublished opinion)

Rule(s):

1. When determining the appropriate disposition for an adjudication, the court must consider the factors listed in N.C.G.S. § 7B-2501(c), but is not required to make findings regarding each.
2. The court may not impose more than 28 days of confinement for a Level 2 Disposition.

On December 11, 2007, the juvenile was adjudicated delinquent of misdemeanor breaking and entering and resisting, delaying, and obstructing an officer, and placed on probation. The court imposed intermittent confinement of five days detention, which was suspended. On January 31, 2008, there was a probation violation hearing, and the court modified the juvenile’s disposition to a Level 2, whereby probation was continued and time in detention was increased to 19 days (i.e., 14 days + 5 days) with 12 days suspended. On March 25, 2008, there was another probation violation hearing wherein there was testimony of the juvenile’s behavior and an admission from the juvenile where the court continued the juvenile probation and increased days of detention to 40 days (i.e., 12 days + 28 days) with 15 days suspended.

The juvenile appealed the court’s disposition order, because the days in detention exceeded the statutory maximum. Although the appeal referenced the first order when it should have referenced the second (corrected) order, the Court of Appeals found that the mistake should not result in a loss of appeal if the intent of the appeal could be inferred from the notice and the appellee was not mislead.

In reviewing the juvenile’s argument that the court failed to enter appropriate findings of facts and conclusions of law to support the Level 2 disposition, the Court of Appeals disagreed that the trial court must making findings in reference to all of the enumerated factors in 7B-2501(c) (i.e., (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). Instead, the Court of Appeals ruled that the trial court must consider each of the factors when determining the appropriate disposition.

Lastly, the juvenile argued that the court lacked authority to order him to serve 40 days in detention. The Court of Appeals agreed, holding that the trial court could not impose more than 28 days of confinement for a Level 2 disposition. Alternatively, the trial court could only do one of the following: continue probation conditions, modify original probation conditions, or order a new disposition. Therefore, the Court of Appeals reversed the ruling and remanded for re-sentencing.

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## In the matter of J.B., 2009 N.C. App. LEXIS 654 (unpublished opinion)

Rule(s):

1. There is no requirement that adjudication orders be written.
2. Where the juvenile gives no notice of appeal, the appellate court lacks jurisdiction.
3. N.C.G.S. § 7B-2513 mandates a statutory minimum of six months of commitment, but may commit the juvenile for no longer if that term would exceed the maximum sentence for an adult convicted of the same offense.

Prior to December 2007, the juvenile was adjudicated delinquent for four felonies and three misdemeanors. In December 2007, the juvenile was adjudicated delinquent for three more felonies and one misdemeanor, but disposition was not entered. In January 2008, the juvenile was adjudicated delinquent for three more misdemeanors and the court entered a disposition order placing the juvenile on probation. In February 2008, a motion for review was filed alleging that the juvenile violated terms of the January 2008 disposition. In March 2008, the court entered a disposition order finding the juvenile violated the terms of the January 2008 order, and committed the juvenile to a youth development center for at least six months.

The juvenile appealed the March 2008 disposition order, and appellate counsel was appointed. In April 2008, trial counsel filed a motion for release pending appeal, and in May 2008, a motion to vacate the March 2008 disposition order on the grounds that commitment was not authorized because the trial court found that the juvenile violated terms of probation for a misdemeanor offense. The court denied both motions. In July 2008, the trial court entered an order amending the March 2008 disposition order, deleting references to the juvenile violating terms of the January 2008 order, and instead finding that he violated terms of the December disposition order (i.e., juvenile would have been on probation for committing a felony and not a misdemeanor).

In December 2008, the juvenile’s appellate counsel filed the record on appeal, but not from the amended order. The juvenile argued that the court erred (1) by finding (in March 2008) the juvenile to be in violation of probation for felony offenses for which he had been adjudicated delinquent in December 2007, but where disposition had not been entered; (2) by amending the commitment order when notice of appeal had been entered and therefore, subject matter jurisdiction lacking; and (3) by committing the juvenile to a youth development center for a maximum term of six months since the probation violation referenced back to a misdemeanor.

The Court of Appeals ruled that (1) it rejected the juvenile’s first argument because there is no requirement that adjudication orders be written and the juvenile cited no authority to support this argument (2) it dismissed the juvenile’ second argument because he did not give notice of appeal from the amended order, and therefore, the Court lacked jurisdiction; and (3) it rejected the juvenile’s third argument as the minimum term of commitment for a juvenile by statute is six months. Accordingly, the Court dismissed in part, and affirmed in part.

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## In the matter of D.L.H., 679 S.E.2d 449, 2009 N.C. App. LEXIS 1175, 2010 N.C. App. LEXIS 421 Rule(s):

1. Juvenile terms of confinement may not be reduced by time spent in custody prior to disposition.
2. By the express language of N.C.G.S. § 7B-1903(b) and (d), it applies only while the allegations of a violation are pending and not where there has been an admission and adjudication of the conduct.
3. Under N.C.G.S. §§ 7B-1903, -1906(b) and (e), “a juvenile confined to secure custody pending disposition or placement is entitled to a hearing at intervals of no more than 10 calendar days to determine whether continued secure custody is warranted.” P.14.

In July 2007, the juvenile was adjudicated of simple affray, and ordered to remain in detention as disposition was continued until August 2007. At the August 2007 hearing, the juvenile was placed on a Level 2 probation until January 2008, and sentenced to 14 days in detention that were stayed pending compliance with conditions of probation. In December 2007, at a hearing on a motion for review, the juvenile admitted the allegations, and was ordered to serve the 14 days in detention, which had been stayed by the August 2007 order. Disposition was continued to January 2008. At the January 2008 hearing, the court held that the juvenile was delinquent, and would benefit from probation. Disposition was continued to late January, and the juvenile was placed in detention pending disposition. Before being placed in detention in January, the juvenile had filed a motion seeking (1) release from custody, asserting the court did not have authority to order her to remain in custody, or in the alternative (2) a secure custody hearing pursuant to N.C.G.S. § 7B1906. The court ordered that it did not have authority to modify previous orders by another judge. At the disposition hearing, a Level 2 disposition was entered, the juvenile’s probation was extended six months, and a 14-day sentence was stayed pending compliance with conditions of probation.

The juvenile appealed orders entered in December 2007, January 2008, and February 2008. The juvenile’s arguments included two regarding the juvenile’s stays in secure custody. The Court of Appeals first addressed the issue of mootness, finding that although the issues raised were now moot to the juvenile (who had since been released from detention), the issues were “capable of repetition, yet evading review.”

Juvenile’s first argument was that the trial court erred by failing to give credit for time served in secure custody prior to the dispositional hearing. (Note: Specifically, the juvenile did not receive credit for the 27 days that she spent in detention awaiting disposition when she received the 14-day sentence in August 2007. Additionally, when the 14-day sentence was activated in December 2007, the juvenile did not receive any credit for time served. The juvenile also spent an additional 28 days in detention pending another dispositional hearing). The Court of Appeals agreed that the court erred in not providing credit for time served, finding that In re Allison, 143 N.C. App. 586, 547 S.E.2d 169 (2001) held that N.C.G.S.15196.1, Credits Allowed, applied to juvenile commitments.

The juvenile’s second argument was that the trial court erred by ordering the juvenile into secure custody after the admission of probation violations because detention was not authorized. The Court of Appeals disagreed, finding that under N.C.G.S. § 7B-1903(c), the trial court was authorized to order secure custody after the admission of probation violations because (1) the juvenile had been adjudicated delinquent previously; (2) the juvenile admitted the probation violations; and the trial court had good cause to continue the dispositional hearing as the court counselor and juvenile’s mother were determining whether out-of-home placement was appropriate.

Thirdly, the juvenile argued that the trial court erred in its refusal to consider the pending motion for release from secure custody. The Court of Appeals agreed, finding that the juvenile was entitled to a hearing under N.C.G.S. § 7B-1906(b), which states, “as long as the juvenile remains in secure or nonsecure custody, further hearings to determine the need for continued secure custody shall be held at intervals of no more than 10 calendar days.”

Lastly, the juvenile argued that trial court erred because it: (1) lacked authority to reinstate a sentence already served and to extend probation at the January 2008 hearing and (2) failed to enter findings of fact to support the extension. The Court of Appeals disagreed, finding that the trial court was authorized to continue the original conditions of probation or modify the conditions of probation (N.C.G.S. § 7B-2510 (e)). The Court also found that the trial court was authorized to activate the original suspended 14-day sentence and an additional suspended 14-day sentence based on the admission to probation violations as the court is allowed to impose up to the 28 days of confinement for a Level 2 disposition (N.C.G.S. § 7B-2506, 7B-2508, and § 7B-2510). Further, the Court found that the trial court had entered sufficient findings of fact to support the extension of probation as the findings of fact indicated that extension “was necessary to protect the community or to safeguard the welfare of the juvenile.”

On discretionary review, the Supreme Court overruled the Court of Appeals, finding that North Carolina general statutes do not authorize credit for time served for protective custody served by juveniles. The Supreme Court reasoned that juvenile proceedings are distinct from criminal prosecutions, and that although criminal sentences impose punishment pursuant to the offense, juvenile dispositions focus on accountability, responsibility, as well as consequences and treatment. The Court further reasoned that in the instant case, the juvenile’s placement in secure custody, “was a reasonable exercise of the district court’s discretion that was intended to serve D.L.H.’s best interests while the parties gathered information on how best to respond to her particular circumstances.” Regarding whether criminal procedure should be imported into the juvenile context to address credit for time served, the Court maintained that delinquency proceedings are not criminal prosecutions, and therefore not subject to all criminal procedure provisions. The Court reasoned that the absence of any statutory indication that N.C.G.S. § 15-196.1 applies to juvenile matters or that a juvenile is entitled to credit for time served lead them to the conclusion that juvenile terms of confinement may not be reduced by time spent in custody prior to disposition.

Further, the Court reasoned that N.C.G.S. § 7B-2514(f), which specifically allows juvenile commitment terms to be reduced by the amount of time on postrelease supervision, supports the conclusion that the legislature did not intend to provide credit for time served in the juvenile context. Moreover, the Court noted that prior decisions applied criminal procedure protections because they were mandated by constitutional guarantees of due process, which were not argued in this case. Accordingly, the Supreme Court reversed the decision, and left other issues (i.e., the holding that juveniles in secure custody are entitled to a hearing at least every 10 days after adjudication and pending disposition for continued secure custody) undisturbed.

N.C. Court of Appeals:

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N.C. Supreme Court:

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## In The matter of A.B., 681 S.E.2d 565, 2009 N.C. App. LEXIS 1758 (unpublished opinion)

Rule(s):

1. A “Critical History Information Sheet” (containing sections on social summary; family history; school history; problem behaviors; and concerns to be addressed by the court) suffices as a “predisposition report” for purposes of including findings of fact in compliance with N.C.G.S. § 7B-2512.
2. Where a juvenile is adjudicated of disorderly conduct at school for verbal altercations and school administrators are called away from their duties, the behavior may constitute substantial interference with the operation of a school (for purposes of review for insufficiency of evidence).

The juvenile was adjudicated of disorderly conduct, and a Level 1 disposition was entered.

Juvenile appealed, arguing that the trial court (1) failed to provide appropriate findings of fact and conclusions of law in writing pursuant to N.C.G.S. § 7B-2512 and (2) erred in failing to grant its motion to dismiss the charge of disorderly conduct due to insufficient evidence.

The juvenile argued that on the disposition order, the court checked “received and considered the predisposition report” and “incorporates the contents,” but failed to attach the report to the order as required. The record indicated that the clerk claimed that the judicial district uses a document titled “Critical History Information Sheet,” incorporates it to the disposition order after an adjudication, and references it as the “predisposition report.” The Court of Appeals found that the trial court’s incorporation of the “predisposition report” or the “Critical History Information Sheet” (containing sections on social summary; family history; school history; problem behaviors; and concerns to be addressed by the court) into the findings of fact in the order complied with N.C.G.S. § 7B-2512.

Regarding the juvenile’s second argument, the Court of Appeals found that there was substantial evidence of disorderly conduct and that the juvenile was the perpetrator of the offense as the juvenile engaged in a verbal altercation using vulgar language, and school administrators were called away from their duties to handle the incident.

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## In the matter of J.L., 2009 N.C. App. LEXIS 1537

Rule(s): Under N.C.G.S. § 7B-2901(b), the juvenile has a right to examine her DSS files and mental health records without a court order.

The juvenile was adjudicated of first-degree burglary and robbery with a dangerous weapon, and a Level 3 disposition was entered committing the juvenile to a youth development center for six months or until his 19th birthday.

Juvenile appealed, arguing that the trial court erred by not allowing counsel to have complete access to review Department of Social Services files or mental health records. The Court of Appeals agreed, finding that the juvenile had a right to review the records for mitigation evidence pursuant to N.C.G.S. § 7B-2901(b). The Court of Appeals found that the trial court’s denial was an abuse of discretion as N.C.G.S. § 7B-2901(b) stipulates that the Director of the Department of Social Services shall maintain a record of juvenile cases including mental health information that may be examined by the juvenile without a court order.

The Juvenile also argued that the trial court erred by denying his motion to continue disposition to allow additional time for counsel to review the predisposition report and prepare for the disposition hearing. The Court of Appeals agreed, finding that the trial court’s denial was an abuse of discretion. The Court of Appeals held that pursuant to 7B-2901(b), the juvenile had a right to gather and present evidence for the disposition hearing. Consequently, the Court of Appeals reversed and remanded the case.

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## In the matter of T.B., 2009 N.C. App. LEXIS 1414 (unpublished opinion)

Rule(s):

1. “Substantial evidence is relevant evidence which a reasonable mind might accept as adequate to support a conclusion.” P.4–5 (citations omitted).
2. A “trial judge, sitting without a jury, has discretion as finder of fact with respect to the weight and credibility that attaches to the evidence.” Comments made by the judge regarding a witness’s credibility do not constitute impermissible opinion. P.8 (citations omitted).

The juvenile was adjudicated of attempted robbery with a dangerous weapon, and a Level 3 disposition was entered committing the juvenile to a youth development center for an indefinite period.

The juvenile appealed, arguing that the trial court erred by denying his motion to dismiss due to insufficient evidence. The juvenile argued that the court did not present sufficient evidence to indicate that he was the perpetrator of the offense or that a dangerous weapon was involved as the victim testified that he was not sure he only saw the perpetrator’s eyes and was unsure if the gun was real. The Court of Appeals disagreed, finding that the evidence indicated that (1) there was sufficient light during the incident, (2) the victim saw the juvenile point the gun at him and threaten him, (3) the victim identified the juvenile to law enforcement within 10 minutes after the incident from a large group of people, and (4) the victim identified the juvenile in court as the perpetrator of the offense.

Next, the juvenile argued that the trial court erred by adjudicating the juvenile delinquent after making an inappropriate and biased comment concerning a witness’s credibility. The Court of Appeals disagreed, finding that after considering the totality of the circumstances, the judge’s comment (with regard to believing the witness’s account of the incident) reflected his thought process and did not reflect impermissible opinion.

Lastly, the juvenile argued that the trial court erred by entering a Level 3 disposition order without making any findings of fact. The Court of Appeals agreed, finding that the disposition order failed to make appropriate finding of fact regarding the grounds for the Level 3 disposition pursuant to N.C.G.S. § 7B-2512 (i.e., to protect the public and meet the needs and bests interests of the juvenile based upon enumerated grounds). The Court of Appeals also pointed out that the disposition order failed to provide information pertaining to the juvenile’s delinquency history. Consequently, the Court of Appeals remanded the case for a new disposition hearing.

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## In the matter of D.R.H., 194 N.C. App. 166; 668 S.E.2d 919; 2008 N.C. App. LEXIS 2207

Rule(s): Under N.C.G.S. § 7B-2508(h), where a juvenile is adjudicated of more than one offense during a single session of juvenile court, the court shall consolidate the offenses for disposition and impose a single disposition for the consolidated offenses (specifying the class and delinquency history level of the most serious offense).

The juvenile was adjudicated of robbery with a dangerous weapon and felony conspiracy, and committed to a youth development center.

The juvenile appealed, arguing that (1) the trial court erred in entering two separate dispositions, and (2) in finding that the juvenile had six delinquency history points and a high delinquency history level. The Court of Appeals agreed with the juvenile’s first argument, stipulating that when a juvenile is adjudicated of more than one offense during a single session of juvenile court, the court shall consolidate the offenses for disposition and impose a single disposition for the consolidated offenses (specifying the class and delinquency history level of the most serious offense) [N.C.G.S. § 7B-2508(h)]. Therefore, the Court of Appeals vacated the disposition and commitment orders and remanded for a single order.

Regarding the juvenile’s second argument, the Court of Appeals disagreed, and after reviewing § 15A-1340.14(f) for guidance, found that the fact that defense counsel (1) did not object to the court’s statement that counsel had reviewed the prior record level worksheet and (2) did not object after the judge’s summation of the point level system, the failure to object amounted to an admission or stipulation that the juvenile had the prior convictions asserted by the State. The Court of Appeals also noted that in the appellate brief the juvenile had not argued that some of the prior adjudications did not exist. Therefore, the Court of Appeals overruled this argument.

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## In the matter of T.P., 2008 N.C. App. LEXIS 2051 (unpublished opinion)

Rule(s):

1. Choosing between two appropriate dispositional levels is within the trial court’s discretion.
2. In determining the appropriate disposition, “the trial court is required to take factors other than culpability into consideration,” including the juvenile’s needs and risk assessment. P.7.

The juvenile was adjudicated of assault with a deadly weapon on a classmate at school. The court imposed a Level 2 disposition of 12 months supervised probation, with a suspended sentence of 14 days in detention. The juvenile gave written notice of appeal on the adjudication and disposition orders. A few weeks later, the juvenile filed a motion for review seeking to modify the order or vacate the adjudication disposition orders based on counsel’s receipt of the juvenile’s records from the relevant school year, which indicated that he was absent from school when the assault occurred. A month later, the court entered an order setting the juvenile’s conditions of disposition pending appeal, but continued hearing for the motion for review. At the hearing on a motion for review, the court dismissed it for lack of jurisdiction (based on the appeal of the adjudication and disposition orders).

The juvenile appealed arguing that (1) the court erred in dismissing the motion for review on the basis that it lacked subject matter jurisdiction and (2) the court abused its discretion by ordering a Level 2 disposition. As to the first argument, the Court of Appeals disagreed, ruling that because no statute authorized modification of the order on the grounds sought by the juvenile’s motion for review, the juvenile must wait for proceedings to be completed at the Court of Appeals before filing the motion, and that the juvenile’s notice of appeal stayed the proceedings.

Regarding the second argument, the Court of Appeals ruled that the court had discretion to impose either a Level 1 or 2 disposition and that there was no abuse of discretion as the decision was supported by consideration of the factors required by the Juvenile Code including the juvenile’s needs and risks assessment.

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## In the matter of M.A.R., 2008 N.C. App. LEXIS 387 (unpublished opinion)

Rule(s): The trial court must make a written statement indicating sufficient findings of fact to support its conclusion that a juvenile should be committed.

The juvenile was adjudicated delinquent of breaking and entering a motor vehicle and was committed to a youth development center.

The juvenile appealed arguing that the trial court failed to make sufficient findings of fact to support its conclusion that the juvenile should be committed. The Court of Appeals agreed, finding that the trial court did not indicate on the disposition form that the court incorporated the predisposition report by reference, did not attach the report to the order, and made no other findings of fact.

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## In the matter of D.M., 2008 N.C. App. LEXIS 189 (unpublished opinion)

Rule(s): The court must consider the dispositional factors listed in N.C.G.S. § 7B2501(c) in selecting the disposition, but it does not have to include those factors in its findings of fact.

• But see *In the Matter of D.T.F.*, 2011 N.C. App. LEXIS 1957 and *In the matter of R.V.G.*, JR., 2012 N.C. App. LEXIS 632.

The juvenile was adjudicated delinquent of injury to real property and simple assault. The court committed the juvenile to a youth development center. The juvenile appealed, arguing that the trial court, by not making findings on the dispositional factors listed in N.C.G.S. § 7B-2501(c), failed to make findings of fact supporting its conclusion of law to commit the juvenile. The Court of Appeals disagreed, holding that the statute does not mandate that specific findings of fact be made, but only that the factors should be considered when selecting the appropriate disposition.

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## In the matter of J.J.D.L., 189 N.C. App. 777, 659 S.E.2d 757 (2008), 2008 N.C. App. LEXIS 693

Rule(s): Where a juvenile does not challenge the trial court’s findings of fact and a court denies the juvenile’s motion for release pending appeal and, the requirement of stating a compelling reason for denial is satisfied by citing the offense of first degree sex offense with a child.

The juvenile was adjudicated delinquent of three counts of first-degree sex offense.

The juvenile appealed, first arguing that the trial court erred by denying the juvenile’s motion for release pending appeal by stating no reason for denying the motion. The Court of Appeals disagreed, finding that on the appellate entries form, the trial court stated as a compelling reason for maintaining the juvenile in custody that the juvenile was adjudicated of “first-degree sex offense with a child § 1727.4(a)(1).”

The juvenile next argued that the trial court erred in admitting into evidence a summary of the juvenile’s statement to a law enforcement officer in which the juvenile admitted some of the allegations. The juvenile argued that the state failed to establish the summary as an accurate account of the statement and that the document entered constituted hearsay. The Court disagreed, finding that the officer’s testimony as to what was in the document was admissible under both the rules of evidence and the rules governing the acceptance of juvenile admissions.

Finally, the juvenile argued that the trial court erred by holding the dispositional hearing prior to receiving the results of a court ordered sex offender evaluation. The Court held that the juvenile failed to raise the argument at trial, and therefore was procedurally barred from bringing the argument on appeal. Furthermore, on review of the claim, the Court found that the juvenile failed to show how the absence of the report hindered the trial court in making its determination at disposition.

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## In the matter of D.K.H., 2008 N.C. App. LEXIS 1424 (unpublished opinion)

Rule(s):

1. Where the record indicates that the trial court received evidence and considered specific facts during the dispositional hearing, the case disposition is not made defective by the fact that the court has indicated having a “policy” regarding certain offenses.
2. Neither N.C. Gen. Stat § 7B-2501 nor 7B-2512 requires including any specific finding of fact.

The juvenile admitted to one count of robbery with a dangerous weapon. Prior to disposition being entered, the trial court stated that it was typically it’s “policy” to sentence juveniles who committed armed robbery to training school even when it was the juvenile’s first offense. The trial court then repeated similar language at disposition prior to committing the juvenile to a youth development center.

The juvenile appealed, first arguing that the trial court erred by not exercising its discretion in determining the appropriate disposition by stating it had a “policy” in similar cases before it. The Court of Appeals disagreed, finding that the court received evidence and considered specific facts during the dispositional hearing, even allowing for two continuances to gather information for the hearing, indicating an exercise of discretion.

The juvenile also argued that the trial court order contained insufficient findings of fact to support the commitment, but the Court found that neither N.C. Gen. Stat § 7B-2501 nor 7B-2512 requires a specific finding of fact, but that N.C. Gen. Stat § 7B-2501(c) merely requires that disposition be “based upon” the specified factors.

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## In the matter of: D.G., 191 N.C. App. 752, 663 S.E.2d 458 (2008), 2008 N.C. App. LEXIS 1478 Rule(s):

1. If the court’s factual findings are supported by competent evidence, they are conclusive on appeal, even though there is evidence to the contrary. P.4 (internal citations omitted).
2. Under state and federal law, North Carolina cannot be compelled to provide services in the nature of a Level 3 placement for undocumented aliens. This includes residential sex offender treatment.
3. Elimination of funding for treatment “constitute[s] a change in circumstance within the intent and meaning of N.C.G.S. § 7B-2600(a),” justifying a modification of the dispositional order. P.6.

The juvenile admitted to first-degree sex offense and placed in a residential sex offender specific facility. A motion for review was filed, stating that the funds were no longer available to support placement of the juvenile because the juvenile was not a qualified alien. The trial court reviewed the matter and finding no other placement option, committed the juvenile to a youth development center.

The juvenile appealed, arguing that the trial court erred in its finding that there was a lack of funding and in modifying the court order committing the juvenile. The Court of Appeals disagreed, finding there was competent evidence to support the trial court’s finding, based on evidence presented at the hearing.

Judge Wynn dissented, stating that the issue of funding could not be determined by the judiciary in the absence of administrative or statutory law, and that the trial court did not make sufficient findings because there was not sufficient evidence that the funding could not be provided.

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## In the matter of S.S., 666 S.E.2d 870, 2008 N.C. App. LEXIS 1738

Rule(s):

Where the trial court continues a case for longer than six months so that a juvenile may testify in another case, N.C.G.S. § 7B-2501(d) does not eliminate the court’s subject matter jurisdiction over the juvenile’s case.

The State filed juvenile petitions alleging that the juvenile committed indecent liberties between children, sex offense with a child under the age of 13 years, and first-degree rape. Pursuant to an agreement with the State, the juvenile admitted that he committed the offenses of second-degree kidnapping, crime against nature, and sexual battery. As part of the agreement, the State agreed to reduce the juvenile’s charges and to recommend Level 2 disposition in exchange for the juvenile agreeing to testify in the trial of a co-defendant. The disposition was scheduled for two months later, but the case was continued to allow the juvenile the opportunity to testify against the co-defendant. The juvenile’s disposition hearing was held, and the juvenile made a motion to dismiss based on N.C.G.S. § 7B-2501, arguing that the dispositional hearing had not taken place within six months. The court denied the motion and entered a Level 2 disposition of one-year probation.

The juvenile appealed, arguing that the trial court erred in denying his motion to dismiss pursuant to N.C.G.S. § 7B-2501(d) (which permits the court to continue the case for no more than six months, after adjudication, to allow the family an opportunity to meet the needs of the juvenile through more adequate home supervision or another plan approved by the court) since the court failed to hold a dispositional hearing within six months, and therefore lost subject matter jurisdiction. After considering N.C.G.S. § 7B-2501(d), the Court of Appeals disagreed, and ruled that the purpose of N.C.G.S. § 7B-2501(d) is to provide an opportunity for families to seek non-judicial resolutions for juveniles, and not to limit the jurisdiction of trial courts in juvenile matters. http://appellate.nccourts.org/opinions/?c=2&pdf=MjAwOC8wOC0yOS0xLnBkZg

## In the matter of J.J., 2008 N.C. App. LEXIS 2065 (unpublished opinion)

Rule(s): Where the court orders an active sentence and also conditions a suspended sentence on admission to a treatment facility, the condition concerns the length of the sentence, but does not concern the success on probation. This is not an improper delegation of authority.

The juvenile was adjudicated delinquent of possession of marijuana. The court entered a Level 1 disposition, placed the juvenile on probation for nine months, and imposed several conditions. Eight months later, the juvenile admitted to violating probation, and the court entered a Level 2 disposition and extended the juvenile’s probation for twelve months with prescribed conditions. The court ordered the juvenile to serve 14 days in detention with seven days active and seven days suspended. The order also referred the juvenile to the Youth Treatment Center (“YTC”). The seven-day sentence would become active only if the juvenile was not admitted into YTC.

The juvenile appealed, arguing that the court abused its discretion by conditioning the additional seven days in detention on the juvenile’s admission into the YTC and by delegating authority to a third party. The Court of Appeals disagreed. The Court of Appeals found that the court did not place the juvenile’s success on probation onto a third party and that the success on probation was not dependent on admission into the YTC. Instead, the court conditioned the length of the juvenile’s detention sentence upon admission into the YTC. Therefore, the Court of Appeals overruled the juvenile’s assignments of error and affirmed the trial court’s ruling.

http://appellate.nccourts.org/opinions/?c=2&pdf=MjAwOC8wOC00NTYtMS5wZG Y

## In the matter of T.A.B., 2007 N.C. App. LEXIS 741 (unpublished opinion)

Rule(s): When a disposition refers to an attachment to indicate its findings of fact and fails to attach another document, the order fails under N.C. Gen. Stat § 7B2501(c).

The juvenile was found in violation of his probation and committed to a youth development center. On appeal, the juvenile argued that the trial court failed to make sufficient findings of fact in determining disposition as required under N.C. Gen. Stat § 7B-2501(c). The Court of Appeals found that the trial court received and considered a predisposition report but did not incorporate or attach it. The Court also noted the pre-order stated “see attached” under “other findings,” but attached nothing. The Court held that the trial court failed to make sufficient findings of fact and remanded the case for a new dispositional hearing.

http://appellate.nccourts.org/opinions/?c=2&pdf=MjAwNy8wNi05NjAtMS5wZGY

## In the matter of J.P.M., 2007 N.C. App. LEXIS 1289 (unpublished opinion)

Rule(s): The fact-finding requirement in N.C.G.S. § 7B-2510 applies to orders regarding probation violations, just as it does to initial disposition orders.

The juvenile was found in violation of his probation and committed to a youth development center.

The juvenile appealed, arguing that the trial court failed to make adequate findings of fact and conclusions of law in accordance with N.C. Gen. Stat § 7B-2412. The State argued that probation violations are governed exclusively by N.C. Gen. Stat § 7B-2510, and therefore the trial court need not make the findings required by N.C.

Gen. Stat § 7B-2512. The Court of Appeals agreed with the juvenile, holding that in a dispositional hearing following a probation violation, the disposition order must be submitted along with adequately supportive findings of fact and conclusions of law. Appropriate findings of fact were not apparent in this case, and the case was remanded for a new dispositional hearing.

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## In the matter of V.A.L., 187 N.C. App. 302, 652 S.E.2d 726 (2007), 2007 N.C. App. LEXIS 2356

Rule(s): While a court may not delegate the authority to determine whether a juvenile will enter a treatment program, it may delegate the authority to direct the juvenile within the program.

The juvenile admitted to a violation of probation. As a new condition of probation, the trial court ordered that the juvenile cooperate with an out of home placement.

The juvenile appealed, arguing that the trial court erred by not designating a specific out of home placement and therefore improperly delegating its authority. The Court of Appeals disagreed, finding that in In re Hartsock, 158 N.C. App. 287 (2003) and In re S.R.S., 180 N.C. App. 151 (2006), the Court held that it was impermissible to allow another entity to decide whether or not cooperation with placement in a facility was necessary. However, the Court held in In re M.A.B., 170 N.C. App. 192 (2005) that it was not improper to order a juvenile to cooperate in a program as directed by another entity. The Court found in the instant case that not specifying the details of the placement was not an improper delegation of authority by the trial court.

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## In the matter of K.W., 2006 N.C. App. LEXIS 395 (unpublished opinion)

Rule(s): Under N.C.G.S. § 7B-2507, prior adjudications may be proved by stipulation of the parties, an original or copy of the court record of the prior adjudication, a copy of the records maintained by the Division of Criminal Information or by the Department of Juvenile Justice, or by any other method found by the court to be reliable.

The juvenile was adjudicated delinquent of misdemeanor larceny in Bertie County and disposition was transferred to Northampton County. The trial court found the juvenile had four or more prior adjudications and committed the juvenile to a youth development center.

The juvenile appealed, arguing that the trial court lacked sufficient proof of the juvenile’s prior adjudications. The Court of Appeals disagreed, finding that under N.C.G.S. § 7B-2507, prior adjudications may be proven by stipulation of the parties, an original or copy of the court record of the prior adjudication, a copy of the records maintained by the Division of Criminal Information or by the Department of Juvenile Justice, or by any other method found by the court to be reliable. The Court held that the evidence presented at trial, which was testimony on behalf of the Chief Court Counselor, a predisposition report presented by the court counselor’s office, which listed the prior adjudications, as well as testimony by the juvenile as to “the existence” of four prior adjudications, was sufficient to prove the prior adjudications. http://appellate.nccourts.org/opinions/?c=2&pdf=MjAwNi8wNS03MjAtMS5wZGY

## In the matter of T.B., 178 N.C. App. 542, 631 S.E. 2d 857 (2006), 2006 N.C. App. LEXIS 1562

Rule(s): Where a juvenile violates the conditions of probation, the court may order a disposition only one level higher than the disposition for which the juvenile was on probation.

The juvenile appealed from a dispositional order on June 1, 2004 committing the juvenile to a youth development center. The juvenile’s prior court history included an adjudication on June 13, 2003 of a minor offense and sentenced at Level 1 for disposition. The juvenile then was found in violation of probation on April 28, 2004. At the dispositional phase of the probation hearing, the court ordered that the juvenile be placed on a “stayed commitment to training school.” The court scheduled a review hearing to be held on June 1, 2004, at which time the court ordered the juvenile committed to a youth development center.

The juvenile argued that the court did not have the authority to order a Level 3 disposition. The Court of Appeals agreed, finding that at the April 28, 2004 hearing, the trial court could only order a disposition at the “next higher level,” which would be limited to a Level 2 disposition. Therefore, disposition could not include a Level 3 commitment, whether or not the commitment was stayed.

http://appellate.nccourts.org/opinions/?c=2&pdf=MjAwNi8wNS01MjEtMS5wZGY

## In the matter of S.R.S., 180 N.C. App. 151, 636 S.E.2d 277 (2006), 2006 N.C. App. LEXIS 2233 Rule(s):

1. The ruling in In re Hartsock, that a court may not delegate the authority to determine whether a juvenile will enter a treatment program, applies to adjudications of probation violation, just as it does to adjudications of delinquency.
2. Ordering a juvenile to follow rules set by counselors or parents is not barred under N.C.G.S. § 7B-2510.

The juvenile was adjudicated of communicating threats. As part of the dispositional order, the court ordered that the juvenile abide by any rules set out by the Court Counselor including, but not limited to, curfew rules and rules regarding with whom the juvenile may associate, that the juvenile cooperate with any out of home placement if deemed necessary, or if arranged by the Court Counselor, and that the juvenile cooperate with any counseling or assessment recommended by the Court Counselor.

The juvenile appealed, arguing that the trial court had improperly delegated its authority to order certain conditions of disposition as held under In re Hartsock, 158 N.C. App. 287, 580 S.E.2d 395 (2003). The Court of Appeals first noted that although Hartsock concerned dispositional alternatives from an adjudication of delinquency and the instant case concerned dispositional alternatives from an adjudication of a probation violation, that Hartsock was still “persuasive and applicable.” While the Court found no fault with the first condition challenged by the juvenile, the Court did hold that the other conditions constituted an impermissible delegation of authority. The Court held that if the trial court felt that out of home placement was necessary, the court would have ordered such placement. The Court similarly held that if the trial court wished for the juvenile to participate in an assessment or counseling, then the trial court should have ordered a specific assessment or specific counseling for the juvenile.

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## State v. Yarrell, 172 N.C. App. 135, 616 S.E.2d 258 (2005), 2005 N.C. App. LEXIS 1428

Rule(s): Other than a prior conviction, “any fact that increases the penalty for a crime beyond the prescribed presumptive range,” P.10 (citations/quotation marks omitted), must be proven to a jury beyond a reasonable doubt.

Defendant was convicted of first-degree murder and several felony assault charges. At sentencing, among other aggravating factors, the trial court found the aggravating factor that defendant had previously been adjudicated delinquent for an offense that would be a Class A, B, C, D or E felony if committed by an adult.

The defendant appealed, arguing that because this aggravator was based on a fact that increased defendant’s sentence, defendant was entitled to have this fact submitted to a jury and proven beyond a reasonable doubt. The Court of Appeals agreed, finding that both the U.S. Supreme Court (under *Blakely v. Washington*, 542 U.S. 296 (2004)) and the North Carolina Supreme Court (under *State v. Allen*, 359 N.C. 425 (2005)) had determined that “other than the fact of a prior conviction, any fact that increases the penalty for a crime beyond the prescribed presumptive range must be submitted to a jury and proved beyond a reasonable doubt.”

## In the matter of M.A.B., 170 N.C. App. 192, 611 S.E.2d 886 (2005), 2005 N.C. App. LEXIS 894

Rule(s): While a court may not delegate the authority to determine whether a juvenile will enter a treatment program, it may delegate the authority to determine the “specifics of the day-to-day program,” including length of participation.

The juvenile was adjudicated delinquent of assault inflicting serious injury. As part of disposition, the juvenile was ordered to pay “restitution in an amount to be determined,” and to “cooperate and participate in a residential treatment program as directed by court counselor or mental health agency.”

The juvenile appealed, arguing that under *In re Hartsock* the court could not delegate its authority in determining the specifics of these dispositional alternatives. The Court of Appeals disagreed, distinguishing *Hartsock* by stating that 1) under N.C.G.S. § 7B-2506(4) the court may determine the amount of restitution, not making it mandatory for the trial court to determine the amount, and 2) the trial court ordered the actual participation in the treatment facility, but that the specifics of the program could be left up to the court counselor or mental health agency.

http://appellate.nccourts.org/opinions/?c=2&pdf=MjAwNS8wNC04NTktMS5wZG Y

## In the matter of H.D., 2005 N.C. App. LEXIS 2598 (unpublished opinion)

Rule(s):

1. Upon disposition, a court must state, in writing, “sufficient findings of fact to support its conclusions of law pursuant to N.C.G.S. § 7B-2501.”
2. Choosing between two appropriate dispositional levels is within the trial court’s discretion.
3. When ordering that a juvenile be placed on the juvenile sex offender registry, the court is not required to include written findings that the juvenile is a danger to the community.

The juvenile was adjudicated delinquent of attempted second-degree sexual offense. Between adjudication and disposition, the juvenile was placed in a secure residential treatment facility to receive sex offender treatment. At disposition, the court committed the juvenile to a youth development center and ordered the juvenile be placed on the juvenile sex offender registry.

The juvenile appealed, arguing that the court failed to make competent findings of fact, made conclusions of law unsupported by the findings, failed to find the juvenile had extraordinary needs that compelled a Level 2 disposition, and erred in ordering the juvenile to register as a sex offender when the court made no findings of fact that the juvenile was a danger to the community.

The Court of Appeals reviewed the first two arguments and noted that part of the order “merely summarized” the treatment facilities’ report, and did not include any analysis. However, the Court then noted that the trial court found a number of facts that amounted to more than mere recitation of the allegations. The Court stated “while we reiterate the need to make specific findings of fact, the trial court made sufficient findings of fact to support its conclusions of law pursuant to N.C.G.S. § 7B-2501.”

The Court next considered the juvenile’s argument that the trial court failed to enter a Level 2 disposition based on the juvenile’s extraordinary needs, specifically that the juvenile was being treated at a secure facility and several parties testified that the placement met the needs of the juvenile. The Court stated that the choice between two appropriate dispositional levels is within the trial court’s discretion, and that the decision should be overturned only when an abuse of discretion is found. The Court noted that the trial court considered testimony and arguments from all parties and made a decision that was reasoned based on all of the evidence.

As to the juvenile’s fourth argument, the Court ruled that the sex offender registry statute does not require the trial court to make written findings that the juvenile is a danger to the community, nor must the court use the language “danger to the community” in its findings. The Court found that the statement “he’s admitted to sexual conduct in public places, so I’m going to allow that registration” satisfied the requirements of the statute.

## In the matter of T.P., 2004 N.C. App. LEXIS 1520 (2004) (unpublished opinion)

Rule(s): Where a disposition is based on multiple adjudications and one is vacated, the court must grant a new disposition hearing.

The juvenile was adjudicated of misdemeanor breaking and entering, felony breaking and entering, felony larceny, and injury to real property. Disposition was entered and consolidated on all four charges. The juvenile filed a motion for appropriate relief regarding the misdemeanor charge, and based on new evidence the trial court vacated that adjudication. However, the trial court did not vacate the dispositional order, which included paying restitution in the vacated matter.

The juvenile on appeal argued that the trial court committed reversible error by not vacating the order in its entirety. The Court of Appeals recognized that although there are differences between criminal and juvenile trials, past court decisions regarding re-sentencing are "instructive," noting that similar cases in adult court resulted in new sentencing hearings. Therefore, the Court remanded the case to the trial court for new disposition.

## In the matter of J.R.F., 162 N.C. App. 175, 589 S.E.2d 894 (2004), 2004 N.C. App. LEXIS 8

Rule(s): Dispositional orders must be supported by findings of fact that are appropriate to the court’s decision and to the record.

The juvenile admitted responsibility for the charge of assault inflicting serious injury and was adjudicated delinquent. At the time of disposition, the juvenile was living with his mother. Based on information given to the court by the court counselor, the court transferred custody to the juvenile's father as a condition of disposition.

The juvenile on appeal argued that the court failed to make findings of fact in the dispositional order supporting a change in custody. The Court of Appeals set aside the part of the order changing custody, stating that under §7B-2501(c), the dispositional order failed to contain "appropriate findings of fact and conclusions of law" to support a change in custody.

## In the matter of L.C.L., 2004 N.C. App. LEXIS 501 (2004) (unpublished opinion)

Rule(s):

1. Where a juvenile violates the conditions of probation, the court may order a disposition at the next higher level than the disposition for which the juvenile was on probation (or it may continue or modify the original terms of probation.)
2. However, a Level 3 disposition may not be imposed on a juvenile for violation of probation that was ordered for a minor offense.

The juvenile was found in violation of the protective supervision of the court, and the court ordered a Level 3 disposition committing the juvenile to a Youth Development Center.

The Court of Appeals considered whether or not the trial court could impose a Level 3 disposition. The Court noted that under N.C.G.S. §7B-2510(e), after a finding of violation of probation, the court may order a new disposition at the next higher level on the disposition chart. The Court also noted that under N.C.G.S. §7B2508(e), a Level 3 disposition may not be imposed if the juvenile is on probation for a "minor offense." The Court found that because the juvenile had been adjudicated of assault on a government official, a Class A1 misdemeanor, and therefore a "serious offense," the trial court properly imposed a Level 3 disposition.

NOTE: The Court of Appeals recognized that the Class A1 misdemeanor was not the juvenile's most recent offense, (a simple assault) but did not discuss whether or not under N.C.G.S. §7B-2508(e) the "serious offense" must be the juvenile's most recent offense, or merely an offense the juvenile committed at some point in the past. Also, the opinion did not state whether or not the juvenile had already been placed on Level 2 supervision prior to the juvenile's probation violation, required under N.C.G.S. § 7B-2510(e)).

## In the matter of N.B., 167 N.C. App. 305, 605 S.E.2d 488 (2004), 2004 N.C. App. LEXIS 2188

Rule(s): The court must order a disposition that protects the public and serves the juvenile’s best interests, which may not be the least restrictive alternative.

The juvenile was adjudicated delinquent of assault with a deadly weapon inflicting serious injury. At disposition, the juvenile was sentenced at Level 3 and committed to a youth development center.

The juvenile appealed, arguing that the trial court should not have sentenced her to a Level 3 disposition because she had no prior delinquency history and was shown to have a low risk of re-offending and a low need to be supervised by the court. The Court of Appeals disagreed, finding that the trial court no longer was mandated to find the “least restrictive alternative” for the juvenile. The Court ruled that the trial court had the discretion to sentence the juvenile at Level 3, and there was no indication that the court abused its discretion.

## In the matter of J.R.H., 158 N.C. App. 287, 580 S.E.2d 395 (2003), 2003 N.C. App. LEXIS 1043 Rule(s):

1. A court may not delegate the authority to determine whether a juvenile will enter a treatment program.
2. Under N.C.G.S. § 7B-2506(20), a court must specify the time of a juvenile’s commitment or delegate its authority to do so (unlike the authority to determine whether to enter a program, which may not be delegated).

The juvenile was adjudicated delinquent for possession of marijuana. As part of disposition, the juvenile was ordered to “cooperate with placement in a residential treatment facility if deemed necessary by MAJORS counselor or Juvenile Court Counselor.” The juvenile was also ordered to “be confined on an intermittent basis in an approved detention facility as follows…”

The juvenile appealed, arguing that the trial court could not delegate its authority either to order placement in a residential treatment facility, or to order intermittent confinement. The Court of Appeals agreed, finding that N.C.G.S. § 7B2506 specifically provides the court with the sole discretion to order dispositional alternatives.

The Court also found that the trial court failed to specify the time of confinement, therefore that portion of the order “[was] incomplete and [has] no effect.”

## In the matter of Allison, 143 N.C. App. 586, 547 S.E.2d 169 (2001), 2001 N.C. App. LEXIS 329

Rule(s): A juvenile adjudicated of a given offense may be committed to a training school for a period that exceeds the maximum prison sentence that may be ordered to an adult convicted of the same offense, so long as the commitment is “reasonably related to the purpose of the act.”

The juvenile was adjudicated delinquent under the former Juvenile Code for a number of offenses, violated probation and was committed to training school for an indefinite period not to exceed 450 days. Once released on conditional release status, the juvenile violated the requirements of the conditional release, including being found delinquent for the offenses of unauthorized use of a motor vehicle and resisting, delaying and obstructing a law enforcement officer. The juvenile admitting the violation of conditional release and was adjudicated delinquent of the new offenses. The trial court returned the juvenile to training school for 450 days for violating conditional release, as well as an additional commitment for a minimum of six months for the new offenses adjudicated.

The juvenile appealed, arguing that the court could not commit her to training school for the six month period because it was longer than an adult could be sentenced to prison for the same offenses. The Court of Appeals affirmed the trial court decision, stating that because the commitment is “reasonably related to the purpose of the act” (to provide supervision and control rather than to punish wrongdoing), the apparent disparate treatment of adults and children is not unconstitutional under the Equal Protection Clause.

## In the Matter of J.B., \_\_\_\_ N.C. App. \_\_\_\_ , No. 18-1036, (August 20, 2019)

Rule(s):

1. The trial court erred in denying the motion to dismiss as a matter of law when the State presented no evidence that the juvenile wished for the video to be made or that he was the one who distributed it on a petition alleging second-degree sexual exploitation of a minor.
2. The trial court erred in denying the motion to dismiss the petition alleging first-degree forcible sexual offense when the State failed to prove penetration, the central element of this crime.
3. The trial court erred when it accepted the juvenile’s admission to attempted larceny when there was not a factual basis to support the juvenile’s admission of guilt, as required by §7B-2407(c).
4. The out of court statements offered by the State were admitted in violation of the juvenile’s constitutional right to confront and cross-examine witnesses and the error was prejudicial.
5. Despite the dispositions being vacated, the court addressed the following disposition (sentencing) errors –
   1. The court must provide adequate written reasons in the Disposition and Commitment Order to support its findings using the factors required by §7B-2501(c).
   2. The court must find compelling reasons to deny release to the juvenile pending appeal when commitment to YDC is ordered according to §7B-2605.

This case arises from sexual misconduct by the juvenile toward a friend (Z) who was attending a sleepover at his house with the juvenile and two of the juvenile’s cousins. The evidence tended to show that sometime during the night, Z woke up to find his pants pulled down and the juvenile behind him. The friend believed someone was holding his legs. Z testified that he “felt [the juvenile’s] privates on his butt” but that he did not feel them “go into his butt.” One of the cousins filmed much of the incident. In the video the juvenile can be heard saying “do not record this.” The video ended up on Facebook.

At the hearing, the State presented statements to the police from the juvenile’s cousins, neither of whom testified at trial. The juvenile’s motions to dismiss at the end of the state’s evidence and at the close of all evidence was denied and the court adjudicated the juvenile responsible for first-degree forcible sexual offense and second-degree exploitation of a minor. The court continued disposition until the juvenile could be assessed by Children’s Hope Alliance (CHA).

At the disposition hearing, the judge was presented with the CHA report indicating that the juvenile’s risk for sexually harmful behaviors were in the low to low-moderate range. The court counselor recommended a level 2 disposition.

Prior to the disposition, the juvenile admitted to an attempted larceny of a bicycle. After considering the juvenile’s assessments and his admission to attempted larceny, the trial court entered a level 3 order, committing the juvenile to a YDC indefinitely. The juvenile appealed and requested his release pending disposition of the appeal. A subsequent hearing was held on the question of his release and the trial court entered an order concluding the juvenile would remain in YDC.

Issue 1 (Second degree sexual exploitation of a minor):

The court found that the trial court erred as a matter of law due to the evidence being insufficient to support the charge. The charge requires the defendant take an active role in the production or distribution of child pornography. The court found that the state presented no evidence that the juvenile wished for the video to be made or that he was the one who distributed it. In fact, the court concluded that it was clear that the juvenile did not want to be filmed, as he explicitly told the cousin to stop recording. The court also rejected the state’s contention that there was a common plan or purpose of humiliating the victim, stating there was nothing in the record to support that contention. As a result, the court vacated the adjudication.

Issue 2 (First degree Forcible Sexual Offense):

An essential element of the charge is that a “sexual act” must take place. A “sexual act” is defined by statute (§14-27.20(5)). In order to have a sexual act, there must be “penetration, however slight by any object into the genital or anal opening of another person’s body.” (§14-27.20(4)).

In this case, the victim’s statement is not ambiguous. Z specifically states in his testimony that penetration did not occur. To support its contention that penetration occurred, the state relies upon the video. The court found that at most the video showed no more than “sexual contact” which is sexual battery (§14-27.33)). Responding to the dissent, the majority asserted that circumstantial evidence cannot be used to overcome a victim’s direct testimony that no penetration occurred. As a result, the state has failed to prove penetration, the central element of this crime. The court ruled that the trial court erred in denying the juvenile’s motion to dismiss and vacated the adjudication.

Issue 3 (Attempted Larceny Admission):

There must be a sufficient factual basis for a juvenile’s admission of guilt before accepting the admission and the factual basis may be based on statements presented by the attorneys (§7B-2407(c)). The facts presented do not support the juvenile’s admission of guilt.

The facts presented indicated a bicycle was stolen by two black males (the juvenile is a black male). The juvenile was found by officers biking down the road with two others who also matched the description. The juvenile was described by the prosecutor as “kind of off on his own” from the other two. Officers asked all the youth to stop and of the three, only the juvenile stopped. He told the officers that he had not stolen the bike, that he knew who had, and admitted to having bolt cutters in his back pack. The juvenile’s attorney argued that the juvenile had loaned his book bag to someone, who then placed the bolt cutters inside it and left to “do their deed.” The state presented no evidence as to where or from whom the bike was recovered.

Because the state failed to present sufficient evidence that the juvenile took affirmative steps, but did not succeed, to take another’s property with no intent to return it, (elements of attempted larceny) there was insufficient evidence upon which the trial court should have accepted the juvenile’s admission of guilt. The adjudication for attempted larceny should be vacated.

Issue 4 (Right of Confrontation):

The state offered out-of-court statements from the two cousins which tended to support the charges against the juvenile. Errors affecting constitutional rights are presumed to be prejudicial unless the state can prove that the error was harmless beyond a reasonable doubt. The state’s contention that the evidence was overwhelming (the video and the victim’s testimony) and the numerous references to the cousin’s statements in the closing cannot overcome the fact that the evidence was ambiguous at best and that this additional evidence of penetration was not prejudicial. Therefore, the state failed to prove these statements were harmless beyond a reasonable doubt.

Issue 5 (a) (Level 3 commitment):

The trial court failed to adequately support the statutorily required factors for committing a juvenile to YDC as required by §7B-2501(c).

The assessment provided by CHA found the juvenile’s risk factors for sexually harmful behaviors were in the low to low-moderate range. The juvenile’s evaluation from the court counselor indicated he “is a low/moderate risk for reoffending” and recommended a level 2 disposition. The recommended terms that were recommended as part of the juvenile’s probation included therapy, curfew, no sleepovers, monitoring of electronic devices, not being used as a babysitter, maintain passing grades at school and no contact with the victim. The report from CHA indicated the juvenile had a stable home life and that his family relationships are close and supportive. The court found that when taking into account the evaluations by the court counselor and CHA and their recommendations, the trial court’s failure to explain its reasoning and basis for some findings that conflicted with the evidence presented did not satisfy the requirements of §7B-2501(c).

Issue 5 (b) (Confinement pending appeal):

§7B-2605 requires the release of the juvenile, with or without conditions, should issue in every case unless the court orders otherwise *and* if the court enters a temporary order affecting the custody or placement of the juvenile the court *must* find compelling reasons and state the reasons in writing.

The trial court failed to list anything under “[c]ompelling reasons release is denied” on the Appellate Entries form and in a separate order with Findings of Facts and Conclusions of Law the trial court’s supporting reasons were phrased as contentions of defense counsel and the state. The trial court did not list independent compelling reasons and as such violated §7B-2605.

The court concluded that it was especially disturbing that the trial court ignored the requirements of the statute thus causing the juvenile to be held in detention for a period of 17 months when his convictions were improper.

**Dissent**:

The dissent would have affirmed all of the trial court’s rulings and orders. The dissent asserts that while there was strong evidence suggesting the juvenile did not commit these offenses, it is the trial judge in juvenile delinquency proceedings who resolves any conflicts in the evidence, not the Court of Appeals. Additionally, when the evidence is viewed in the light most favorable to the state, the dissent would have found that the state met its burden on each of the adjudications.

The dissent also found that the recitation of the facts was sufficient to show that the juvenile directly participated, or at least acted in concert, in the commission of the attempted theft of the bike.

With regard to the level 3 order, the dissent would have found that the trial judge’s findings of fact were sufficient and “appropriate” under §7B-2501 and despite the fact that the trial court *could* have imposed a level 2 disposition, its decision to impose a level 3 disposition was not unreasonable.

While confinement pending appeal requires compelling reasons, the court need not be verbose. The dissent concluded that the trial court’s order sufficiently noted compelling reasons for continued confinement pending his appeal.

<http://appellate.nccourts.org/opinions/?c=2&pdf=37905>

## In re W.M.C.M., \_\_\_\_ N.C. App. \_\_\_\_ , No. COA20-164, (April 20, 2021)

<https://ncjuveniledefender.files.wordpress.com/2021/05/in-re-wmcm.pdf> - Level 3 commitment order affirmed (with a dissent) .

Rule(s):

1. The statute does not require that the exact statutory language be used when accepting an admission.
2. During an admission, when the court asks the juvenile questions from Form AOC-J-410 nearly verbatim, and the trial court gives a broader explanation of his confrontation rights than the exact language in the statute, there is no error, prejudice, or violation of the youth’s confrontation rights and an admission is entered into knowing and voluntary.
3. The trial court provided sufficient findings of fact to support its decision to commit the youth to a Youth Development Center (YDC), as was provided by statute.

The youth 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 the youth the questions on Form AOC-J-410 nearly verbatim, with additional clarification questions regarding the youth’s ability to confront witnesses if he were to have an adjudicatory trial. Specifically, the court asked “[y]ou also understand you have the right to ask witnesses questions during a hearing?” The judge accepted the youth’s admission and found the youth responsible. In the adjudication order 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 the youth to the YDC and detailed his delinquency, history of criminal acts, and violent and aggressive behavior in the Disposition and Commitment order.

The juvenile argued that the adjudication should be reversed because the trial court did not follow the exact language of §7B-2407, specifically as to the question regarding confrontation of witnesses. The Court of Appeals found that the trial court addressed all six prongs required by §7B-2407(a), explicitly clarified the youth’s understanding, and fully informed him of his rights. The youth then expressly agreed to take the plea offer and admit responsibility and he signed the Form AOC-J-410. The Court of Appeals determined that the youth’s rights were protected by the court and his admission was knowing and voluntary.

The opinion also found that the trial court is not required to use the AOC form Adjudication Order. The court’s order met all of the requirements of §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.”

With regard to the disposition order committing the youth to a YDC, the trial court made findings of fact as required by §7B-2501(c), including naming the offenses that were admitted to, his extensive delinquency history, increasing violent behaviors, and refusal to comply with services and placements. The trial court also relied on many reports from organizations that had worked with the youth in the past. There was no abuse of discretion at disposition.

Dissent (Judge Murphy)

Judge Murphy dissented and would have found that (1) the trial court’s colloquy with the youth during the adjudication hearing was inadequate; and (2) the trial court’s adjudication order was insufficient. He would have reversed the trial court’s orders and remanded for further proceedings.

Judge Murphy argues that the trial court did not comply with the requirements of §7B-2407(a)(4); specifically, the trial court did not ask the youth whether he understood that by his “admissions [he] waive[d] [his] right to be confronted by the witnesses against [him.]” §7B-2407(a)(4) (2019) (emphasis added). Instead, the trial court asked the youth whether he understood he had “the right to ask witnesses questions during a hearing[.]” Judge Murphy contends that this is not what *In re T.E.F.* (the precedent case relied upon for admissions) requires. He contends that “[t]he right to confront the witnesses against oneself is a greater right than to ask questions of the witnesses the State chooses to call.”

With regard to the sufficiency of the adjudication order, Judge Murphy argues that the trial court failed to state the precise allegations the youth was found responsible for, and as such would have found that the findings were insufficient.

## [In the Matter of J.G.](https://appellate.nccourts.org/opinions/?c=2&pdf=40735), 2021-NCCOA-613 (November 16,2021)

Rule(s): A juvenile’s admission must be made knowingly and voluntarily. Advisement by the court that the most restrictive disposition is a Level 2 then disposition by the court at a Level 3 leaves the juvenile’s admission as not knowing or voluntary and the adjudication and disposition orders must both be set aside. If a trial court plans to impose a disposition level higher than that set out in the transcript of admission, the juvenile must be given a chance to withdraw his plea and be granted a continuance.

Summary: Jake entered an admission to one count of breaking or entering a motor vehicle in Wake County. The transcript reflected, and the juvenile Court advised him, that the most serious or severe disposition on the charge was a Level 2 disposition. The case was transferred to Cumberland County for disposition. The juvenile Court in Cumberland county found, based on his prior history, that Jake was eligible for Level 3 disposition and thus imposed such. Jake was committed to a Youth Development Center for a minimum of six months, not to exceed his 20th birthday. After navigating around a procedural technicality involving the jurisdiction to review the matter, the court held that Jake was not properly advised of the most restrictive disposition he could receive such that a dispositional court could enter a Level 3 disposition. Jake was not given sufficient notice or an opportunity to withdraw the admission before the disposition level was raised to a Level 3. Thus, his admission was not knowingly and voluntarily entered.

Outcome: The Court of Appeals vacated the transcript of admission, reversed the juvenile court’s adjudication order and amended disposition order, and remanded for further proceedings.

<https://appellate.nccourts.org/opinions/?c=2&pdf=40735>

# DOUBLE JEOPARDY

Rules concerning retrials and trials for probation violation.

## In the matter of C.J.L., 2012 N.C. App. LEXIS 1093 (unpublished opinion)

Rule(s):

1. Showing that counsel was ineffective requires showing both that “counsel made errors so serious that counsel was not functioning as the counsel guaranteed the defendant by the Sixth Amendment” and that “counsel’s errors were so serious as to deprive the defendant of a fair trial.” P.6–7.
2. “[A]n order of mistrial which is declared . . . to serve the ends of public justice will not ordinarily cause a subsequent conviction after retrial to be susceptible to a double jeopardy challenge.” P.9 (citations omitted).

A petition was filed alleging the juvenile committed simple assault, communicating threats, and sexual battery. At the July 2011 hearing, the State presented the victim’s testimony which included statements the trial court found to be inadmissible and prejudicial; thereby declaring a mistrial without objections from either the prosecutor or defense counsel. The trial court then calendared the matter for hearing by another judge. At the August 2011 hearing, the trial court adjudicated the juvenile delinquent and entered a Level 1 disposition order.

The juvenile appealed arguing ineffective assistance of counsel because she failed to object to the order declaring a mistrial, suggesting that the juvenile’s right to be free from double jeopardy was not protected. The Court disagreed, finding that an order of mistrial will not ordinarily cause a subsequent conviction after retrial to be susceptible to a double jeopardy challenge.

Next, the juvenile contended that the State violated his constitutional right to due process by knowingly soliciting or failing to correct false testimony from the victim. In their review of the record the Court found that the juvenile did not raise any such constitutional challenge on appeal, therefore, the issue was not properly before the Court.

http://appellate.nccourts.org/opinions/?c=2&pdf=MjAxMi8xMi0yMzQtMS5wZGY

## In the Matter of C.O., 160 N.C. App. 409, 585 S.E.2d 478 (2003), 2003 N.C. App.

LEXIS 1789

Rule(s):

1. Probation violations hearings are “analogous” to adult probation revocation hearings.
2. Therefore, where the events of a probation violation might constitute a separate offense, a petition alleging delinquency for that offense does not constitute double jeopardy.

The juvenile was adjudicated delinquent for assault with a deadly weapon and assault on a government official. The juvenile was placed on probation for one year under a number of conditions. On September 20, 2001, a probation violation was filed alleging that the juvenile violated probation in a number of ways, including “becoming physically aggressive with his sister.” On October 23, 2001, the juvenile admitted to the violations of probation, not including the above-mentioned provision. On February 19, 2002 a petition for misdemeanor assault, based on the same facts of the earlier probation violation allegation, was filed against the juvenile. At the adjudicatory hearing, the juvenile moved to dismiss the petition based on double jeopardy, but was denied and the juvenile was adjudicated delinquent of the offense.

The juvenile appealed, arguing that the State could not prosecute the same incident under both a probation violation and a petition alleging delinquency. The Court of Appeals disagreed, holding that, as in adult proceedings, a probation violation hearing is not a criminal prosecution, utilizing different standards of proof, and that “it is well established that double jeopardy protections do not apply to probation revocation hearings.” The Court ruled that juvenile probation violation hearings are “analogous,” P.6, to adult probation revocation hearings in adult court, and therefore should be treated equally under the law.

# DUE PROCESS

Rules concerning due-process standards of review.

## In the matter of R.L.C., 179 N.C. App. 311, 635 S.E.2d 1, 2006 N.C. App. LEXIS 1913, affirmed by, In re R.L.C., 361 N.C. 287; 643 S.E.2d 920 (2007), 2007 N.C. LEXIS 417

Rule(s):

1. Private, consensual, non-procreative sexual activity between minors can be regulated due to the legitimate government interest in promoting physically and mentally healthy young citizenry and in preventing sexual activity between minors in order to halt the spread of sexually transmitted diseases. N.C.G.S. § 14-77 therefore survives rational-basis review and does not fail for lack of due process.
2. N.C.G.S. § 14-77 contains no element of age difference and should be so interpreted under its plain meaning.

The juvenile was adjudicated delinquent for committing crime against nature (N.C.G.S. § 14-77) by having oral sex with a 12 year old when he was 14 years old in a vehicle parked in a public lot.

The juvenile appealed, arguing that because no statutes were violated specifically prohibiting non-procreative sexual conduct between minors, then the criminalization of private, consensual, non-procreative sexual conduct between minors would be a violation of the Due Process Clause of the 14th Amendment of the

U.S. Constitution, as held by the U.S. Supreme Court in *Lawrence v. Texas*. The Court of Appeals upheld the statute as it applies to minors and public activity, stating that Lawrence was only applicable to consenting adults, and that the statute had a legitimate state interest to regulate prostitution, non-consensual sexual acts, public sexual acts and sexual acts between minors. The dissent disagreed with the majority that all sexual conduct between minors may be regulated by N.C. Gen. Stat § 14-77, without regard to the circumstances, as the General Assembly has stated in other statutes that there is a legitimate state interest in the regulation of the sexual conduct between minors when there is a certain difference in age.

The Supreme Court of North Carolina agreed with the Court of Appeals' majority opinion, holding that private, consensual, non-procreative sexual activity between minors can be regulated due to the legitimate government interest in promoting physically and mentally healthy young citizenry and in preventing sexual activity between minors in order to halt the spread of sexually transmitted diseases. Also, despite the existence of statutes regulating intercourse between minors less than three years apart in age, because N.C. Gen. Stat § 14-77 contains no age differential element, it should be interpreted as it is written by its plain meaning, without reference to any variance in age.

Finally, the dissent stated that the application of N.C. Gen. Stat § 14-77 to minors conflicts with the more specific statutes regarding sexual conduct between minors, which intend to protect young victims or to prevent underage pregnancies.

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http://appellate.nccourts.org/opinions/?c=1&pdf=MjAwNy81MzFBMDYtMS5wZGY

# ERRORS

Rules concerning what constitutes reversible or harmless error.

## In the matter of W.J.W., 2014 N.C. App. LEXIS 371 (unpublished opinion)

Rule(s):

1. Where the juvenile challenges the sufficiency of evidence supporting some findings of fact, but unchallenged findings of support the trial court’s conclusions of law, erroneous findings constitute harmless error.
2. Where the juvenile does not object to the court’s finding that statements were made voluntarily, that fact is binding for purposes of *Miranda* analysis.
3. Where the court misstated the standard of proof at the conclusion of adjudication but stated the correct standard in its written order, the trial court did not err.

A school resource officer (SRO) smelled a peculiar odor, which the SRO identified as marijuana, and observed a plastic bag containing a “brown and green” substance in the boys’ locker room. The SRO found a pair of pants with a homemade pipe sticking out of the pocket and a school bag near the plastic bag. The juvenile’s name was inside the school bag. The juvenile was called into the locker room and the SRO asked whether the bag and pants belonged to the juvenile. The juvenile replied in the affirmative. The juvenile had not been read his *Miranda* rights, or his rights under N.C.G.S. § 7B-2101(a). He was charged with possession of a schedule VI controlled substance and possession of drug paraphernalia. The juvenile moved to suppress his statements made in response to the SRO’s questions. The trial court denied the motion. The juvenile was adjudicated delinquent of both offenses and placed on 12 months of probation.

The juvenile appealed first arguing that a certain number of the trial court’s findings of fact contained in the order denying his motion to suppress were not supported by evidence in the record. (The remaining findings of fact were binding upon the Court on appeal.) The Court disagreed finding that because unchallenged findings of fact supported the trial court’s conclusions of law, any erroneous findings constituted harmless error.

Next the juvenile asserted that the trial court erred in admitting his statements made during a custodial interrogation prior to his being read his *Miranda* rights, or his rights pursuant to N.C.G.S. § 7B-2101(a). The Court noted that one of the trial court’s key findings of fact, that the juvenile’s statements were voluntary, is unchallenged by the juvenile upon appeal, and is thus binding upon the Court. Further, the Court determined that because the juvenile’s statements were voluntary, and did not result from coercion, the juvenile’s *Miranda* rights were not implicated. “The fact that the [juvenile] may have been in custody, or may have been interrogated, is not relevant if his statements were voluntary and free of coercion.

Lastly, the juvenile contended that the trial court applied the wrong standard of proof in its adjudication order by stating that “there is reasonable cause in this case to find the [juvenile] guilty of the two offenses,” which constitutes a reversible error. The Court disagreed finding that the standard of proof expressed in the written adjudication order was correct, and that the trial court did not err. Accordingly, the order was affirmed.

http://appellate.nccourts.org/opinions/?c=2&pdf=31242

## In the matter of M.J.G., 2014 N.C. App. LEXIS 611

Rule(s):

1. Where the court indicates that relevant facts have been proven beyond a reasonable doubt and states that it “concludes as a matter of law, that in regard to the allegations in the petition(s) before the Court” the juvenile is delinquent, P.9, this satisfies the requirement (under N.C.G.S. § 7B-2411) that the court indicate having found the juvenile to have been adjudicated delinquent beyond a reasonable doubt.
2. While witness testimony regarding a person’s intent is inadmissible, testimony as to the person’s demeanor is admissible.
3. “[T]he court is empowered to assign weight to the evidence presented at the trial as it deems appropriate . . . .” P.14 (citations omitted).
4. Where “[t]he juvenile’s conduct merit[s] intervention by several teachers, the assistant principal, as well as the school resource officer,” P.19,

the behavior may constitute substantial interference with the operation of a school (for purposes of review for insufficiency of evidence).

1. The fact that a dispositional hearing lasting 12 minutes does not necessarily suggest any impropriety on the court’s part.
2. Where the juvenile’s parent may not have spoken until after the court has issued a disposition and the parent agrees with the court’s opinion, the ostensible breach of N.C.G.S. § 7B-2501 is harmless.

In May 2013 two petitions were filed alleging misdemeanor assault and disorderly conduct related to circumstances that occurred at a fundraiser volleyball game held in the gymnasium of an elementary school. The juvenile was seen sitting next to two boys that were assumed to be “getting ready to fight” by having their “fists clenched.” A teacher testified that when the juvenile was asked to come off the bleachers the juvenile became angry and stormed off the bleachers and “right over [a parent]…and pushed out the gym door.” The teacher testified that the juvenile began shouting, cursing and put his finger less than an inch away from the teacher’s face. The aforementioned parent also testified about her contact with the juvenile stating that “she had to take three or four steps back to keep from falling” as he came off the bleachers. The parent also testified that “the look on [the juvenile’s] face was very defiant.” The school resource officer testified that he “had to put [his] hands on [the juvenile] to remove him from the hallway.” The juvenile was adjudicated delinquent of both offenses and placed on probation for 12 months.

The juvenile appealed first arguing that the trial court erred by failing to find that he was delinquent of the offense of misdemeanor assault beyond a reasonable doubt. Relying on *In re J.V.J.*, 209 N.C. App.737, 707 S.E.2d 636 (2011), the juvenile argues that the adjudication order does not include the conclusion of law that he committed assault beyond a reasonable doubt nor does it include findings of fact inferring such a conclusion. The Court found that in *J.V.J.*, the trial court failed to address any of the allegations set out in the juvenile petition. It even failed to summarily aver that “the allegations in the petition [had] been proved.” In the present case, however, the Court determined that the “Juvenile Adjudication Order” stated that the “[trial] Court concludes as a matter of law, that in regard to the allegations in the petition(s) before the Court” the juvenile is delinquent. Also, the petition for misdemeanor assault alleged that the juvenile committed simple assault by “forcefully hitting the victim in her shoulder, breast, and chest area with his shoulder, causing the victim to move back a few steps.” Accordingly, the Court rejected the juvenile’s argument that the trial court failed to find that he had committed misdemeanor assault beyond a reasonable doubt.

Next, the juvenile asserted that the trial court erroneously allowed the parent to testify that the juvenile’s expression was ‘defiant’. *State v. Sanders*, 295 N.C. 361, 245 S.E.2d 674 (1978) states that “a witness’s opinion of another person’s intention on a particular occasion is generally held to be inadmissible.” Here, however, the Court believed that the parent’s testimony was more appropriately characterized as describing the juvenile’s demeanor. The Court cited *State v. Stager*, 329 N.C. 278, 406 S.E.2d 876 (1991), which provides that “opinion evidence as to the demeanor of a criminal defendant is admissible into evidence. Further, *State v. Moore*, 276 N.C. 142, 171 S.E.2d 453 (1970) states that “the appearance of a man, his actions, his expression, his conversation – a series of things – go to make up the mental picture in the mind of the witness which leads to a knowledge which is as certain, and as much a matter of fact, as if he testified, from evidence presented to his eyes, to the color of a person's hair, or any other physical fact of like nature.” The Court found that the parent’s testimony that the juvenile’s “look on his face” was ‘very defiant” related to her perception of the juvenile shortly after the alleged incident. Because the testimony stemmed from the parent’s personal experience combined with her observation of the juvenile, it was admissible to shed light upon the circumstances surrounding the alleged incident, and thus, was relevant and admissible. Therefore, the Court rejected the argument.

Alternatively, the juvenile contended that the trial court should have granted his motion to dismiss because there was no other evidence to indicate that his act was intentional. The Court found that argument unpersuasive, holding that a thorough review of the record demonstrated that the parent’s testimony was not the only evidence to establish that the juvenile acted with intent. The Court further stated that in a juvenile adjudication hearing, “the [trial] court is empowered to assign weight to the evidence presented at the trial as it deems appropriate. Reviewing the evidence in the light most favorable to the state, the Court held that there was sufficient evidence for the trial court to determine that the juvenile’s actions were intentional.

Next, the juvenile argued that his actions did not amount to disorderly conduct because there was insufficient evidence that the his actions amounted to a disturbance of the peace, order, or discipline at the school when no students, classes, or programs were in any way affected and his actions minimally affected the staff’s activities. The juvenile cites *In re Eller*, 331 N.C. 714, 417 S.E.2d 479 (1992) as providing guidance for identifying behavior which constitutes a violation of N.C.G.S. § 14-288.4(a)(6). In *Eller*, the N.C. Supreme Court did not find a substantial interference where the “students were only modestly interrupted from their work and returned to their lesson upon being instructed to do so by their teacher.” The *Eller* court cited two cases to support its conclusion, including *State v. Midgett*, 8 N.C. App. 230, 174 S.E.2d 124 (1970). In *Midgett* the Court of Appeals affirmed the denial of a motion for nonsuit when student-defendants entered a school office with the expressed intention of interrupting the school day. Because of the student defendants’ actions, the secretary, the principal and another teacher were kept from performing their official duties and the school was dismissed early. As such, the Court held that there was ample evidence to support all of the elements of disorderly conduct.

In the present case, the juvenile argued that his circumstances are more similar to those found in *Eller* and distinguishable from the facts found in *Midgett*. This Court disagreed, finding that the circumstances of the present case comparable to the facts found in *Midgett*. The juvenile’s conduct merited intervention by several teachers, the assistant principal, as well as the school resource officer. Therefore, the Court found that the trial court did not err by denying the juvenile’s motion to dismiss the charge of disorderly conduct.

In his final argument, the juvenile contended that the several errors occurred at his disposition hearing. Specifically, he asserted that the fact that his dispositional hearing was twelve minutes long thus resulting in a “sham” hearing. The juvenile did not cite any authority to support the assumption. Furthermore, the Court found the assertion unpersuasive as the trial court judge did not sign the disposition order until two days following the day of the hearing. Finally, the juvenile argued that the trial court erred by allowing his mother to be heard only subsequent to the trial court entering the disposition. The Court disagreed holding that even if the trial court decided the terms of the juvenile’s disposition prior to allowing the juvenile’s mother to be heard, the error would be harmless based on the fact that the juvenile’s mother did not object to a condition of attending a court ordered class but effectively agreed with the trial court when she was heard. Accordingly, the trial court adjudication and disposition orders were affirmed.

http://appellate.nccourts.org/opinions/?c=2&pdf=31301

## In the matter of S.J.E., 2008 N.C. App. LEXIS 1860 (unpublished opinion)

Rule(s):

1. Where the court excludes a lab report concerning substance identification but admits a field test and expert testimony, the evidence is sufficient to defeat a motion to dismiss.
2. A court may not delegate the authority to determine whether a juvenile will enter a treatment program.
3. When a clerical error, including checking the incorrect box on a form, is discovered in a judgment or order, it is appropriate to remand for correction.

The juvenile was adjudicated delinquent of possession of crack cocaine, and the court entered a Level 2 disposition.

The juvenile appealed, challenging the sufficiency of the evidence to prove that the substance retrieved from his pocket was crack cocaine. The juvenile argued that after the court excluded from evidence a lab report identifying the substance as cocaine, the court should have allowed his motion to dismiss. The Court of Appeals disagreed, and found that there was evidence indicating that a field test resulted in a positive result for crack cocaine. Additionally, the Court of Appeals cited *State v. Fletcher*, 92 N.C. App. 50, 56, 373 S.E.2d 681, 685 (1988), and found that the expert testimony of the arresting officers identifying the substance as crack cocaine was sufficient to defeat the motion to dismiss.

The juvenile also argued that the court’s order improperly delegated its authority to the juvenile court counselor to decide whether he should be required to enter a treatment program. The Court of Appeals cited N.C.G.S. §7B-2506, which provides the court with the power and discretion to order appropriate dispositional alternatives, and *In re Hartsock*, 158 N.C. App. 287, 580 S.E.2d at 395 (2003), which held that the statute does not state or indicate that the court may delegate its discretion. As a result, the Court of Appeals vacated this portion of the disposition order and remanded for further findings.

Lastly, the Court of Appeals found that based on the transcript, it was clear that the court understood it had discretion to enter either a Level 1 or 2 disposition, but made a clerical error. The Court of Appeals cited *State v. Jarman*, 140 N.C. App. 198, 202, 535 S.E.2d 875, 878 (2000), indicating that “a clerical error results from a minor mistake or inadvertence” such as inaccurate checking of boxes (*In re D.D.J.*, *D.M.J.*, 177 N.C. App. 441, 444 628 S.E.2d 808, 811 (2006). When such an error is discovered on appeal, it is appropriate to remand the case to the court for correction [*State v. Linemann*, 135 N.C. App. 734, 738, 522 S.E.2d 781, 784 (1999)].

Consequently, the Court Appeals remanded the case for correction of the error. http://appellate.nccourts.org/opinions/?c=2&pdf=MjAwOC8wNy0xMDQ3LTEucG

Rm

## In the Matter of: H.D.H., \_\_\_\_ N.C. \_\_\_\_, No. COA19-490 (January 21, 2020)

Rule(s): When the court enters an order extending juvenile probation under NCGS 7B-2510(c), the court must make written findings of fact supporting the decision to extend probation.

The juvenile was adjudicated undisciplined and later found to have “violated a contempt warning” by failing to abide by the protective supervision order. The juvenile admitted to indirect contempt and was placed on probation as a delinquent juvenile. A motion for review was filed against the juvenile, not alleging any violation, but requesting the court to extend probation to allow for further supervision. The juvenile asked for supervision to be terminated, but the court extended probation, without including written findings or conclusions. The juvenile appealed, arguing that NCGS 7B-2510(c) requires the trial court to make written findings.

The court considered the statute and noted that it requires the court to find that probation extension is necessary either to protect the community or safeguard the welfare of the juvenile. The court then noted that the problem may have arisen due to the use of an outdated form which didn’t provide for a probation extension. A review of the current form revealed that space was provided on the form to make findings. As a result the court determined that the statute requires the trial court to make written findings to support extension of probation. Because there was information provided to the court which would support findings of extension, but the court did not make findings, the case was reversed and remanded for entry of a new order.

<http://appellate.nccourts.org/opinions/?c=2&pdf=38699>

# EVIDENCE

Evidence concerning evidence and ramifications of errant admissions on appeal.

## In the matter of A. L., 2016 N.C. App. Lexis 264 (unpublished opinion)

Rule(s): Defense counsel must establish evidence to support a self-defense claim before introducing evidence of victim’s history of violence.

Three petitions were filed against the juvenile alleging the offenses of misdemeanor simple assault, communicating threats and misdemeanor larceny. At the adjudication hearing, the juvenile’s counsel sought to introduce evidence regarding the victim’s purportedly violent character. The State objected and the trial court sustained the objection.

At the close of the State’s evidence, the juvenile moved to dismiss the communicating threat charge, which the trial court granted. The juvenile was adjudicated delinquent of the simple assault charge. Pursuant to a plea agreement, the State subsequently dismissed the remaining larceny charge, and the juvenile admitted to violating his probation, which stemmed from a prior adjudication and disposition. The juvenile was sentenced to twelve months’ probation.

On appeal, the juvenile first argued that the trial court erred by denying his counsel’s attempt to cross-examine the victim’s purported reputation for violence. Specifically, the juvenile asserted that it was error to exclude evidence of the victim’s alleged reputation for violence because the evidence was relevant to the juvenile’s assertion of self-defense. The Court disagreed, stating that it is within the trial court’s authority to limit the scope of cross-examination until the defense presents evidence of self-defense, so long as the court does “not preclude questioning regarding the subject at a later time. *State v. Tann*, 57 N.C. App. 531, 291 S.E.2d 827 (1982). Here, the Court determined that because the juvenile’s counsel sought to introduce this evidence concerning allegations of the victim’s purported reputation for violence before any evidence had been introduced to establish that the juvenile acted in self-defense, the trial court properly sustained the State’s objection to the presentation of that evidence at that time.

The juvenile then contended that he received ineffective assistance of counsel at trial because his counsel “eviscerated the juvenile’s self-defense claim” by failing to present evidence in support of the juvenile’s self-defense claim, and that such performance was deficient and resulted in prejudice. The Court found that their review of the record indicated that any deficiency in the juvenile’s trial counsel’s performance was not egregious and did not fall below an objective standard of reasonableness. Specifically, the Court determined that according to the juvenile’s own testimony, he conceded that the victim gave an accurate account of the incident, and did not offer testimony in response to his counsel’s questions that may have established a basis for a claim of self-defense.

Finally, the juvenile posited that the trial court committed reversible error by failing to include sufficient findings of facts in its adjudication order as to whether the juvenile committed the assault alleged in the petition. Relying on *In re J.V.G.*, the juvenile argues that the trial court’s findings of fact were insufficient to meet the statutory requirements of N.C.G.S. § 7B-2411. However, the Court has held that 7B2411 “does not require the trial court to delineate each element of an offense and state in writing the evidence which satisfies each element, and…does not specifically require that an adjudication order contain appropriate findings of fact.” Unlike the decision in *In re J.V.G.* where the Court found that the adjudication order did not even summarily aver that the allegations in the petition had been proved, in the present case this Court concluded that the written adjudication order satisfied the minimum requirements of 7B-2411.

Accordingly, the adjudication order and disposition were affirmed.

## In the matter of J.W., 2014 N.C. App. LEXIS 1153 (unpublished opinion)

Rule(s): The State must present substantial evidence to establish essential element of a crime.

The juvenile appeals from orders adjudicating her delinquent for committing the offense of assaulting a government employee and placing her on one year of probation. On appeal, the juvenile asserted that the State did not offer sufficient evidence to support a determination that the juvenile intentionally kicked the principal or understood that the principal was a government employee.

The Court found that although the record contains evidence tending to show that the juvenile repeatedly kicked and flailed with the principal held her, the record does not provide a basis for concluding that the juvenile intentionally kicked the principal. Further, the evidence did not establish whether the juvenile’s flailing and kicking were done to procure her release from the principal’s hold or to cause physical injury to the principal. Therefore, the Court concluded that the State did not present substantial evidence to establish the essential element of intent of the charge of assault on a government official or employee.

Because the juvenile established that her trial counsel failed to make a motion that would and should have resulted in a dismissal of the sole charge against her, the Court held that such failure prejudiced the juvenile and, thus, established that her representation at trial was constitutionally inadequate. The juvenile was thus entitled to relief from her conviction for misdemeanor assault on a government official or employee on the grounds of ineffective assistance of counsel. Accordingly, the adjudication was vacated.

http://appellate.nccourts.org/opinions/?c=2&pdf=31289

## In the matter of J.K.C., 2013 N.C. App. LEXIS 1024 (unpublished opinion)

Rule(s):

1. “Where a lay witness testifies as to his recollection of events, such testimony is within Rule 701 as it is based on the perception and personal knowledge of that witness.” P.1
2. Assessment of a child’s competence to testify at trial “‘rests in the sound discretion of the trial judge in the light of his examination and observation of the particular witness.’” P.9.
3. “A child witness who can demonstrate an understanding of the requirement of veracity for testimony is deemed competent to testify.” P.1–2.
4. Under N.C.G.S. § 15A-924(a)(6), neither errors in nor omissions of citations are grounds for dismissal or reversal.
5. In ruling on a motion to dismiss, “the question for the Court is whether there is substantial evidence (1) of each essential element of the offense charged, or of a lesser offense included therein, and (2) of [juvenile’s] being the perpetrator of such offense.” P.13.

Five petitions were filed against the juvenile alleging two counts of firstdegree sexual offense, two counts of crime against nature and one count of indecent liberties against children. During the adjudication hearing, the victim, age 3 at the time of the incident, testified that the juvenile “licked [her] private while in the bathroom.” The victim’s father also testified regarding the sequence of events that occurred on the night of the incident in question. At the trial, the juvenile did not offer any evidence. The juvenile was found responsible for two counts of first-degree sexual offense and one count of crime against nature. The trial court entered a Level 2 disposition and placed the juvenile on supervised probation.

The juvenile appealed arguing first that the trial court committed reversible error by allowing the victim’s father to testify that he believed the victim was telling the truth. The juvenile contended that the admission of the victim’s testimony was improperly admitted because it was barred under Rule 701 of the Rules of Evidence which limits testimony by a lay witness to testimony “in the form of opinions or inferences . . . which are (a) rationally based on the perception of the witness and (b) helpful to a clear understanding of his testimony or the determination of a fact in issue.” The Court disagreed, finding that the testimony of the victim’s father was proper lay witness testimony because it was meant not to establish the credibility of the victim’s statements, but to reveal the victim’s father’s perception of and response to the events of that night.

The juvenile next argued that the trial court committed reversible error in ruling that the victim was competent to testify. Specifically, the juvenile asserted that during the victim’s voir dire, the victim demonstrated her incompetence because she showed an inability to distinguish between fact and fiction. The Court found that the issue of whether a child is competent to testify at trial “is a matter which rests in the sound discretion of the trial judge in the light of his examination and observation of the particular witness.” The record revealed that the trial court made detailed findings of fact in open court following the completion of the victim’s voir dire and determined that despite giving contradictory testimony in response to questioning, the victim was competent to testify. Accordingly, as the decision of the trial court to admit the victim’s testimony was based upon the trial court’s personal observations of the victim during voir dire, and finding her sufficiently competent to testify, the Court determined that the trial court did not err in admitting the victim’s testimony. The third argument the juvenile raised was the trial court lacked jurisdiction because the juvenile petitions charging her referenced subsection N.C.G.S. § 1427.4A(a)(2), while the allegations in the petitions tracked the language of N.C.G.S. § 14-27.4A(a)(1). However, the Court has found that under N.C.G.S. § 15A-924(a)(6) (2011), regarding content of criminal pleadings, “[e]rror in the citation or its omission is not ground for dismissal of the charges or for reversal of a conviction.” In the present case, the Court found that it was clear from the petitions that although a typographical error was made, citing to N.C.G.S. § 14-27.4A(a)(2), which pertains to an offender 18 years old or older, rather than to the correct statute, N.C.G.S. § 1427.4A(a)(1), the language used in the petitions clearly follows that of the appropriate statute, N.C.G.S. § 14-27.4A(a)(1). Therefore, the petitions, as alleged, were valid and sufficient to properly charge the juvenile with two counts of first-degree sexual offense. Accordingly, the Court overruled the argument.

Fourth, the juvenile argued that the trial court committed reversible error by denying the motion to dismiss the charges where the State failed to present sufficient evidence of each and every element of the offense. The Court disagreed noting that in ruling on a motion to dismiss, “the question for the Court is whether there is substantial evidence (1) of each essential element of the offense charged, or of a lesser offense included therein, and (2) of [juvenile’s] being the perpetrator of such offense. If so, the motion was properly denied.” In the present case, the juvenile argues that the State presented insufficient evidence that the juvenile committed a first-degree sexual offense. N.C.G.S. § 14-27.1(4) (2011) defines a sexual act is as “cunnilingus, fellatio, analingus or anal intercourse, but does not include vaginal intercourse.” In the present case, the Court found that the victim repeated testified that the juvenile performed cunnilingus on her. Further, the victim’s statements to others, as well as her trial testimony, was consistent regarding the juvenile’s sexual act of digital penetration. Viewing the evidence in the light most favorable to the State, the Court found that the evidence was sufficient to prove each element of each count of first-degree sexual offense.

The juvenile further argued that because no specific act constituting crime against nature was alleged in the petition, the trial court adjudicated the juvenile’s charges on alternate theories. The Court found that the evidence supported separate sexual acts, either of which can support a charge of crime against nature. Therefore, in the light most favorable to the State, sufficient evidence was presented to permit the trial court to find the juvenile responsible as to each of the charges of first-degree sexual office and crime against nature. Accordingly, the trial court did not err in denying the juvenile’s motion to dismiss the charges.

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## In the matter of K.C., 2013 N.C. App. LEXIS 385

Rule(s):

1. The element of purpose, as required for an adjudication of sexual battery, “may not be inferred solely from the act itself,” P.8, but must be inferred from factors like age disparity, control by the juvenile, the location and secretive nature of the juvenile’s actions, and the attitude of the juvenile.
2. “[T]he gist of the action for battery is not the hostile intent of the defendant, but rather the absence of consent to the contact on the part of the plaintiff.” P.13 (citations omitted). Therefore, regardless of intent or effect, touching without consent is sufficient to survive a request for review under N.C. R. App. 2 if the juvenile does not move to dismiss at the hearing.
3. The court must consider the dispositional factors listed in N.C.G.S. § 7B2501(c) in selecting the disposition.

A petition was filed alleging the juvenile committed the offenses of simple assault and sexual battery. During the adjudicatory hearing, the prosecuting witness testified that the juvenile “touched and grabbed” her when she bent over to shelve a book. The prosecuting witness reported the incident and the school resource officer (SRO) investigated the matter. At the hearing, the SRO testified that Karen had seemed ‘a little upset’ when she informed him that the juvenile “grabbed and squeezed [her buttocks].” The SRO further testified that the juvenile admitted to touching the prosecuting witness on the buttocks, “but he said it was an accident.” When testifying in his own defense, the juvenile explained that he had been sitting in his seat when he dropped his pencil and came into contact with the prosecuting witness during the process of leaning down to pick it up, stating “when I picked my pencil up, I accidently hit [her] butt, but I didn’t squeeze it.” The juvenile was subsequently adjudicated delinquent with respect to the misdemeanor sexual battery offense. The court said nothing during the hearing regarding the charge of simple assault. In the written order, however, the court concluded that the juvenile was delinquent with regard to sexual battery and simple assault and placed on 9 months of probation and directed to submit to a juvenile sex offender evaluation and comply with treatment recommendations.

A juvenile can be found delinquent of sexual battery if, “for the purpose of sexual arousal, sexual arousal, sexual gratification, or sexual abuse, [the juvenile] engages in sexual contact with another person…[b]y force and against the will of the other person. As both parties testified to the fact that the juvenile made contact with the prosecuting witness’s buttocks, the Court concluded that there was sufficient evidence of sexual contact. However, regarding the question of sexual purpose, the Court has held that the element of purpose “may not be inferred solely from the act itself.” Rather, factors like age disparity, control by the juvenile, the location and secretive nature of the juvenile’s actions, and the attitude of the juvenile should be taken into account. In the present case the Court found that the evidence is not sufficient to raise more than a suspicion or possibility that the juvenile committed sexual battery. The question of whether the contact between Keith and Karen was intended “for the purpose of sexual arousal, sexual gratification, or sexual abuse” is disputed by the parties and there is no third party observer to provide additional context. Because the mere act of touching is not enough to show purpose, the Court vacated the sexual battery adjudication.

The juvenile also contended that the trial court erred by finding that he committed simple assault. The Court found that “the gist of the action for battery is not the hostile intent of the defendant, but rather the absence of consent to the contact on the part of the plaintiff.” In this case, both parties admit that the juvenile touched the prosecuting witness’s buttocks. Though there is contradictory evidence as to whether Keith intended to make contact with Karen, the mere fact that he touched her without her consent is sufficient to preclude further review. The juvenile also argued that the court’s adjudication of simple assault was not supported by sufficient findings of fact. N.C.G.S. § 7B-2411 lays out the requirements of juvenile adjudications, providing:

if the court finds that the allegations in the petition have been proved [beyond a reasonable doubt], the court shall so state in a written order of adjudication, which shall include, but not be limited to, the date of the offense, the misdemeanor or felony classification of the offense, and the date of adjudication.

In examining the record the Court found that the juvenile’s written adjudication order regarding the simple assault included information such as the date of the offense, the fact that the assault is a class 2 misdemeanor, the date of the adjudication and clearly states the court considered the evidence and adjudicated the juvenile delinquent as to the allegation of simple assault beyond a reasonable doubt, which satisfies N.C.G.S. § 7B-2411. Accordingly, the Court affirmed the simple assault adjudication order.

Next, the juvenile maintained that the disposition order failed to address certain factors required by N.C.G.S. § 7B-2501. The Court found that the record did not establish that the trial court considered all of the factors, and thus, held that that the trial court failed to make sufficient findings of fact under section N.C.G.S. § 7B-

2501 and remanded to the district court for additional findings of fact on disposition. Lastly, the juvenile argued that he received Ineffective Assistance of Counsel (IAC) because his counselor “failed to make proper motions to preserve the issue of sufficiency of the evidence for appellate review.” The Court refrained from addressing the question as to either sexual battery or simple assault. The Court concluded that the issue of IAC related to the sexual battery allegation was moot because a decision on the matter would have had no practical effect on the existing controversy as the delinquency adjudication was vacated. As to the simple assault, the Court refrained from addressing the juvenile’s argument of IAC because it was premature. IAC requires that the juvenile show that (1) his attorney’s performance was deficient and (2) such deficient performance prejudiced his defense. Because of the nature of IAC claims, the juvenile will not likely be in a position to adequately develop the claims on direct appeal. “Should the reviewing court determine that IAC claims have been prematurely asserted on direct appeal, it shall dismiss those claims without prejudice to the [juvenile’s] right to reassert them during a subsequent proceeding. In this case, the record is unclear on whether the performance of the juvenile’s attorney fell below an objective standard of reasonableness or prejudiced his case as to the charge of simple assault. Accordingly, the Court dismissed the issue without prejudice.

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## In the matter of D.W-S., 2012 N.C. App. LEXIS 1146 (unpublished opinion)

Rule(s):

1. Probation-revocation proceedings are subject to the statutory provisions governing juvenile dispositions, not adjudications.
2. N.C.G.S. § 7B-2501(a) plainly describes such proceedings as “informal, and the court may consider written reports or other evidence concerning the needs of the juvenile.” P.10.
3. Juveniles in probation-revocation proceedings are (probably) entitled to at least a diminished right of confrontation analogous to that provided to adults (who “‘may confront and cross-examine adverse witnesses unless the court finds good cause for not allowing confrontation’”). P.9 (quoting N.C.G.S. § 15A-1345(3)).
4. Where the court issued dispositional orders based on competent evidence and later issued supplemental (non-dispositional) orders with findings of fact based on excluded evidence, the error is harmless.

On May 12, 2011 the juvenile was adjudicated delinquent for simple misdemeanor possession and injury to personal property. The trial court subsequently entered a Level 1 disposition order. The terms of the juvenile’s probation required that he “remain on good behavior and not violate any laws.” The Juvenile Court Counselor (JCC) filed a motion for review in September 2011, alleging the juvenile violated the terms of his probation as evidenced by a twelve-page fax from the detention facility outlining multiple instances of the juvenile’s poor behavior. At the hearing, the JCC was the sole witness, testifying as to the information contained in the behavior reports. The juvenile objected and moved to strike the JCC’s testimony as he had no first-hand knowledge of the juvenile’s behavior described in the reports. The judge overruled the objections; however, the court did not admit the documents from the detention facility. The juvenile did not present any evidence. At the conclusion of the hearing, the district court determined the juvenile violated the terms of his probation and entered a Level 2 disposition order dated October 27, 2011. Upon receipt of the case file regarding the juvenile’s adjudication in New Hanover County, a second written order containing findings of fact based on the JCC’s testimony and materials contained in the New Hanover County file was signed by the judge on November 4, 2011, although it did not change the disposition entered on October 27, 2011.

The juvenile appealed asserting the court violated his constitutional right to confront adverse witnesses. While Article 24 of the juvenile code mandates ‘the right to confront and cross-examine witness,” the Court has consistently held that juvenile probation revocation proceedings are dispositional, and thus subject to the statutory provisions governing juvenile dispositions, not adjudications; therefore, the procedural safeguards of a dispositional hearing differ significantly. Accordingly, juvenile probation revocation hearings are “informal, and the court may consider written reports or other evidence concerning the needs of the juvenile.” N.C.G.S. § 7B-2501(a).

The juvenile further argued that the right to confrontation during juvenile probation revocation “survives as an essential component of constitutional due process.” *Gagnon v. Scarpelli*, 411 U.S. 778, 782 (1973). The Court disagreed indicating that even if Gagnon applied, the juvenile suffered no prejudice as a result of the JCC’s testimony. In criminal prosecutions, “[a] violation of the defendant’s rights under the Constitution of the United States is prejudicial unless the appellate court finds that it was harmless beyond a reasonable doubt.” N.C.G.S. § 15A-1443(b) (2011). The State bears the burden of demonstrating that any error was harmless. Id. Even employing this high burden to the juvenile case sub judice, the Court found any alleged error harmless.

Secondly, the juvenile asserted that the second order contained findings of facts unsupported by the evidence before the court during the October 27, 2011 hearing. The Court indicated that the language of the second order makes clear that it is not a disposition on the juvenile’s New Hanover adjudication but rather a supplemental order. However, the Court determined that the second order contained several findings of fact that appeared to be based on solely on information contained in the New Hanover file which were not supported by evidence that was properly before the district court at the time the first dispositional order was entered. The juvenile further contested several of the order’s findings and conclusions misrepresented the nature and quality of, and basis for the JCC’s testimony. The Court disagreed, finding that “[w]here there are sufficient findings of fact based on competent evidence to support the trial court’s conclusions of law, the judgment will not be disturbed because of other erroneous findings which do not affect the conclusions.” *Black Horse Run Prop. Owners Ass’n v. Kaleel*, 88 N.C. App. 83, 86, 362 S.E.2d 619, 622 (1987). The Court held that striking the improper portions of the order does not render the trial court’s ultimate conclusions of law unsupported by other findings of fact within the second order. The second order did not augment or change the disposition entered by the court on 27 October 2011 in any way, but merely provided detailed findings and conclusions supporting the original disposition. Accordingly, the disposition order of October 27, 2011 is affirmed.

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## In the matter of R.D., 2012 N.C. App. LEXIS 1173 (unpublished opinion)

Rule(s):

1. “[T]he ‘unusual hour’ [of a juvenile’s presence in a given location] is an appropriate factor for a law enforcement officer to consider in formulating a reasonable suspicion,” P.10 (citations omitted) as is the juvenile’s presence in a closed park.
2. The court must consider the dispositional factors listed in N.C.G.S. § 7B2501(c) in selecting the disposition and must indicate having done so in its dispositional order.
3. Under N.C.G.S. § 7B-2605, to deny the release of a juvenile whose appeal is pending, the court must provide compelling reasons in writing.

The juvenile was adjudicated delinquent for possessing drug paraphernalia and subsequently placed on six months of probation with numerous conditions. The trial court also ordered the juvenile to be placed in a detention center for five days. The court stayed three days, but denied the juvenile’s request to stay all five days of the detention pending appeal. Thus, the juvenile served two days in detention.

The juvenile appealed first arguing that the trial court erred in denying his motion to suppress evidence of drug paraphernalia because the officers lacked the reasonable suspicion required to conduct an investigatory stop. The Court noted that the totality of the circumstances would have justified the stop: the officers observed the juveniles trespassing on park property after closing, the officer was aware of multiple calls regarding vandalism in the park, and the juvenile “began to walk faster” upon observing the police. Consequently, the Court found that the lower court did not err in denying the juvenile’s motion to suppress.

Next, the juvenile contended that the trial court erred in ordering dispositional alternatives without making the requisite findings of fact in the disposition order. The Court agreed holding that “the written order contains insufficient findings to allow this Court to determine whether it properly considered all of the factors required by N.C.G.S. § 7B-2501(c)” Accordingly, the dispositional order was reversed and remanded for a new dispositional hearing.

Finally, the juvenile argued that the trial court erred in denying his request to stay two days of his detention pending his appeal. The Court stated that the issue is clearly resolved by the “plain language” of N.C.G.S. § 7B-2605 which provides that the reason for entering a temporary order affecting the custody or placement of the juvenile must be stated in writing. The trial court made no such findings of fact. Therefore, the Court vacated the order and remanded the matter to the district court. Further, the Court stated that on remand, “the trial court must dispose of this matter as follows: (1) the court must determine whether Juvenile’s confinement pending appeal was proper; and, if so, then (2) the court must enter “compelling reasons for denying release.”

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## In the matter of J.T.K., 211 N.C. App. 645; 712 S.E.2d 747; 2011 N.C. App. LEXIS 941 (unpublished opinion)

Rule(s):

1. Where the court sequesters witnesses but does not close the courtroom to the general public, the court has not violated N.C.G.S. § 7B-2402.
2. Sequestration of witnesses is within the trial court’s discretion.

The juvenile was adjudicated delinquent of a second-degree sex offense, and the court entered a Level 2 disposition.

The juvenile appealed, arguing that the trial court unlawfully closed the courtroom during the adjudication hearing at the State’s request to sequester the juvenile’s witnesses despite his objection. The Court of Appeals disagreed, finding that because the juvenile did not move to sequester the State’s witnesses and the adjudication hearing was not closed to the public, the juvenile’s argument lacked merit. The Court further noted that if it were to consider the juvenile’s brief a challenge to the lawfulness of the sequestration motion, there was no abuse of discretion when the court made its decision. Accordingly, the Court affirmed the adjudication and disposition orders.

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## In the matter of J.R.V., 212 N.C. App. 205; 710 S.E.2d 411; 2011 N.C. App. LEXIS 951

Rule(s): Where the court violates N.C.G.S. § 7B-2405 by failing to affirmatively inform the juvenile of his privilege against self-incrimination, the error is harmless if the juvenile's testimony was consistent with the State’s prior evidence or was favorable to the juvenile.

The juvenile was adjudicated delinquent of misdemeanor larceny, and placed on probation for a period not to exceed 12 months.

The juvenile appealed, arguing that the trial violated N.C.G.S. § 7B-2405 when it permitted him to testify without advising him of the privilege against self-incrimination. The Court of Appeals agreed with the juvenile’s argument, reasoning that N.C.G.S. § 7B-2405 places an affirmative duty on the trial court to protect a juvenile’s right against self-incrimination by engaging in some colloquy with the juvenile to ensure that he or she understands the right against self-incrimination prior to testifying at his or her adjudicatory hearing. Because the court failed to engage in this colloquy, the Court found that there was error. The Court, however, noted that the error was not prejudicial. The Court based its conclusion on the fact that during the juvenile’s testimony, the information he provided regarding a previous relationship with the perpetrators of the crime had already been established by his earlier conversation with police, making him subject to the “friend exception” to the mere presence rule. As the testimony was consistent with evidence provided earlier or was otherwise favorable to the juvenile, the Court found that the trial court’s failure to advise the juvenile against self-incrimination was not prejudicial. Accordingly, the Court affirmed the trial court’s order of adjudication and disposition. http://appellate.nccourts.org/opinions/?c=2&pdf=MjAxMS8xMC0xMTE2LTEucGR m

## In the matter of M.C., 2011 N.C. App. LEXIS 2501 (unpublished opinion)

Rule(s): N.C.G.S. § 15-903(A)(1) does not apply to juvenile court. Under N.C.G.S. § 7B-2300, the State is not required to reduce oral statements to written or recorded form.

Petitions were filed alleging that the juvenile committed first-degree rape and first-degree kidnapping. At the adjudication hearing, the victim’s nephew was called as a witness. Thereafter, the court asked the prosecutor if there were any written interview statements made by the witness. The prosecutor indicated that there were no written statements, and the juvenile objected. The trial court overruled the objection.

The juvenile appealed, arguing that pursuant to N.C.G.S. § 15-903(A)(1), the trial court erred by admitting testimony by a witness when the prosecution failed to turn over documentation of its pretrial interviews with the witness. The Court of Appeals disagreed, holding that N.C.G.S. § 15-903(A)(1) did not apply to juvenile cases, but to cases within the original jurisdiction of the superior court. The Court noted that N.C.G.S. § 7B-2300 pertains to discovery in juvenile court, and does not require the State to render oral statements to written or recorded form. (The Court admonished counsel for failing to follow Rules of Appellate Procedure, which require that identities of those under the age of 18 be protected in juvenile matters in accordance with N.C.G.S. § 7B-2602. Because such stipulations were not followed, personal identifying information about the juvenile and the victim was published on the Court’s electronic filing site. However, the record is no longer on the filing site).

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## In the matter of D.L.D., 2010 N.C. App. LEXIS 683 Rule(s):

1. “[R]he legality of a search of a student should depend simply on the reasonableness, under all the circumstances, of the search.” P.5 (citations omitted). This includes searches conducted by law enforcement officers.
2. Reasonableness is determined under a twofold inquiry: “[W]hether the . . . action was justified at its inception [and] whether the search as actually conducted was reasonably related in scope to the circumstances which justified the interference . . . .”
3. Where there is reasonable suspicion that the search would yield evidence of possession of controlled substances on school property, the search is justified at its inception. Reasonable suspicion that the search would yield evidence of possession of controlled substances on controlled property.
4. The search is “permissible in its scope when the measures adopted are reasonably related to the objectives of the search and not excessively intrusive in light of the age and sex of the student and the nature of the infraction.” Id. (citations omitted).
5. An officer’s pat-down upon detection of a strong odor of marijuana is not excessively intrusive and satisfies the second prong of the reasonableness standard (depending on the student’s age and gender).

After noticing three juveniles looking “fishy” on a school camera near a restroom where juveniles had been arrested for drug offenses in the past, the assistant principal indicated that he and the school resource officer should go to the scene and “check on it.” Upon nearing the students, one of the students ran into the restroom and seemed to place something in his pants. While frisking the juvenile as directed by the assistant principal, the school resource officer found a container with three individually wrapped bags of marijuana. Upon searching the juvenile in a conference room, the school resource officer found $59.00 that he identified as his mother’s rent money and not money from selling drugs. The juvenile was arrested, and a petition was filed. The juvenile filed a motion to suppress statements and evidence, which was denied. Subsequently, the juvenile was adjudicated delinquent of possession with intent to sell or deliver marijuana. The court entered a Level 2 disposition, placed the juvenile under a court counselor’s supervision for 12 months, and entered other specific conditions.

The juvenile appealed, arguing that the trial court erred by denying his motion to suppress physical evidence as the search violated his Fourth and Fifth Amendment rights. The Court of Appeals disagreed, finding that the search was reasonable under *New Jersey v. T.L.O*, 469 U.S. 325, 341, 105 S. Ct. 733, 742-43. 83 L. Ed 2d 720, 734 (1985), since the search was “justified at its inception” (i.e., it was thought that there would be evidence of violating the law or school rules) and the search “was reasonably related in scope to the circumstances which justified the interference in the first place” (i.e., juvenile’s behavior including finding marijuana during the frisk). The Court also found that the search in the conference room, which uncovered $59 was justified as the school resource officer had just found a controlled substance on the juvenile.

The juvenile’s next argument was that the trial court erred in denying his motion to suppress his statement to the school resource officer. The Court of Appeals disagreed, finding that the statement regarding the money being for rent money and not from selling drugs was an excited utterance, and therefore admissible as it was “unsolicited and spontaneous.” State v. Hall, 131 N.C. App. 427, 436, 508 S.E.2d 8, 14 (1998).

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## In the matter of C.G., 2009 N.C. App. LEXIS 183 (unpublished opinion)

Rule(s): Where (inter alia) a detective told the juvenile that the juvenile was not under arrest, was free to leave, and did not have to talk to the detective if he did not choose to do so, a reasonable person of the juvenile’s age would not have felt that he was under arrest, and the questioning did not constitute custodial interrogation.

The juvenile was adjudicated of breaking and entering, given a Level 1 disposition, and placed on probation for six months.

The juvenile appealed, arguing that the trial court erred in failing to suppress his statement to the investigating detective on the grounds that the statement was obtained as the result of a custodial interrogation and that the juvenile was not advised of his rights. The Court of Appeals reviewed the trial court’s findings of fact (e.g., that the detective told the juvenile he was not under arrest, was free to leave, and did not have to talk to the detective if he did not choose to do so; the detective obtained a pass from school administrators for the juvenile to return to class after the interview; the interview took place in the school office, and the juvenile was seated closest to the door; the juvenile returned to class after the interview; the juvenile was not mistreated; and a reasonable person of the juvenile’s age would not have felt that he was under arrest) and concluded that the juvenile was not in custody during the interview. Therefore, the trial court did not err in denying the juvenile’s motion to suppress.

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## In the matter of A.J.W., K.S.W., 2008 N.C. App. LEXIS 1783 (unpublished opinion)

Rule(s):

1. A detective’s testimony regarding out-of-court statements made by witnesses is excluded under the Sixth Amendment’s Confrontation Clause.
2. Where the trial court has admitted such testimony in error, appellate review may be appropriate under N.C.R. P. App. 2 (prevention of

“manifest injustice”). P.8.

The juveniles were adjudicated delinquent of felonious breaking and entering and felonious larceny.

Both juveniles appealed. A.J.W.’s amended notice of appeal was filed in reference to the “Adjudication and Disposition issues by the [trial court] on the 31st day of January 2007 and filed March 2, 2007.” K.S.W.’s amended notice of appeal was filed in reference to the “Adjudication Hearing on December 14, 2006 in Iredell

County, NC.”

K.S.W.’s notice of appeal indicated that he was appealing the adjudication order, and not the disposition order. Pursuant to *In re A.L.* (166 N.C. App. 276, 601 S.E.2d 538 (2004), if the record does not indicate that the disposition order is being appealed, the Court of Appeals does not have jurisdiction to review the case.

Therefore, the court dismissed K.S.W.’s appeal.

A.J.W. argued that the admission of the detective’s testimony regarding outof-court statements made to him by two witnesses, who implicated A.J.W. and K.S.W., was a violation of the Sixth Amendment’s Confrontation Clause and the hearsay rules. The Court of Appeals ruled that since the witnesses did not appear at trial, and the juvenile did not have an opportunity to cross-examine them, admission of the witnesses’ statements violated the Sixth Amendment’s Confrontation Clause.

The court found that the juvenile was entitled to a new delinquency hearing.

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## In the matter of H.D., 2007 N.C. App. LEXIS 1267 (unpublished opinion)

Rule(s):

1. If a party fails offer proof of the significance of excluded evidence, a trial court may not review the exclusion for error.
2. Under the North Carolina Code of Professional Responsibility, an attorney may not serve as witness in a case she is handling.
3. Expert testimony regarding legal conclusions is inadmissible, but admitting such testimony is nevertheless harmless where admission does not result in prejudice.

The juvenile was adjudicated delinquent for misdemeanor assault and misdemeanor breaking and entering.

The juvenile only appealed the trial court's ruling that the juvenile was competent, arguing that the trial court erred in not allowing the juvenile's witness to testify and in not allowing the attorney to testify on the juvenile's behalf. The Court of Appeals decided not to rule on the first argument, stating that at trial the attorney failed to make an offer of proof as to the significance of the excluded evidence, therefore preventing the Court from reviewing the merits of counsel's argument. The Court also held that it was not error to refuse the attorney's testimony when it would be adverse to the rules of professional ethics and conduct as the attorney may not act as both advocate and witness.

Finally, the Court held that although the trial court erred in allowing the state's witness to testify as to the legal conclusion of capacity to proceed, it amounted to harmless error because there was no possibility the trial court would have concluded otherwise based only on the State's witness.

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## In the matter of A.L., 2006 N.C. App. LEXIS 22 (unpublished opinion)

Rule(s):

1. Where a witness identifies the juvenile by sight after the incident has occurred, the identification is testimonial.
2. “The Sixth Amendment’s Confrontation Clause bars the use of a testimonial statement made by a witness who does not appear at a criminal trial, unless the witness is unavailable to testify at trial and was subject to cross-examination at the time the statement was made.” P.4 (citations omitted).

The juvenile was adjudicated delinquent for assault by pointing a gun. At the adjudicatory hearing, a police officer testified to statements made by the victim, who was not present at the hearing.

The juvenile appealed, arguing that under *Crawford v. Washington*, 541 U.S. 36, 158 L. Ed. 2d 177 (2004), the juvenile was denied his Sixth Amendment right to confront the witnesses against him. The Court of Appeals first noted that in a juvenile adjudicatory hearing, the respondent is entitled to have the evidence evaluated under the same standards as an adult would in a criminal proceeding. The Court then considered the evidence presented by the State, and held that while the victim’s response to the officer’s question “What happened?” was not testimonial in nature, the victim’s “show up” identification of the juvenile as the offender was testimonial, not subject to any hearsay objection, and therefore was improperly allowed into evidence.

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## In the matter of R.P.M., 172 N.C. App. 782, 616 S.E.2d 627 (2005), 2005 N.C. App. LEXIS 1803

Rule(s): Where no evidence shows that the juvenile, “by his conduct made it known to [the] perpetrator that he was standing by to lend assistance when and if it should become necessary,” P.2, the evidence is insufficient to prove that the juvenile aided and abetted others in committing a crime.

The juvenile was adjudicated delinquent of common law robbery and “assault with a deadly weapon with intent to inflict serious injury” based on a theory of aiding and abetting.

The juvenile appealed, arguing that the State failed to prove the elements of aiding and abetting, and that “assault with a deadly weapon with intent to inflict serious injury” was not a crime listed in the North Carolina General Statutes for which the juvenile could be adjudicated. The Court of Appeals agreed, holding that to find a person guilty of aiding and abetting, the State must show that the person made it known to the primary offenders that the person was “standing by to lend assistance when and if it should become necessary.” The Court found that, especially in relation to the common-law robbery charge, the evidence tended to show that the juvenile tried to assist the victim, not those involved in the commission of the crime. The Court also ruled that because the charge of “assault with a deadly weapon with intent to inflict serious injury” does not exist as crime listed in the North Carolina General Statutes, the petition that listed the charge was fatally defective on its face.

## In the matter of S.S.T., 165 N.C. App. 533, 599 S.E.2d 59 (2004), 2004 N.C. App. LEXIS 1411

Rule(s): Under the plain language of N.C.G.S. § 8C-1, Rule 609(d), if the juvenile defendant in a delinquency case chooses to testify, the juvenile may be ordered to testify with respect to whether the juvenile was adjudicated delinquent.” P.2.

The juvenile was adjudicated of disorderly conduct, resisting, obstructing and/or delaying an officer, and assault on a government officer/employee. During the cross-examination of the juvenile at the adjudication hearing, the state asked the juvenile if the juvenile had been previously adjudicated. Trial counsel did not object, but the juvenile argued on appeal that evidence of the juvenile's prior adjudications were not admissible to impeach the juvenile's testimony.

The Court of Appeals disagreed, noting that while Rule 609 of the North Carolina Rules of Evidence provides that "evidence of juvenile adjudications is generally not admissible," the Juvenile Code does provide an exception. Under N.C.G.S. §7B-3201(b), if a juvenile is the defendant in an adjudicatory hearing and chooses to testify, the juvenile may be required to testify about prior adjudications. The Court noted that although this rule is under the heading of juvenile expunctions, it applies as plainly stated in the statute.

## State v. Oliver, 159 N.C. App. 451, 584 S.E.2d 86 (2003), 2003 N.C. App. LEXIS 1494

Rule(s): A witness’s school-disciplinary record is not admissible for impeachment purposes where counsel does not ask the witness about or direct the court’s attention to anything of an impeaching nature.

The juvenile was adjudicated delinquent of second-degree sex offense and crime against nature. As part of its defense, the juvenile challenged the credibility of one witness by attempting to introduce the witness' school disciplinary records. The district court refused to allow the records into evidence and found the juvenile responsible for the charges.

The Court of Appeals affirmed the decision, stating that the juvenile failed to question the witness on any information of an impeaching nature, and therefore did not establish a basis for challenging the witness' credibility. The court also found that the district court correctly excluded the juvenile from cross-examining the principal for impeachment purposes using similar reasoning.

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## In the matter of S.W.R., 154 N.C. App. 477, 571 S.E.2d 879 (2002), 2002 N.C.

App. LEXIS 1454

Rule(s): Where testimony regarding a caller’s identity is not based on recognition of the caller’s voice, but is based solely on the caller’s self-identification, the evidence is inadmissible for the purpose of establishing identity.

The juvenile was adjudicated delinquent of burning of personal property.

The juvenile appealed, arguing that the trial court did not have sufficient evidence to adjudicate. Specifically, the juvenile argued 1) the trial court should have not allowed into evidence contents of a phone call purported to have been made by the juvenile and 2) if that evidence was excluded, the juvenile’s motion to dismiss at the end of the State’s evidence and at the end of all evidence presented should have been granted. The Court of Appeals agreed, finding that the telephone call had not been properly identified as being from the juvenile and that absent the identification evidence, the State failed to prove each and every element of the offense charged.

## State v. Clapp, 137 N.C. App. 14, 526 S.E.2d 689 (2000), 2000 N.C. App. LEXIS 252

Rule(s): “The issue of competency of a witness rests in the sound discretion of the trial court based upon its observation of the witness.” P.9. This includes observations of a child witness where the juvenile contests the witness’s competency based on age.

The juvenile was adjudicated of second-degree sex offense. The victim in the matter was 3 years old at the time of the offense and 4 years old at the time of the adjudication hearing, where the victim testified on behalf of the State.

On appeal, the juvenile argued that the victim was too young to testify and therefore incompetent as a witness. The Court of Appeals disagreed, finding that the trial court had an opportunity to observe the victim testify, and absent abuse of discretion on the part of the trial court, the testimony should have been allowed.

## State v. Pugh, 138 N.C. App. 60, 530 S.E.2d 328 (2000), 2000 N.C. App. LEXIS 551

Rule(s): The court’s voir dire must be sufficient to allow the court to determine whether a witness was able to express herself or to understand the duty to tell the truth.

The juvenile was adjudicated delinquent of first-degree sex offense, indecent liberties, and assault inflicting serious injury on a child under age sixteen.

The juvenile appealed, arguing that the trial court erred by finding the alleged victim incompetent to testify. The Court of Appeals agreed, finding that the trial court’s inquiry into the alleged victim’s competency (which involved a brief exchange by the judge and the alleged victim) was insufficient to allow the court to determine whether or not the alleged victim was able to express herself or understood the duty to tell the truth.

## In the Matter of J.B., \_\_\_\_ N.C. App. \_\_\_\_ , No. 18-1036, (August 20, 2019)

Rule(s):

1. The trial court erred in denying the motion to dismiss as a matter of law when the State presented no evidence that the juvenile wished for the video to be made or that he was the one who distributed it on a petition alleging second-degree sexual exploitation of a minor.
2. The trial court erred in denying the motion to dismiss the petition alleging first-degree forcible sexual offense when the State failed to prove penetration, the central element of this crime.
3. The trial court erred when it accepted the juvenile’s admission to attempted larceny when there was not a factual basis to support the juvenile’s admission of guilt, as required by §7B-2407(c).
4. The out of court statements offered by the State were admitted in violation of the juvenile’s constitutional right to confront and cross-examine witnesses and the error was prejudicial.
5. Despite the dispositions being vacated, the court addressed the following disposition (sentencing) errors –
   1. The court must provide adequate written reasons in the Disposition and Commitment Order to support its findings using the factors required by §7B-2501(c).
   2. The court must find compelling reasons to deny release to the juvenile pending appeal when commitment to YDC is ordered according to §7B-2605.

This case arises from sexual misconduct by the juvenile toward a friend (Z) who was attending a sleepover at his house with the juvenile and two of the juvenile’s cousins. The evidence tended to show that sometime during the night, Z woke up to find his pants pulled down and the juvenile behind him. The friend believed someone was holding his legs. Z testified that he “felt [the juvenile’s] privates on his butt” but that he did not feel them “go into his butt.” One of the cousins filmed much of the incident. In the video the juvenile can be heard saying “do not record this.” The video ended up on Facebook.

At the hearing, the State presented statements to the police from the juvenile’s cousins, neither of whom testified at trial. The juvenile’s motions to dismiss at the end of the state’s evidence and at the close of all evidence was denied and the court adjudicated the juvenile responsible for first-degree forcible sexual offense and second-degree exploitation of a minor. The court continued disposition until the juvenile could be assessed by Children’s Hope Alliance (CHA).

At the disposition hearing, the judge was presented with the CHA report indicating that the juvenile’s risk for sexually harmful behaviors were in the low to low-moderate range. The court counselor recommended a level 2 disposition.

Prior to the disposition, the juvenile admitted to an attempted larceny of a bicycle. After considering the juvenile’s assessments and his admission to attempted larceny, the trial court entered a level 3 order, committing the juvenile to a YDC indefinitely. The juvenile appealed and requested his release pending disposition of the appeal. A subsequent hearing was held on the question of his release and the trial court entered an order concluding the juvenile would remain in YDC.

Issue 1 (Second degree sexual exploitation of a minor):

The court found that the trial court erred as a matter of law due to the evidence being insufficient to support the charge. The charge requires the defendant take an active role in the production or distribution of child pornography. The court found that the state presented no evidence that the juvenile wished for the video to be made or that he was the one who distributed it. In fact, the court concluded that it was clear that the juvenile did not want to be filmed, as he explicitly told the cousin to stop recording. The court also rejected the state’s contention that there was a common plan or purpose of humiliating the victim, stating there was nothing in the record to support that contention. As a result, the court vacated the adjudication.

Issue 2 (First degree Forcible Sexual Offense):

An essential element of the charge is that a “sexual act” must take place. A “sexual act” is defined by statute (§14-27.20(5)). In order to have a sexual act, there must be “penetration, however slight by any object into the genital or anal opening of another person’s body.” (§14-27.20(4)).

In this case, the victim’s statement is not ambiguous. Z specifically states in his testimony that penetration did not occur. To support its contention that penetration occurred, the state relies upon the video. The court found that at most the video showed no more than “sexual contact” which is sexual battery (§14-27.33)). Responding to the dissent, the majority asserted that circumstantial evidence cannot be used to overcome a victim’s direct testimony that no penetration occurred. As a result, the state has failed to prove penetration, the central element of this crime. The court ruled that the trial court erred in denying the juvenile’s motion to dismiss and vacated the adjudication.

Issue 3 (Attempted Larceny Admission):

There must be a sufficient factual basis for a juvenile’s admission of guilt before accepting the admission and the factual basis may be based on statements presented by the attorneys (§7B-2407(c)). The facts presented do not support the juvenile’s admission of guilt.

The facts presented indicated a bicycle was stolen by two black males (the juvenile is a black male). The juvenile was found by officers biking down the road with two others who also matched the description. The juvenile was described by the prosecutor as “kind of off on his own” from the other two. Officers asked all the youth to stop and of the three, only the juvenile stopped. He told the officers that he had not stolen the bike, that he knew who had, and admitted to having bolt cutters in his back pack. The juvenile’s attorney argued that the juvenile had loaned his book bag to someone, who then placed the bolt cutters inside it and left to “do their deed.” The state presented no evidence as to where or from whom the bike was recovered.

Because the state failed to present sufficient evidence that the juvenile took affirmative steps, but did not succeed, to take another’s property with no intent to return it, (elements of attempted larceny) there was insufficient evidence upon which the trial court should have accepted the juvenile’s admission of guilt. The adjudication for attempted larceny should be vacated.

Issue 4 (Right of Confrontation):

The state offered out-of-court statements from the two cousins which tended to support the charges against the juvenile. Errors affecting constitutional rights are presumed to be prejudicial unless the state can prove that the error was harmless beyond a reasonable doubt. The state’s contention that the evidence was overwhelming (the video and the victim’s testimony) and the numerous references to the cousin’s statements in the closing cannot overcome the fact that the evidence was ambiguous at best and that this additional evidence of penetration was not prejudicial. Therefore, the state failed to prove these statements were harmless beyond a reasonable doubt.

Issue 5 (a) (Level 3 commitment):

The trial court failed to adequately support the statutorily required factors for committing a juvenile to YDC as required by §7B-2501(c).

The assessment provided by CHA found the juvenile’s risk factors for sexually harmful behaviors were in the low to low-moderate range. The juvenile’s evaluation from the court counselor indicated he “is a low/moderate risk for reoffending” and recommended a level 2 disposition. The recommended terms that were recommended as part of the juvenile’s probation included therapy, curfew, no sleepovers, monitoring of electronic devices, not being used as a babysitter, maintain passing grades at school and no contact with the victim. The report from CHA indicated the juvenile had a stable home life and that his family relationships are close and supportive. The court found that when taking into account the evaluations by the court counselor and CHA and their recommendations, the trial court’s failure to explain its reasoning and basis for some findings that conflicted with the evidence presented did not satisfy the requirements of §7B-2501(c).

Issue 5 (b) (Confinement pending appeal):

§7B-2605 requires the release of the juvenile, with or without conditions, should issue in every case unless the court orders otherwise *and* if the court enters a temporary order affecting the custody or placement of the juvenile the court *must* find compelling reasons and state the reasons in writing.

The trial court failed to list anything under “[c]ompelling reasons release is denied” on the Appellate Entries form and in a separate order with Findings of Facts and Conclusions of Law the trial court’s supporting reasons were phrased as contentions of defense counsel and the state. The trial court did not list independent compelling reasons and as such violated §7B-2605.

The court concluded that it was especially disturbing that the trial court ignored the requirements of the statute thus causing the juvenile to be held in detention for a period of 17 months when his convictions were improper.

**Dissent**:

The dissent would have affirmed all of the trial court’s rulings and orders. The dissent asserts that while there was strong evidence suggesting the juvenile did not commit these offenses, it is the trial judge in juvenile delinquency proceedings who resolves any conflicts in the evidence, not the Court of Appeals. Additionally, when the evidence is viewed in the light most favorable to the state, the dissent would have found that the state met its burden on each of the adjudications.

The dissent also found that the recitation of the facts was sufficient to show that the juvenile directly participated, or at least acted in concert, in the commission of the attempted theft of the bike.

With regard to the level 3 order, the dissent would have found that the trial judge’s findings of fact were sufficient and “appropriate” under §7B-2501 and despite the fact that the trial court *could* have imposed a level 2 disposition, its decision to impose a level 3 disposition was not unreasonable.

While confinement pending appeal requires compelling reasons, the court need not be verbose. The dissent concluded that the trial court’s order sufficiently noted compelling reasons for continued confinement pending his appeal.

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# INEFFECTIVE ASSISTANCE OF COUNSEL

Rules concerning the two-part test for ineffective-assistance claims.

## In the matter of C.W.N., Jr., 2013 N.C. App. LEXIS 483

Rule(s):

1. Counsel’s failure to make a closing argument in a non-jury delinquency hearing does not constitute ineffective assistance of counsel.
2. Where the proceeding “maintained the character of a confrontation between adversaries,” P.13, this fact carries weight in the first prong of an analysis regarding a claim of ineffective assistance.

A petition was filed alleging the juvenile committed misdemeanor assault related to an incident at school. During the adjudicatory hearing evidence was submitted that the victim was struck as the juvenile and three other boys were engaged in horseplay while in a boys’ bathroom at their school. At the conclusion of the presentation of evidence the juvenile’s counsel stated, “Your Honor, I don’t have anything to add to what the Court has heard.” The prosecution made a closing argument. The judge then adjudicated the juvenile delinquent of misdemeanor assault.

The juvenile appeals first that his counsel’s failure to make a closing argument before the trial court was a per se violation of the Sixth Amendment right to assistance of counsel. Rejecting the notion that silence is prejudicial, the Court stated that counsel’s failure to present a closing argument in the context of a nonjury juvenile delinquency hearing is not a circumstance so likely to prejudice the accused that a violation of the juvenile’s Sixth Amendment right to assistance of counsel is to be presumed.

Secondly, the juvenile argues that he received ineffective assistance to counsel when defense counsel failed to make the argument that the incident in the boys’ bathroom was an accident occurring as a result of horseplay. To establish ineffective assistance of counsel the juvenile must show that his counsel's conduct fell below an objective standard of reasonableness. In order to meet this burden the juvenile must satisfy a two part test:

First, the defendant must show that counsel's performance was deficient. This requires showing that counsel made errors so serious that counsel was not functioning as the counsel guaranteed the defendant by the Sixth Amendment. Second, the defendant must show that the deficient performance prejudiced the defense. This requires showing that counsel's errors were so serious as to deprive the defendant of a fair trial, a trial whose result is reliable.

The defendant must show that there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.

After reviewing the record, the Court concluded that the juvenile proceeding maintained the character of a confrontation between adversaries and that the juvenile’s counsel required the prosecution’s case to survive a meaningful adversarial testing. Furthermore, the juvenile failed to establish a reasonable probability that had counsel asserted on closing argument that the incident was an accident occurring as a result of horseplay, the result of the proceeding would have been different. Accordingly, the adjudication order was affirmed.

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## In the matter of S.D., 2013 N.C. App. LEXIS 88 (unpublished opinion)

Rule(s):

1. Where the juvenile bases an ineffective-assistance claim on counsel’s failure to move for a dismissal for insufficient evidence, “[t]he dispositive issue . . . becomes whether there is a reasonable probability that the trial court would have granted defendant’s motion[.]” P.4.
2. Where the State presents competent evidence tending to show that the juvenile was the perpetrator, there is not a reasonable probability that the trial court would have granted the juvenile’s motion, and the argument fails the second step of the ineffective-assistance analysis.

The juvenile was adjudicated delinquent for second degree trespass and placed on probation and required to complete 65 hours of community service.

The juvenile appealed first arguing ineffective assistance of counsel. The juvenile’s claim partially rested on counsel’s failure to move for a dismissal based on insufficiency of the evidence. Specifically, the juvenile asserted that had counsel argued the lack of sufficient evidence to establish that juvenile was the perpetrator of the offense, there would have been a reasonable probability of the charge being dismissed. The Court disagreed noting that when ineffective assistance of counsel claims are based on the failure to move for a dismissal on grounds of insufficient evidence, “[t]he dispositive issue . . . becomes whether there is a reasonable probability that the trial court would have granted defendant’s motion[.]” Based on witness testimony and the juvenile’s admission to entering the property at the dispositional hearing, the Court was not convinced that the trial court would have granted counsel’s motion to dismiss.

The juvenile also faulted counsel for failing to effectively cross-examine the witnesses and for neglecting to make a closing argument. The Court determined that there was nothing in the record indicating counsel’s performance fell below an objective standard of reasonableness. As such, the Court concluded that the juvenile was not denied effective assistance of counsel. Secondly, the juvenile contended that the trial court erred by imposing a Level I disposition without making sufficient findings of fact. The Court agreed finding that the trial court’s disposition order failed to comply with the N.C.G.S. § 7B-2501(c) and N.C.G.S. § 7B-2506(6).

Accordingly, the Court remanded for a new dispositional hearing.

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*In the matter of J.Y.*, 2011 N.C. App. LEXIS 1662 (unpublished opinion)

Rule(s): Where the State offers no evidence as to an essential element of the offense and the juvenile’s counsel does not move to dismiss for insufficient evidence, this constitutes ineffective assistance, satisfying both steps of analysis.

The juvenile was adjudicated of committing injury to another’s personal property, and placed on a Level 1 disposition.

The juvenile appealed, arguing that because he was never identified by any of the State’s witnesses at the trial, which is an essential element of the offense, trial counsel should have moved to dismiss the petition. The juvenile argued that failure to make such a motion denied him effective assistance of counsel. After determining that the ineffective assistance claim required no further investigation and could be reviewed by considering the record on appeal and the verbatim transcript of the proceedings, the Court agreed that the juvenile was denied effective assistance of counsel. The Court held that because the record indicated that the State failed to introduce sufficient evidence that the juvenile committed the offense, trial counsel should have moved to dismiss the charges due to insufficient evidence, even if only to preserve the issue for appeal. Accordingly, the Court found that trial counsel’s performance fell below the objective standard of reasonableness, and prejudiced the juvenile as it is likely that the motion to dismiss due to insufficient evidence would have been granted, and if not, it would have at least been reserved for appeal. For those reasons, the Court vacated and remanded the case.

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## In the matter of M.S., 2009 N.C. App. LEXIS 288 (unpublished opinion)

Rule(s):

1. “According to N.C.G.S. § 7B-2508(f), where a juvenile has a high delinquency history and has committed a violent offense, the trial court is required to impose a Level 3 disposition.” P.4.
2. “Under N.C.G.S. § 7B-2508(e), “[a] trial court exercising jurisdiction over a juvenile who has been adjudicated delinquent under a Level 3 disposition ‘shall commit the juvenile to the Department for placement in a youth development center.’” . . . . . It is only when the trial court makes specific written findings substantiating the extraordinary needs on the part of the offending juvenile that the trial court may use its discretion and impose a Level 2 disposition instead.” Id.

The juvenile was adjudicated of robbery with a dangerous weapon, and the court entered a Level 3 disposition committing the juvenile to a youth development center (“YDC”) until his 18th birthday.

The juvenile appealed, arguing that (1) the trial court failed to use its discretion in sentencing and instead chose commitment because the offense was an armed robbery; (2) the trial court erred in proceeding with the hearing where the summons issued no service; and (3) counsel was ineffective in failing to object to the lack of service of the summons. The court disagreed with the juvenile’s first argument, finding that the court was required to enter a Level 3 disposition due to the juvenile’s high delinquency history and the fact that he committed a violent offense. Additionally, the court indicated that the court considered the required statutory factors (which include the seriousness of the offense; the need to hold the juvenile accountable; the importance of protection public safety; the degree of culpability indicated by the circumstances of the particular case; and the rehabilitative and treatment needs of the juvenile indicated by a risk and needs assessment), and made a specific finding of fact regarding the gravity of the offense.

Regarding the juvenile’s second argument, the Court disagreed, finding that the juvenile waived the lack of personal jurisdiction by appearing and participating in the hearing without objecting.

Lastly, the court found that counsel’s performance did not fall below and objective standard of reasonableness and did not prejudice the juvenile.

Consequently, the court affirmed the trial court’s order.

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## In the matter of A.V., 188 N.C. App. 317, 654 S.E.2d 811 (2008), 2008 N.C. App. LEXIS 80

Rule(s): When the appellate court finds that the State’s evidence was sufficient to withstand a motion to dismiss, the juvenile is not prejudiced by counsel’s failure to preserve the argument challenging that sufficiency; such failure by counsel does not constitute ineffective assistance of counsel.

The juvenile was adjudicated delinquent of assault on a state employee.

The juvenile appealed, first arguing that the juvenile received ineffective assistance of counsel. The Court of Appeals stated that to establish ineffective assistance, the juvenile must show that the attorney’s performance was deficient and that the juvenile suffered prejudice as a result of the deficient performance. The juvenile argued that because trial counsel failed to renew its motion to dismiss at the close of all the evidence, the juvenile was unable to preserve an argument challenging the sufficiency of the evidence. The Court found however, that the State presented substantial evidence at trial to withstand a motion to dismiss, and therefore the juvenile could not show that the juvenile suffered prejudice from trial counsel’s deficient performance.

The juvenile also argued that the trial court erred by not considering the risk and needs assessment and other pre-dispositional reports at disposition, as well as not attaching the predisposition report as required by the disposition form. The Court held that, while the issue was preserved of right because it was an issue of statutory mandate, trial counsel only appealed the adjudication order and therefore the Court did not have jurisdiction to hear any claims regarding disposition.

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## In the matter of J.D.R., 628 S.E.2d 259, 2006 N.C. App. LEXIS 915 (unpublished opinion)

• Note: Same incident and ruling as In the Matter of J.T.S., 2010 N.C. App. LEXIS 1602

Rule(s):

1. When the appellate court finds that the State’s evidence was sufficient to withstand a motion to dismiss, the juvenile is not prejudiced by counsel’s failure to preserve the argument challenging that sufficiency; such failure by counsel does not constitute ineffective assistance of counsel.
2. The statutory language of N.C.G.S. § 14-288.4(a)(6) (“disturbs or interferes with the teaching of students at any . . . educational institution or engages in conduct which disturbs the peace, order or discipline at any . . . educational institution”) has two prongs, one requiring specific intent and one requiring general intent.
3. Where the alleged prong of an offense can be satisfied by general intent, the allegations may be sufficiently supported by evidence tending to show general intent.

The juvenile was adjudicated of wantonly and willfully burning a schoolhouse and creating a public disturbance that interfered with the education of others. (Evidence tended to show that that the juvenile provided a lighter to another juvenile to allow him to examine the pipe chase in a restroom, and that a fire started in the pipe chase after the other juvenile placed a burning paper towel into the pipe chase).

The juvenile appealed arguing that the trial court erred by: (1) denying his motion to suppress exculpatory statements made while in custody that were not made freely or after voluntarily waiving rights to self-incrimination and (2) finding that there was sufficient evidence of both charges.

Addressing the motion to suppress first, the Court of Appeals found that there was no error as the juvenile was not in custody and his statement was given freely and voluntarily. The Court of Appeals found that the trial court’s finding was supported by competent evidence. Specifically, the evidence tended to show that: (1) the juvenile was escorted to the administrative office by an assistant principal; (2) one of the assistant principals was interviewing the juvenile when he indicated his involvement in starting the fire; (3) the school resource officer and the off-campus officers were not present during the questioning although the school resource officer was nearby and entered and exited the room thereafter; (4) the principal did not inform the juvenile that he could not leave the room; (5) school administration entered and exited the room indicating that it was unlocked; and (6) there was no physical restraint placed on the juvenile.

The juvenile also argued that his statement was not made freely and voluntarily, as he was not advised that his statements could be used against him or that he had a right to have a parent present during questioning. As a result, the juvenile indicated that he had been tricked into providing a statement. The Court disagreed, finding that the facts that he was not informed that his statement could be used against him or that a parent could be present during questioning did not establish that he was tricked into making a statement or that it was made involuntarily. As to the juvenile’s argument that there was insufficient evidence to find that he had the intent to wantonly and willfully burn the schoolhouse, the Court noted that this issue was not preserved for appeal. However, the Court indicated that if it considered the argument, there was evidence indicating that the juvenile either aided another juvenile in “wantonly and willfully” setting the fire or acted in concert with the juvenile to set the fire when he provided the lighter, and attempted to extinguish the fire himself instead of pulling the alarm to notify the school of the fire.

As to the juvenile’s argument that he received ineffective assistance of counsel due to his attorneys’ failure to seek dismissal of the disorderly conduct charge, the Court of Appeals disagreed. The Court found that even if it assumed that trial counsel erred by failing to seek the dismissal, the juvenile did not suffer any prejudice because there was evidence to support a finding of responsibility to the charge.

The Court also disagreed that there was no showing that he acted intentionally. The Court found that he acted intentionally when he provided the lighter to the other juvenile to examine the pipe chase, and that he should have been aware that using a lighter to generate a flame could result in a fire. The Court based its reasoning on the second prong of N.C.G.S. 14-288.4(a) (6) concerning general intent crimes. The Court also reasoned that any fire in a school building is likely to result in a disruption of the educational process. Accordingly, the Court affirmed the decision.

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# LIFE WITHOUT THE POSSIBLITY OF PAROLE

Rules concerning juveniles sentenced to life imprisonment

## State v. Antone, 2015 N.C. App Lexis 265

Rule(s): the trial court must consider all mitigating factors in determining whether a juvenile should be sentenced to life without the possibility of parole and must include findings of fact on the absence or presence of any mitigating factor The defendant was charged with robbery with a dangerous weapon and first degree murder. The defendant was 16 years old and a ninth grade student when the crime occurred. The jury found the defendant guilty of first degree murder based upon both felony murder and malice, premeditation and deliberation. The trial court was required to decide whether the defendant should be sentenced to life imprisonment without parole, or life imprisonment with parole pursuant to Part 2A of Article 81B of Chapter 15A of the North Carolina General Statutes. The trial court entered an order and subsequently a judgment sentencing defendant to life imprisonment without parole. Judgment was arrested on the robbery with a dangerous weapon conviction.

On appeal the defendant argued that the trial court erred by imposing a sentence of life imprisonment without the possibility of parole where it failed to identify any mitigating factors present in the case. The Court agreed.

N.C.G.S. § 15A-1340.19C(a) states that when sentencing a minor who has been convicted of first degree murder that was not solely based on the theory of felony murder “the court shall consider any mitigating factors” in determining whether a defendant should be sentenced to life without parole. Further, the statute says that “the order adjudging the sentence shall include findings on the absence or presence of any mitigating factors and such other findings as the court deems appropriate to include in the order.”

The Court of Appeals has held that the “use of the language ‘shall’ is a mandate to trial judges, and that failure to comply with the statutory language is a reversible error. The NC Supreme Court has further held that mere recitations of evidence “cannot substitute for findings of fact resolving material conflicts.” In the present case, the Court found that the trial court’s findings of fact and order failed to comply with the mandate set forth in N.C.G.S. 15A-1340.19C. The trial court’s order made cursory, but adequate findings of fact as to the mitigating circumstances set forth in N.C.G.S. § 15A-1340.19B(c)(1), (4), (5), and (6), but the order did not address factors (2), (3), (7), or (8). The Court stated that factor (8), the likelihood of whether a defendant would benefit from rehabilitation in confinement, was a significant factor.

The Court went on to find that portions of the findings of fact were more recitations of testimony, stating that “the better practice is for the trial court to make evidentiary findings of fact that resolve any conflicts in the evidence, and then to make ultimate findings of fact that apply the evidentiary findings to the relevant mitigating factors as set forth in N.C.G.S. § 15A- 1340.19B(c). If there is no evidence presented as to a particular mitigating factor, then the order should so state, and note that as a result, that factor was not considered.”

Accordingly, the Court vacated the order and judgment of the trial court and remanded the case for a new sentencing hearing.

http://appellate.nccourts.org/opinions/?c=2&pdf=32541

# PETITION

Rules concerning the form and function of juvenile petitions, filing deadlines, and allegations that suffice for petition purposes.

## In the Matter of T.K. \_\_\_ N.C. App. \_\_\_\_ (May 16, 2017); No. COA16-1047 (published)

Rule(s): (1) A petition in a juvenile delinquency case must have the signature of a juvenile court counselor (or other appropriate representative of the State), and the words “Approved for Filing” in order for a district court to have subject matter jurisdiction over the petition.

After an altercation at school, a petition was filed against the juvenile for simple affray which was signed by a juvenile court counselor and marked “Approved for Filing”, before being filed with the district court. On the day of the hearing, the school resource officer signed a second petition for the same incident, alleging that the juvenile was also delinquent for disorderly conduct. The second petition was not signed by a court counselor, nor was it marked “Approved for Filing”, but it was still filed with the district court. Prior to the hearing, the State dismissed the simple affray charge, and the court adjudicated the juvenile delinquent for disorderly conduct. The Juvenile Code imposes specific requirements that must be satisfied before the court obtains jurisdiction (N.C.G.S.§7B-1703(b)). No prior cases have addressed whether the signature of the court counselor and the “Approved for filing” language are prerequisites for jurisdiction in delinquency cases. However, prior case law determined that the trial court lacked subject matter jurisdiction in an abuse and neglect case when the petition was not signed and verified by the petitioner as required by the Juvenile Code. The court found the petition fatally defective based upon this precedent and ruled the court did not have subject matter jurisdiction. The adjudication was vacated and dismissed.

This ruling does not extend the holding in *In re D.S.* (364 N.C. 184 (2010) where the NC Supreme Court held that the timelines imposed by N.C.G.S.§7B-1703(b) are not jurisdictional.

In a concurring opinion, Judge Stroud found that even if the petition was not fatally defective, the adjudication and disposition orders would need to be reversed because there was no evidence of disorderly conduct.

http://appellate.nccourts.org/opinions/?c=2&pdf=35240

## In re J.S.G.., \_\_\_\_ N.C. App. \_\_\_\_ , No. COA20-82, (March 2, 2021)

<https://ncjuveniledefender.files.wordpress.com/2021/05/in-re-jsg.pdf> - Adjudication and dispositional orders vacated.

Rule(s):

1. Juvenile petitions are held to the same standard as criminal indictments in that it must assert every element of a criminal offense, with sufficient specificity as to provide notice to the juvenile of the charge.
2. A fatally deficient petition fails to convey jurisdiction to the court.

A juvenile petition was filed charging J.S.G. with possession of a controlled substance with intent to deliver (G.S. 90-95(a)(1)). The petition stated that the juvenile delivered “1 orange pill believed/told to be Adderall[.]” The petition failed to identify the pill as a controlled substance. The youth was adjudicated delinquent for possession with intent to manufacture, sell, or deliver a controlled substance and placed on probation under a level 1 disposition.

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 Court stated that 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, a controlled substance. Identification of the controlled substance is a crucial element of the offense.

The court also commented on additional issues raised on appeal that did not need to be addressed since the orders were vacated on other grounds. These issues related to the evidence of the identification of the pill. For example - the lay testimony of the SRO regarding identification of the pill would not be competent evidence to identify the controlled substance, as the SRO never saw the pill, his identification was based solely on the description provided by another student. Our Supreme Court has determined that expert witness testimony is required to establish that a pill is in fact a controlled substance because this evidence “must be based on a scientifically valid chemical analysis and not mere visual inspection.” Ward, 364 N.C. at 142, 694 S.E.2d at 744 (footnote omitted).

Both the adjudication and dispositional orders were vacated.

## In the matter of I.E.H., 2015 N.C. App. LEXIS 555 (unpublished opinion)

Rule(s): Short form language in juvenile petitions is allowable.

The trial court adjudicated the juvenile delinquent for committing attempted second-degree sexual offense. On appeal, the juvenile first argued that the “short form” description of the facts supporting the offense in the petition was insufficient to confer the jurisdiction in the trial court under the Juvenile Code. Specifically, the juvenile asserts that the petition failed to include the elements of “attempt”: (1) “specific intent to commit the sexual act” and (2) “overt acts showing intent.” The Court has held that in adult cases, a criminal indictment “charging a completed offense is deemed sufficient to support a conviction for an attempt to commit the crime charged.” *State v. Slade*, 81 N.C. App. 303, 306, 343 S.E.2d 571, 573 (1986); see also N.C.G.S. § 15-170 (2014). “Upon the trial of any indictment the prisoner may be convicted of the crime charged therein or of a less degree of the same crime, or of an attempt to commit the crime so charged.” Further, the Court stated that N.C.G.S. § 15-144.2(c) (2014) allows for “short form” indictments in adult cases where second-degree sexual offense of a disabled person is alleged. In the present case, the Court determined that the language of the juvenile petition met the standard to which an adult indictment for attempted second-degree sexual offense would be held.

The Court then turned to whether the language was sufficient in a juvenile petition alleging the same offense. Relying upon *In re J.F.*, where the court concluded that the “short form” indictment language for the charges alleged met the statutory requirement for a juvenile petition, the Court held that the juvenile petition in the present case was sufficient.

The juvenile next argues the trial court erred in denying his motion to dismiss. The Court disagreed finding that the State presented substantial evidence as outlined in In In re Heil, e.g. (1) the juvenile had the specific intent to commit a sexual act against the victim, (2) the juvenile committed overt acts showing intent to commit the sexual act and (3) the juvenile was the perpetrator of the offense.

Finally, the juvenile asserted that the trial court erred in failing to find he committed attempted second-degree sexual offense beyond a reasonable doubt. The Court has previously held “where a trial court is unclear or inconsistent in its application of the standard of proof, the case must be remanded for clarification as to the standard applied.” *In Re D.K.*, 200 N.C. App. 785, 788, 684 S.E.2d 522, 525 (2009). The Court found no such ambiguity or inconsistency existed here and determined that the trial court’s written findings clearly stated the standard of proof that the trial court applied.

Thus, the trial court’s adjudication order and delinquency finding were affirmed. http://appellate.nccourts.org/opinions/?c=2&pdf=32967

## In the matter of C.L.Y., 2013 N.C. App. LEXIS 911 (unpublished opinion)

Rule(s):

1. “[T]he juvenile petition ‘serves essentially the same function as an indictment in a felony prosecution and is subject to the same requirement that it aver every element of a criminal offense, with sufficient specificity that the accused is clearly apprised of the conduct for which he is being charged.’” P.3 (citations omitted).
2. Where the petition is for resisting, delaying or obstructing an officer (as prohibited by N.C.G.S. § 14-223), stating that the officer was performing an arrest suffices to indicate the official duty being discharged (the second of three elements of the indictment).

The trial court adjudicated the juvenile delinquent for resisting, delaying or obstructing an officer and placed on supervised probation. At the adjudication hearing, an officer testified that he was on foot patrol due to recent breaking or enterings in the area. The officer stated that based on the descriptions of the suspects in the breaking or enterings, he initiated a voluntary contact with the juvenile. The officer testified that the juvenile “broke off” from his companion in a direction away from the officer. The officer, who was familiar with the juvenile, then confirmed that the juvenile had an outstanding secure custody order and radioed for assistance. The juvenile continued to run until other officers took him into custody.

The juvenile appealed the trial court’s order arguing that the juvenile petition failed to sufficiently allege the charge of resisting, delaying or obstructing a public officer on grounds that it did not properly allege the duty the officer was discharging at the time of the juvenile’s alleged misconduct. He asserted the trial court lacked jurisdiction over the matter due to this allegedly fatal defect in the juvenile petition. The Court disagreed holding “in a juvenile delinquency action, the juvenile petition ‘serves essentially the same function as an indictment in a felony prosecution and is subject to the same requirement that it aver every element of a criminal offense, with sufficient specificity that the accused is clearly apprised of the conduct for which he is being charged.’”

According to N.C.G.S. § 14-223, a person is guilty of resisting, delaying or obstructing a public officer when he “willfully and unlawfully resist[s], delay[s] or obstruct[s] a public officer in discharging or attempting to discharge a duty of his office[.]” An indictment for the charge of resisting a public officer must “‘1) identify the officer by name, 2) indicate the official duty being discharged, and 3) indicate generally how defendant resisted the officer.’” In the present case, the Court concluded that because the petition described a duty that the officer was discharging or attempting to discharge at the time of the juvenile’s flight, the juvenile petition alleges all the essential elements of the offense of resisting, delaying, or obstructing a public officer. Accordingly, the trial court had jurisdiction over the juvenile. The trial court’s adjudication and disposition orders were affirmed.

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## In the matter of Z.M.L., 2013 N.C. App. LEXIS 9 (unpublished opinion)

Rule(s): Because Chapter 7B timeline requirements are “directory, rather than mandatory,” P.3 (citations omitted), failure to file a petition within 15 days after the complaint is received (or within 15 days after an extension, where granted) does not destroy the trial court’s subject matter jurisdiction.

The juvenile was adjudicated delinquent for simple assault and placed on probation.

The juvenile appealed contending that the trial court lacked jurisdiction because the petition was not filed in a timely manner as required by N.C.G.S. § 7B1703. Pursuant to the statute, a juvenile court counselor must file a petition within 15 days after the complaint is received, with an extension of no more than 15 additional days available at the discretion of the chief court counselor. According to the record, the juvenile petition was filed more than 15 days after an extension granted by the chief court counselor. The Supreme Court has explicitly held, however, that “our legislature did not intend for these timelines to implicate subject matter jurisdiction” and that compliance with these timelines is not a “prerequisite[] for district court jurisdiction over allegedly delinquent juveniles.” The court found that like other Chapter 7B timeline requirements, the timelines set out in N.C.G.S. § 7B-1703 are “directory, rather than mandatory[.]” Consequently, the Court affirmed the order. http://appellate.nccourts.org/opinions/?c=2&pdf=MjAxMy8xMi00MDYtMS5wZGY

## In the matter J.C., 2012 N.C. App. LEXIS 402 (unpublished opinion)

Rule(s):

1. “[W]here the petition is filed within the statutory time period after a written complaint is received the requirements of § 7B-1703(b) are met, even where the juvenile court counselor’s office had notice of the offense prior to receipt of the complaint.” P.4.
2. Where a case is delayed for a total of seven months by continuances ordered for good cause, the delay is probably permissible under N.C.G.S. § 7B-2403 and § 7B-2406.

Petitions alleging the juvenile committed felonious breaking and entering, first degree trespass, injury to real property, and two counts of injury to personal property were filed in August 2010. A second petition was filed in October 2010 alleging the juvenile committed the offense of injury to real property. An adjudication hearing was held in March 2011. The juvenile was adjudicated of injury to personal property and one count of injury to real property and was sentenced to 9 months of supervised probation.

The juvenile appealed arguing that (1) the trial court committed prejudicial error and violated his rights to due process, (2) the juvenile court counselor violated N.C.G.S. § 7B-1703 by failing to file the petition in a timely manner, and (3) the trial court violated N.C.G.S. § 7B-2403 and 7B-2406 by not holding the adjudication hearing within a reasonable time.

As to the first argument, the Court could not review the issue on the merits as the juvenile raised the matter for the first time on appeal. “Constitutional issues not raised and passed upon at trial will not be considered for the first time on appeal.”

The Court affirmed the trial court’s order related to the juvenile’s second argument stating, “where the petition is filed within the statutory time period after a written complaint is received the requirements of 7B-1703(b) are met, even where the juvenile court counselor’s office had notice of the offense prior to receipt of the complaint.”

Regarding the juvenile’s last argument, the Court found that the trial court did not violate either 7B-2403 or 7B-2406. There was “nothing in the record to suggest that the delay between the filing of petition and the hearing was unreasonable, especially in light of the fact that both continuances of the matter were admittedly for good cause. Accordingly, the decision was affirmed.

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## In the matter of D.B., 2011 N.C. App. LEXIS 1745

Rule(s):

1. “[A]n indictment for larceny must allege the owner or person in lawful possession of the stolen property. If the entity named in the indictment is not a person, it must be alleged that the victim was a legal entity capable of owning property.” P.6 (citations omitted).
2. Searching a person for identification exceeds the scope of a Terry frisk, which may be used only to determine whether someone is armed.
3. Where the sole evidence of possession of stolen property is the result of an unlawful search or seizure, denying the juvenile’s motion to dismiss is reversible error.

The juvenile was adjudicated of felony breaking and entering, felony larceny pursuant to breaking and entering, and misdemeanor possession of stolen goods, and the court entered a Level 2 disposition.

The juvenile appealed, arguing that (1) the petition was fatally defective because it did not contain an allegation that the alleged victim, a corporation, was a legal entity capable of owning property; (2) the trial court erred by admitting evidence of a stolen bank card obtained by an officer in a search for identification that unlawfully exceeded the scope of a Terry frisk; and (3) the adjudication order contained clerical errors.

As to the juvenile’s first argument, the Court of Appeals held that because the victim was a corporation, the petition must have alleged that the victim was a legal entity capable of owning property to avoid being fatally defective. As the petition failed to do so, the Court vacated the adjudication and disposition for the felony larceny pursuant to breaking and entering charge.

Regarding the juvenile’s next argument, the Court of Appeals agreed that the search exceeded the scope of a Terry frisk, and was therefore unconstitutional. The Court held that a Terry frisk may only be used to determine whether a suspect is armed and thereafter, to confiscate contraband that is immediately identifiable during the frisk. As the juvenile was searched for an identification card, and not a weapon, the search exceeded the scope of a Terry frisk. Moreover, the error was not harmless beyond a reasonable doubt. Accordingly, the Court reversed the misdemeanor possession of stolen property offense.

The juvenile’s last argument was that the adjudication order contained clerical errors because one of the findings incorrectly indicated that the juvenile admitted to the alleged offenses and a conclusion of law indicated that the juvenile committed a serious offense. The Court of Appeals agreed that the finding on the adjudication order indicating that the juvenile admitted the alleged offenses was a clerical error. However, it found that the argument regarding the classification of the offense was without merit as the juvenile committed a Class H felony, breaking and entering.

Accordingly, the Court remanded the case for correction of the adjudication order. http://appellate.nccourts.org/opinions/?c=2&pdf=MjAxMS8xMC0xNDc2LTEucGR m

## In the matter of J.M., 2011 N.C. App. LEXIS 2064 (unpublished opinion)

Rule(s):

1. Because interrupting the discharge of an official duty is an element of delaying or obstructing an officer (as prohibited by N.C.G.S. § 14-223), a petition for such “must . . . indicate the official duty being discharged . . . . [T]he particular duty that the officer is performing while being resisted is of paramount importance and is very material to the preparation of the defendant’s defense.” P.6–7 (citations omitted).
2. Where an officer conducts a search incident to arrest and the arrest is unlawful, the search is also unlawful. Evidence from such a search is excluded.

The juvenile was adjudicated delinquent of resisting, delaying, and obstructing a public officer and carrying a concealed weapon, and placed on a Level 2 disposition with continued probation.

The juvenile appealed, arguing that the trial court erred by (1) finding that he was responsible for resisting, delaying, and obstructing a public officer because the juvenile petition alleging such was fatally defective and that the evidence did not support the court’s determination that he committed the offense and (2) admitting testimony that a set of brass knuckles were found on him during a search incident to arrest. The Court of Appeals agreed with both arguments.

As to the juvenile’s first argument, the Court agreed that the petition failed to allege properly the duty that the officer was discharging or attempting to discharge at the time of the juvenile’s alleged misconduct. Instead, the petition focused on the juvenile’s misconduct of failing to stop running as demanded. Accordingly, the Court held that because the elements of the offense were not satisfied, the trial court lacked jurisdiction over the juvenile, thereby rendering that portion of the adjudication and disposition orders void for lack of jurisdiction. Therefore, the Court reversed the adjudication and disposition orders relating to the resisting, delaying, and obstructing a public officer.

Regarding the juvenile’s second argument concerning the concealed weapon charge, the Court noted that because the juvenile failed to object to the admission of the officers’ testimony at the adjudication hearing or to suppress the evidence seized, he failed to preserve the issue for appeal. Therefore, the Court reviewed the juvenile’s argument under the plain error standard of review. After its analysis, the Court agreed with the juvenile’s argument that because he was unlawfully arrested for resisting, delaying, and obstructing a public officer, the search incident to arrest resulting in the seizure of the brass knuckles was also unlawful. The Court held that in order for the juvenile to have been lawfully arrested for resisting, delaying, and obstructing a public officer, the officer must have had probable cause to believe that the juvenile fled from a lawful investigative detention, and not a consensual encounter.

The Court further held that prior to fleeing, the juvenile had not been detained properly by the officer, and therefore, a reasonable person would have believed he was at liberty “to go about his business rather than complying” with the officer’s instructions. The Court pointed out that the officer had no previous dealings with the juvenile, had not observed any drug-related activity, or received any information regarding drug-related activity. Thus, the only justification for the stop was that the juvenile was in a “known drug area.” Any investigatory stop based on this rationale alone would have been impermissible. As the juvenile was unlawfully arrested for resisting, delaying, and obstructing a public officer, the search incident to arrest resulting in the seizure of the brass knuckles was unlawful as well. Because the only evidence regarding the concealed weapon was provided by the officer’s testimony, a different result would have been reached but for the trial court’s commission of plain error in admitting the testimony. Consequently, the Court found that the order adjudicating the juvenile delinquent for carrying a concealed weapon should be reversed and remanded for further proceedings.

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## In the matter of M.W., 2010 N.C. App. LEXIS 871 (unpublished opinion)

Rule(s): Where the chief court counselor grants the juvenile court counselor a 15day extension to file a petition (pursuant to N.C.G.S. § 7B-1703) and indicates time constraints and high case volume as the reason, this is not an abuse of discretion.

In August 2008, the juvenile was adjudicated of injury to personal property.

The juvenile appealed the adjudication order and the disposition order (entering Level 1 and Level 2 punishments) on the grounds that the court lacked subject matter jurisdiction because the petition was not timely filed. In reviewing the record, the Court of Appeals disagreed, and ruled that the petition was filed timely. The Court of Appeals found that although there was no written order from the chief court counselor granting a 15-day extension pursuant to N.C.G.S. § 7B-1703(b), the court counselor’s computer system indicated that such an extension was granted due to high caseloads. The juvenile further challenged the validity of the extension, arguing that the chief court counselor abused his discretion. As to this argument, the Court of Appeals disagreed, finding that the chief court counselor exercised appropriate discretion and provided a rational reason for granting the extension (i.e., high caseloads). Consequently, the Court of Appeals affirmed the order.

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## In the matter of C.B., 2010 N.C. App. LEXIS 927 (unpublished opinion)

Rule(s):

1. Where the court did not state the standard of proof at the conclusion of adjudication but stated the correct standard in its findings of fact, the trial court did not err.
2. Where the court erroneously marks a box indicating that the juvenile admitted the allegations, but correctly states in its order that the juvenile denied the allegations, the case will be remanded for the limited purpose of correcting the clerical error.

The juvenile was adjudicated delinquent of assault on a government officer/employee.

The juvenile appealed, arguing that the trial court erred by failing to (1) find that the allegations in the petition were proven beyond a reasonable doubt; (2) grant his motion to dismiss; and (3) find that he admitted the allegations in the petition.

As to the first argument, the Court ruled that the trial court found that the juvenile’s description of the events was “incredible” and that the testimony of the teachers was credible. The Court indicated that although the oral statement regarding the allegations in the petition may have omitted the standard of proof, it was written in the findings of fact appropriately and there was never any ambiguity regarding it.

Regarding the juvenile’s second argument that the trial court failed to grant his motion to dismiss, the Court ruled that the State’s evidence indicated that the juvenile pushed the teacher into the frame of a door (after his request to go to the restroom was denied), and therefore, the motion was properly denied.

As to the juvenile’s last argument that the trial court erred in finding that he admitted the allegations in the petition, the Court agreed. The Court found that the trial court made a clerical error in marking the box indicating that the juvenile admitted to allegations in the petition although the court marked otherwise in another section of the order. Consequently, the Court of Appeals remanded the case to correct the clerical order.

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## In the matter of U.V.M., 2009 N.C. App. LEXIS 99 (unpublished opinion)

Rule(s): Where the meaning of the date stamp on a petition is unclear, the court may interpret it as indicating the date on which the juvenile counselor received the complaint.

The juvenile was adjudicated delinquent of communicating threats and injury to personal property. The court continued disposition, and placed the juvenile in secure custody. While the juvenile was in secure custody, a petition was filed alleging that the juvenile was delinquent for committing injury to real property. At the dispositional hearing, the juvenile admitted to the charge of injury to personal property. The court accepted the admission, adjudicated the juvenile delinquent, and entered disposition for the first offense, injury to personal property, and the second alleged offense, injury to real property. The court placed the juvenile on probation.

The juvenile appealed, arguing that the court lacked subject matter jurisdiction to enter adjudication and disposition orders because the petitions were not filed timely. The Court of Appeals agreed, indicating that although there were date stamps on the petitions, there was nothing in the record to indicate what the dates represented or when the complaints were received by the intake counselor. Given the ambiguity of the date stamps, the Court of Appeals determined that the dates the petitions were verified by the investigating officer were the dates the court counselor received the complaints. The Court of Appeals ruled that based on the dates, all three petitions were not filed within the 15 mandated days, and there was no indication that the chief juvenile court counselor granted an extension from the 15-day period to the 30-day maximum.

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## In the matter of D.S., 694 S.E.2d 758, 2010 N.C. LEXIS 434

Rule(s):

1. For purposes of juvenile adjudication, the definition of “complaint” is “a written and sworn document whose primary purpose is to articulate specific allegation(s) of delinquency to the JCC.” P.8.
2. Because the time limit set forth in N.C.G.S. § 7B-1703 (15 days, plus a 15-day extension) is not jurisdictional, courts do no lack jurisdiction over petitions filed after that deadline.

The juvenile was adjudicated of sexual battery and simple assault. On appeal the juvenile argued that (1) the trial court lacked subject matter jurisdiction because the sexual battery petition was not filed timely pursuant to N.C.G.S. § 7B-1703 (i.e., within 15 days after the complaint is received, or within 30 days if the chief court counselor grants an extension within the first 15 day requirement); (2) there was a fatal variance between the acts alleged in the petition and the evidenced presented at the hearing; and (3) the trial court erred in making a finding of fact 3(c) absent supporting evidence at the hearing.

Regarding the first argument, the Court of Appeals agreed with the juvenile, finding that the court counselor failed to act timely when filing the second petition 50 days after the complaint was received. Accordingly, the Court of Appeals vacated the order adjudicating the juvenile delinquent of sexual battery.

Regarding the juvenile’s second argument, the juvenile argued error because the simple assault petition alleged that he touched the victim with his hands, whereas the evidence indicated that he touched the victim with a Pixy Stix. The Court disagreed, and overruled the assignment of error finding that the variance between the petition and the evidence presented at the hearing did not prevent the juvenile from preparing a defense for simple assault.

Regarding the juvenile’s last argument that there was no evidence that he touched the victim, the Court disagreed. The Court found that there was “clear, cogent and convincing evidence to support the findings of fact and conclusions of law by the trial court” that the juvenile assaulted the victim.

In July 2009, the State filed a petition for discretionary review seeking review of whether the Court of Appeals erred by holding (1) that provisions of N.C.G.S. § 7B1703 were prerequisites in juvenile delinquency cases, and (2) that the trial court had no jurisdiction where the complaint alleging sexual battery was received by the Department of Juvenile Justice and Delinquency Prevention one day prior to the filing of the juvenile petition even if N.C.G.S. § 7B-1703 is considered a jurisdictional statute. First, the Supreme Court determined that the juvenile court counselor filed the petition timely because he filed the petition alleging sexual battery after the new complaint of sexual battery was received. The Court held that the meaning “complaint” is a written and sworn document asserting specific allegations of delinquency” and that “when the complaint is received” in N.C.G.S. § 7B-1703 is the “date on which the juvenile court counselor’s office receives a document alleging that a juvenile is delinquent.” The Supreme Court reasoned that the court counselor in his ministerial capacity (i.e. of receiving complaints, performing intake, and determining whether to file petitions considering charges alleged) would not been able to file a petition for sexual battery based upon receiving a complaint for simple assault. The Supreme Court reasoned that the Court of Appeal’s conclusion regarding timeliness was a result of treating the “underlying allegations, rather than the document itself, as the complaint.” Reasoning that the court counselor was only authorized to determine whether the complaint before him should be filed as a petition, diverted, or resolved without further action, the Court held that the court counselor was not required to file a petition alleging sexual battery at the time of filing the petition for simple assault. The Court also noted that the purpose of the Juvenile Code not only provides for cases to be resolved expeditiously, but also provides for protection of the public, deterrence of crime, rehabilitative services, as well as an effective and equitable system. Moreover, the Court also noted that nothing in the provisions indicate a legislative intent to elevate expediency over other specified purposes of the Code. Last, the Court held that the legislature did not intend for the timing requirements of N.C.G.S. § 7B-1703 to be jurisdictional as the statute does not mention jurisdiction or that failure to meet timelines divests the district court of subject matter jurisdiction. The Court compared the timing requirements to those governing abuse, neglect, and dependency cases wherein timing requirements are considered “directory rather than mandatory.” Accordingly, the Supreme Court reversed the decision, and remanded the case to the Court of Appeals to address assignments of error related to the sexual battery adjudication.

Upon remand, the Court of Appeals held that the trial court erroneously failed to grant the juvenile’s motion to dismiss as to the sexual battery charge. Relying on *In re T.S.*, 133 N.C. App. 272, 515 S.E.2d 230 (1999), the Court of Appeals found that there was no proof that the juvenile was acting for a sexual purpose and that the juvenile’s actions without the purpose of sexual arousal, sexual gratification, or sexual abuse failed to constitute sexual battery. Consequently, the Court reversed and remanded for entry of dismissal.

NC Supreme Court: http://appellate.nccourts.org/opinions/?c=1&pdf=MjAxMC8yNzNQQTA5LTEucGR m

NC Court of Appeals:

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## In the matter of K.H., 2009 N.C. App. LEXIS 322 (unpublished opinion)

Rule(s):

1. Where evidence is offered to show duress and is erroneously excluded, the error is not prejudicial if the evidence would not have sufficiently established duress.
2. Under N.C.G.S. § 15-144.2(a), the language of a short-form sex-offense indictment (which alleges a “sexual offense,” but does not use the language of “sexual act”) is sufficient for purposes of a valid petition.

The juvenile was adjudicated of second-degree sexual offense.

The juvenile appealed, arguing: First, that the trial court erred by excluding evidence that may have shown he was under duress due to an alleged violation of the notice requirement of N.C.G.S. § 15A-905(c)(1); and, second, that the court lacked jurisdiction because the petition failed to allege that he engaged in a sexual act.

Regarding the first argument, the juvenile contended that the trial court erroneously believed that the notice requirements of that N.C.G.S. § 15A-905(c) (1) applied to juvenile cases, and therefore, the court’s ruling excluding evidence in support of duress constituted error. The Court of Appeals stipulated that if it assumed that there was error in excluding the evidence, the evidence still would not have supported a finding that the juvenile was not delinquent. Therefore, the Court of Appeals found that it could find no prejudicial error.

Regarding the second argument, the juvenile argued that the petition was fatally defective as it did not allege an essential element of second-degree sexual offense, and that the language of a “short form” sex offense indictment was not valid for delinquency proceedings. The Court of Appeals disagreed, finding that allowing petitions worded in the same manner as short form indictments was consistent with the rule that “juvenile petitions are generally held to the standards of a criminal indictment.”

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## In the matter of M.S., 681 S.E.2d 441, 2009 N.C. App. LEXIS 1364

Rule(s):

1. “[W]hen an indictment is alleged to be facially invalid, thereby depriving the trial court of jurisdiction, the indictment may be challenged at any time.” P.4 (citations omitted).
2. Naming the victim in an indictment of sexual offense is not merely evidentiary. For the indictment to be valid, “there must be some attempt to name the victim.” P.9. Failure to name the victim makes the indictment facially invalid.

Four petitions were filed alleging that the juvenile was delinquent for committing four counts of first-degree sexual offense. The juvenile admitted to two counts of first-degree sexual offense in return for the State’s promise to dismiss the other two counts of sexual offense. After the court accepted the juvenile’s admission, he was adjudicated delinquent of two counts of first-degree sexual offense, and placed on Level 2 probation for 12 months.

The juvenile appealed, arguing that the petitions were fatally defective under N.C.G.S. 15-144.2(b) as they failed to name the alleged victims. The Court of Appeals agreed finding that (1) a challenge to the facial validity of a juvenile petition depriving the court of jurisdiction may be raised at any time including after a transcript of admission has been filed, and therefore review was not waived by the juvenile’s failure to object; (2) the petition’s reference to the victims as “a child” without alleging the victims’ names was fatally defective as for a sexual offense indictment to be legally valid under N.C.G.S. 15-144.2(b), it must contain the victim’s name, identifying initials or some form of the name that can be tested under the Coker and Lowe tests, even if the indictment is in approved short form; and (3) the victim’s name is not merely evidentiary, but critical to avoid double jeopardy and other legal issues. As the petitions in the case were found to be fatally defective, thereby depriving the court of subject matter jurisdiction, the Court of Appeals vacated the trial court’s orders.

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## In the matter of N.S.H., 2009 N.C. App. LEXIS 1858 (unpublished opinion)

Rule(s): The requirement that an admission include a factual basis, N.C.G.S. § 7B2407(c), may be satisfied by a stipulation in the juvenile’s statement of the facts.

The juvenile was adjudicated of disturbing the peace, and disposition was entered requiring him to complete 45 hours of community service.

The juvenile appealed, arguing that the trial court (1) lacked subject matter jurisdiction to adjudicate him due to the juvenile court counselor failing to file the petition timely; (2) erred in permitting Judge Davis (and not the initial judge) to preside over the hearing to determine whether the trial court lacked subject matter jurisdiction; and (3) lacked a factual basis to accept his delinquency admission.

Regarding his first argument, the juvenile specifically reasoned that since there was no evidence that the court counselor received an extension of time to file the juvenile complaint, the trial court lacked subject matter jurisdiction. The Court of Appeals disagreed with the first argument, finding that the record indicated that the court counselor received a timely extension to file the complaint (i.e., an additional 15 days granted by the chief court counselor), and that the complaint was filed as a petition timely thereafter.

The Court of Appeals also disagreed with the juvenile’s second argument that only the initial judge had the authority to hear evidence pertaining to the extension since he (i.e., the initial judge) entered the adjudication order and continued disposition. The Court found that as a final disposition had not been entered by the court, Judge Davis had authority to determine whether the trial court had subject matter jurisdiction at the adjudicatory hearing.

For his third argument, the juvenile contended that the court lacked an adequate factual basis to accept his admission pursuant to N.C.G.S. § 7B-2407 because the deputy provided unsworn testimony as the factual basis for the juvenile’s admission. The Court of Appeals disagreed, finding that the trial court had ample sources to provide the court with an adequate factual basis to accept the juvenile’s admission (e.g., the deputy’s unsworn testimony; stipulation to the deputy’s testimony; the opportunity to cross examine the deputy that was declined by juvenile’s counsel; and the juvenile’s waiver of a formal reading). The Court found that the juvenile’s stipulation complied with N.C.G.S. § 7B-2407 as the court could accept an admission based upon a statement of facts by the juvenile’s attorney.

The Court affirmed the order adjudicating the juvenile delinquent.

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## In the matter of A.W. and K.M., 189 N.C. App. 787, 661 S.E.2d 56, 2008 N.C. App. LEXIS 805 (unpublished opinion)

Rule(s): “A delinquency petition may be amended ‘only if the amended petition does not charge the juvenile with a different offense,’” P.3 (citations omitted), though it may be amended to allege a lesser included offense of the original charge.

The juveniles were adjudicated of petitions alleging injury to personal property. At the adjudicatory hearing, the petitions initially alleged injury to real property, but were amended by the court after a motion from the state.

The juvenile appealed, arguing that trial court erred in allowing the state’s motion to amend the petitions. The Court of Appeals agreed, finding under statutory and case law that a petition may be amended only if it does not charge the juvenile with a different offense, or is not a lesser included offense of the original charge. The Court found that injury to personal property is not a lesser-included offense of injury to real property and therefore the trial court erred in allowing the motion to amend.

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## In the matter of I.P., 2008 N.C. App. LEXIS 1191 (unpublished opinion)

Rule(s):

1. Without valid service of the petition and summons, the trial court may not exercise jurisdiction over a person.” P.3
2. “‘However, a person may submit himself to the jurisdiction of the court, if he makes a general appearance, even if the court has not already obtained jurisdiction over defendant by serving him with process.’” Id.

The juvenile was adjudicated delinquent of simple assault.

The juvenile appealed, first claiming that the juvenile was not properly summoned because the juvenile was only served with one summons for the two petitions filed. The Court of Appeals disagreed, finding that the juvenile’s presence in the courtroom and participation in the proceedings waived any defect in the service. The juvenile also argued that the petition was deficient because it failed to allege essential elements of the offense. The Court described three theories under which the juvenile could be adjudicated of simple assault, and found that the State sufficiently proved every element of simple assault where it is “an overt act showing an intentional offer by force and violence to do injury to another sufficient to put a person of reasonable firmness in apprehension of immediate bodily harm.” http://appellate.nccourts.org/opinions/?c=2&pdf=MjAwOC8wNy0xNDMwLTEucG

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## In the matter of K.W., 191 N.C. App. 812, 664 S.E.2d 66, 2008 N.C. App. LEXIS 1477

Rule(s):

1. Rule eliminating jurisdiction upon failing to meet filing deadlines, overturned by In the Matter of D.S., 694 S.E.2d 758, 2010 N.C. LEXIS 434.
2. “[T]he chief juvenile court counselor is required to provide some indication that he or she properly exercised discretion in extending the fifteen-day period mandated to the thirty-day maximum . . . .”

The juvenile was adjudicated delinquent of two counts of injury to personal property.

The juvenile appealed, arguing that the trial court lacked subject matter jurisdiction because the court counselor failed to file the petitions within fifteen days of receipt, and without an extension from the chief court counselor. The Court of Appeals agreed, finding that the court counselor filed the petitions in sixteen days, and that without any demonstration that the chief court counselor granted an extension, the Court could not presume that the chief court counselor authorized an extension.

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## In the matter of A.M., 2008 N.C. App. LEXIS 1548 (unpublished opinion)

Rule(s): Where the juvenile is adjudicated of a lesser included offense than the allegation as initially charged in the petition, notice is adequate.

The juvenile was alleged to have committed assault with a deadly weapon, “with a 11 inch carving knife, by pointing the knife at her stating she would slit her throat.” At the adjudicatory hearing, several witnesses testified that the juvenile and the alleged victim engaged in fighting, but only the alleged victim testified that the juvenile threatened the alleged victim with a knife. At the close of the evidence, the court adjudicated the juvenile delinquent of simple assault.

The juvenile appealed, arguing that a fatal variance existed in the allegations in the petition and the evidence presented at trial. The Court of Appeals disagreed, finding that the charge of simple assault is a lesser included offense of assault with a deadly weapon, was therefore included in the allegations of the petition, and thus the juvenile was put on notice that a finding of simple assault was a possible result of the adjudicatory hearing.

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## In the matter of T.K., III, 2007 N.C. App. LEXIS 220 (unpublished opinion)

Rule(s):

1. Because the charge of simple assault does not have to include the element of “apprehension of harmful or offensive contact,” but may instead allege “an overt act showing an intentional offer by force and violence to do injury to another sufficient to put a person of reasonable firmness in apprehension of immediate bodily harm,” P.6, a petition alleging for the charge is sufficient where it alleges an assault by wiping feces on the victim’s face.
2. The evidence is sufficient to establish that a juvenile acted in concert with others where the juvenile was asked to watch the assault, stood near the victim, was present at the scene, had previously picked on the victim, testified that he thought it would be amusing to see someone smear feces on the victim, told the camp counselor that he did so himself, and stated in his apology letter, “I'm sorry for doing those horrible things to you.”

The juvenile was adjudicated delinquent of simple assault (wiping feces on the face of a fellow camper who was asleep). The trial court found that the juvenile acted in concert with two other juveniles in the commission of the act.

The juvenile appealed, first arguing that the petition failed to include the element that the victim was “put in apprehension of harmful or offense contact.” The Court of Appeals found that under North Carolina law, the charge of simple assault does not have to include the element of “apprehension of harmful or offensive contact,” but can instead allege “an overt act showing an intentional offer by force and violence to do injury to another sufficient to put a person of reasonable firmness in apprehension of immediate bodily harm.” Therefore, the petition alleging an assault “by inserting [a] finger into [an] anus and wip[ing] feces on [the victim’s] face” sufficiently alleged the charge of simple assault.

The juvenile also argued that the trial court erred by denying his motions to dismiss because the state failed to prove beyond a reasonable doubt that he acted in concert with the other juveniles. The Court of Appeals disagreed, stating that to show concerted action of the commission of crime the state must prove that 1) the juvenile is present at the scene of the crime and 2) the juvenile 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. The Court found that the following evidence sufficient to adjudicate the juvenile of simple assault: (1) one of the other juveniles asked the juvenile to “come and watch” him commit the assault; (2) the juvenile stood four or five feet from the victim; (3) the juvenile was present at the scene of the assault; (4) the juvenile had picked on the victim during the week at camp; (5) the juvenile testified he thought it would be “amusing” to watch one of the juvenile’s smear feces across the victim’s face; (6) when confronted about the incident, all the juveniles stated “we” smeared feces on the victim’s face; and (7) the juvenile stated in his apology letter, “I'm sorry for doing those horrible things to you.”

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## In the matter of B.D.N., 186 N.C. App. 108, 649 S.E.2d 913, 2007 N.C. App. LEXIS 1969

Rule(s):

1. Plain-error analysis applies only to matters related to jury instructions and admissibility of evidence – not where the juvenile may have been charged and convicted under the wrong offense.
2. Where an offense meets the elements of multiple statutes, one of which is defined more broadly than another (e.g., applying to “any building,” rather than only public buildings), the charges do not have to be for the more specific offense.

The juvenile was adjudicated of communicating a false bomb threat. The evidence indicated that at the juvenile’s school, a calculator displaying the words “Bomb at Lunch” was found by another student. The student showed the calculator to the teacher, who reported the incident to school administration. The school was then evacuated. Another student heard the juvenile tell someone that the juvenile “meant it all as a prank, and [the juvenile] didn’t think they’d take it actual [sic] seriously.” Another student testified that the juvenile told a student that the reason the juvenile made the threat was that “it would be fun to get out of school.”

The juvenile appealed, arguing that the state failed to prove the case beyond a reasonable doubt, that the trial court committed plain error by denying the juvenile’s motion to dismiss because the juvenile was improperly petitioned and adjudicated under the statute, and that the trial court lacked subject matter jurisdiction to petition the juvenile.

The Court of Appeals disagreed that the state failed to prove every element of the case. The Court held that based on both the evidence that the juvenile was likely to have used the calculator before the message was discovered, and on the testimony presented against the juvenile, that the state provided substantial evidence of each element of the offense.

As to the juvenile’s second argument, the Court refused to apply the plain error rule and barred the assignment of error.

Lastly, the Court considered the juvenile’s argument that the court lacked subject matter jurisdiction because the juvenile should have been charged under N.C. Gen. Stat 14-69.1(c), not N.C. Gen. Stat 14-69.1(a), because the former statute specifically controls false bomb threats made threatening “any public building.” The Court disagreed, finding that N.C. Gen. Stat 14-69.1(a) controls “any building,” which would include public buildings, and rejected the juvenile’s argument that as between two statutes, the more specific statute should control.

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## In the matter of K.J.H., 2007 N.C. App. LEXIS 2287 (unpublished opinion)

Rule(s):

1. A petition alleging delinquency must “assert[] facts supporting every element of a criminal offense and the juvenile’s commission thereof . . . .” P.3 (quoting N.C.G.S. § 7B-1802 (2005)).
2. Where knowledge that property is stolen is an element of the offense and the petition fails to allege the juvenile’s knowledge to that effect, the petition is fatally defective.

The juvenile was adjudicated delinquent of possession of a stolen motor vehicle and speeding to elude arrest.

The juvenile appealed, arguing that the petitions alleging the offenses failed to allege all of the essential elements of offenses. The Court of Appeals considered each offense, finding that the stolen motor vehicle petition was defective because it failed to allege the element that the juvenile knew or had reason to believe the vehicle was stolen, but that the speeding to elude arrest petition was sufficient to notice the juvenile of the offense.

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## In the matter of B.D.W., 175 N.C. App. 760, 625 S.E.2d 558 (2006), 2006 N.C. App. LEXIS 273 Rule(s):

1. In an indictment, each count must contain every element of the offense, unless incorporated by reference.
2. Where the charge is for second-degree kidnapping, failure to allege the purpose of kidnapping is fatal.

The juvenile was adjudicated delinquent on two counts of second-degree kidnapping, one count of common law robbery, and two counts of simple assault.

The juvenile appealed, arguing that the petitions for the charges of second-degree kidnapping failed to contain all the elements of the crime alleged. The Court of Appeals agreed, finding that the petitions did not allege the purpose for the kidnapping, which is an essential element of second-degree kidnapping. The State argued that the companion petitions alleged the conduct needed to satisfy the elements missing, but the Court of Appeals, after reviewing adult criminal jurisprudence, disagreed, holding that in an indictment, each count must contain every element of the offense, unless incorporated by reference. The Court found the petitions in the instant case did not incorporate the missing element by reference, and remanded the case for adjudication on two counts of false imprisonment. The Court also noted that pending the appeal, the State moved the district court to amend the petitions to include the missing elements, to which the district court complied. The Court found that once the juvenile entered notice of appeal, the district court lacked jurisdiction to amend the petition and therefore nullified the amendment.

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## In the matter of R.P.M., 172 N.C. App. 782, 616 S.E.2d 627 (2005), 2005 N.C. App. LEXIS 1803

Rule(s): Where no evidence shows that the juvenile, “by his conduct made it known to [the] perpetrator that he was standing by to lend assistance when and if it should become necessary,” P.2, the evidence is insufficient to prove that the juvenile aided and abetted others in committing a crime.

The juvenile was adjudicated delinquent of common law robbery and “assault with a deadly weapon with intent to inflict serious injury” based on a theory of aiding and abetting.

The juvenile appealed, arguing that the State failed to prove the elements of aiding and abetting, and that “assault with a deadly weapon with intent to inflict serious injury” was not a crime listed in the North Carolina General Statutes for which the juvenile could be adjudicated. The Court of Appeals agreed, holding that to find a person guilty of aiding and abetting, the State must show that the person made it known to the primary offenders that the person was “standing by to lend assistance when and if it should become necessary.” The Court found that, especially in relation to the common-law robbery charge, the evidence tended to show that the juvenile tried to assist the victim, not those involved in the commission of the crime. The Court also ruled that because the charge of “assault with a deadly weapon with intent to inflict serious injury” does not exist as crime listed in the North Carolina General Statutes, the petition that listed the charge was fatally defective on its face.

## In the matter of D.G.G., 162 N.C. App. 487, 592 S.E.2d 12 (2004), 2004 N.C. App. LEXIS 172

Rule(s): A petition alleging delinquency must “assert[] facts supporting every element of a criminal offense and the juvenile’s commission thereof . . . .” P.8 (quoting N.C.G.S. § 7B-1802 (2003)).

The juvenile was adjudicated of first-degree sex offense. The juvenile petition alleged that the sex offense was perpetrated "by force against the victim's will," per N.C.G.S. §14-27.4(2). However, the state presented no evidence under this theory, instead prosecuting under subsection (1) of §14-27.4, requiring a specific age difference between the parties.

The Court of Appeals vacated the adjudication and disposition, finding that a petition in a juvenile case serves essentially the same function as an indictment in an adult felony case, and therefore must allege every element of the offense the state intends to prove at trial.

## In the matter of D.J.H., 153 N.C. App. 102, 568 S.E.2d 878 (2002), 2002 N.C. App. LEXIS 1086 Rule(s):

1. The time of an assault is not essential to the allegation, and failure to state the exact date is not fatal.
2. A general appearance by a party constitutes a submission to the jurisdiction of the court, waiving improper service.

The juvenile was petitioned for simple assault. The allegations in the petition stated that the offense occurred “between 1 April 2000 and 15 July 2000.” The juvenile was adjudicated of simple assault.

The juvenile appealed, arguing that the petition was fatally defective because it did not allege a specific date for the offense. The Court of Appeals disagreed, holding that the time of the offense was not essential to the assault allegation, and that the juvenile failed to argue that the lack of specificity misled or prejudiced the juvenile. The juvenile’s presence at the hearing and participation in the hearing constituted a waiver of lack of service and jurisdiction.

## In the matter of N.J., 135 N.C. App. 400, 520 S.E.2d 787 (1999), 1999 N.C. App. LEXIS 1158 Rule(s):

1. In order to be constitutional, a petition alleging delinquency “must set forth the alleged misconduct with particularity.” P.4 (citations omitted).
2. This entails “asserting facts supporting every element of a criminal offense and the juvenile’s commission thereof . . . .” P.4 (quoting N.C.G.S. § 7A-560).
3. Where the ages of the juvenile and victim are essential to the offense, failure to state those ages is a fatal defect.

The juvenile was charged with five counts of sexual offenses. The juvenile was adjudicated of four counts of first-degree sex offense and one count of first-degree rape.

The juvenile appealed, arguing that 1) the first four petitions were deficient on their face because they did not allege a crime; 2) the fifth petition was improperly allowed to be amended prior to trial; and 3) the State failed to prove every element of the offense.

The Court of Appeals agreed with the first contention, finding the first four petitions fatally defective by failing to state with particularity the nature of juvenile’s acts as well as allegations regarding the juvenile or alleged victim’s ages.

The Court determined it did not need to rule on the second argument, holding that the State failed to offer evidence of the juvenile’s age, an element necessary to prove the allegation of first-degree rape.

# PROBATION

Rules concerning probation terms and conditions, hearings, and violations.

## In the matter of D.S.B., 2015 N.C. App. LEXIS 165

Rule(s): Despite clerical errors related to terms of probation, adequate notice is provided if the correct term is established elsewhere in the record.

The juvenile was adjudicated delinquent for commission of a class H felony, and received a Level II probationary disposition. After admitting a probation violation, the trial court imposed a Level III disposition, committing the juvenile to a Youth Development Center (YDC).

The juvenile appealed arguing that the trial court “exceeded its statutory authority by ordering a Level Three commitment” because the motion for review alleged that the juvenile had “violated conditions of probation that arose from a minor offense and therefore did not give the juvenile notice that he might receive a Level Three disposition.” The juvenile asserted that in *In re S.B.*, 207 N.C. App. 741, 701 S.E.2d 359 (2010), the Court held that the pleadings in the violation report controlled and limited the potential outcome of the probation proceedings.” In the present case, the Court disagreed finding that although there was an erroneous reference to an earlier term of probation to which the juvenile was subject to a Level II disposition, the record also established that the juvenile court counselor accurately noted in the motion for review the correct expiration date of the juvenile’s probation which was imposed after being adjudicated for a violent or serious offense. Therefore, the Court concluded that the motion for review provided adequate notice that he was alleged to have violated the conditions of the only term of probation to which he was then subject. Moreover, the Court determined that even if the motion for review failed to provide the juvenile with the notice that he could receive a Level III disposition for the probation violations, the record and transcript of the hearing established that the he had actual notice of his legal status because counsel acknowledged that “YDC was on the table” and did not object when the trial court expressly confirmed that he was on probation for commission of a Class H felony. The juvenile also contended that he was “prejudiced by the inadequacy of the motion because he did not have notice that he might be subject to a level three disposition when he made the decision to stipulate to several of the violations. Again, the Court disagreed, holding that the violations, which appeared to involve straightforward issues of fact, would not have been difficult to establish in the absence of a stipulation. Accordingly, trial court’s order was affirmed.

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## In the matter of Z.T.W., 2014 N.C. App. LEXIS 1408

Rule(s): (1) Probation may be revoked solely on the basis of hearsay.

(2) Trial court has the authority to hold a juvenile in secure custody pending placement if adjudicated delinquent

Trial court entered a supplemental order providing that juvenile should be placed out of his home and that, pending placement, the juvenile should be held in secure custody. The juvenile appealed contending that the trial court erred by finding that he had violated his probation based solely on hearsay evidence. In view of the fact that the Supreme Court has clearly held that an adult offender’s probation may be revoked solely on the basis of hearsay, the Court of Appeals did not take up the juvenile’s suggestion that they make an analysis of the extent to which the manner in which the juvenile’s revocation hearing adequately protected his procedural rights. As a result, Juvenile is not entitled to relief from the trial court’s orders on the basis of this contention.

Next the juvenile asserted that the trial court erred by finding that he willfully violated the terms and conditions of his probation without accounting for the fact that the Juvenile has a federally recognized disability. In addition, juvenile argued that the trial court erred by revoking his probation given that the record contained evidence tending to show that any violation of his probation that he might have committed was not a willful one. In order for the trial court to revoke a juvenile’s probation all that is required is that there be competent evidence reasonably sufficient to satisfy the judge that the juvenile had, without lawful excuse, willfully violated a valid condition of probation. The Court found that at the probation hearing, the State clearly met its burden of establishing that the juvenile violated the terms and conditions of the probationary judgment. Further the Court held that even if the alleged violations weren’t willful, that fact would have no bearing on the juvenile’s unexcused absences, another condition of his probation, as the trial court could have readily found the juvenile’s justification for the absences to be inadequate. Accordingly, the Court determined that the trial court did not err by entering a new dispositional order providing for the juvenile’s placement in an outof-home setting even if the fact that the juvenile had an IEP somehow operated to render his conduct in communicating threats something other than willful.

In his final challenge the juvenile argued that the facts did not warrant secure custody. N.C.G.S. 7B-1903 (c) provides that a juvenile is allowed “to be held in secure custody pending disposition or placement in the event that the juvenile had been adjudicated delinquent.” Consequently, in light of the juvenile’s adjudication, the Court found that the trial court clearly had the authority to hold the juvenile in secure custody pending placement. As a result, the Court found that the juvenile wasn’t entitled to relief from the trial court’s secure custody order.

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## In the matter of R.C., 671 S.E.2d 378, 2008 N.C. App. LEXIS 2136 (unpublished opinion)

Rule(s): In light of the informality of juvenile probation-violation hearings, the trial court may “effectively” deny a motion to dismiss, without ruling on it, by informing the juvenile that it will hear her evidence.

The juvenile was placed in a wilderness program for an additional six months after violating conditions of probation associated with an adjudication for breaking and entering and unauthorized use of a motor vehicle. Before the six months ended, the juvenile’s court counselor filed a motion for review requesting that the juvenile’s probation be extended for another six months so that the juvenile could complete the program.

The juvenile appealed, arguing that the trial court erred when it failed to rule on his motion to dismiss at the close of the State’s evidence at the probation violation hearing. The Court of Appeals disagreed, ruling that dispositional hearings “may be informal,” and although the best practice would have been for the court to deny the motion specifically, the trial court did so effectively by informing the juvenile that the court would hear his evidence. Also, as the court had discretion to extend the juvenile’s probation for an additional year, and the juvenile failed to show any prejudicial error as a result of the extension, the Court of Appeals found there was no abuse of discretion.

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## In the matter of D.J.M., 181 N.C. App. 126, 638 S.E.2d 610, (2007), 2007 N.C. App. LEXIS 68

Rule(s): The inquiries required under N.C.G.S. § 7B-2407 apply only to admissions of committing substantive offenses – not admissions to probation violations.

The juvenile admitted to a violation of probation.

The juvenile appealed, arguing that the trial court failed to make specific inquiries required under N.C.G.S. § 7B-2407 (pertaining to when admissions to criminal conduct may be accepted) to ensure that the juvenile’s admission was knowing and voluntary. The Court of Appeals disagreed, finding that the statute only applies to admissions of committing criminal offenses, not admissions to probation violations.

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## In the matter of T.J., 146 N.C. App. 605, 553 S.E.2d 418 (2001), 2001 N.C. App. LEXIS 980

Rule(s): “The trial court has “limited discretion . . . to modify probation within a reasonable time after its expiration. The determination of what amount of time is reasonable should be made in light of the time necessary to schedule a hearing on a juvenile’s probation and the time needed by the juvenile and the State to prepare for such a hearing.” P.5.

The juvenile was adjudicated delinquent of possession of stolen property. The juvenile was placed on probation on February 2, 1999 for one year. On January 21, 2000, the juvenile’s court counselor filed a motion for review alleging that the juvenile violated the terms of his probation. At the probation violation hearing held on February 14, 2000, the juvenile admitted to violating probation and was extended on probation for six months.

The juvenile appealed, arguing that the trial court did not have the authority to extend the juvenile’s probation because the probation violation hearing occurred after the expiration of the original term of his probation. The Court of Appeals disagreed, finding under N.C.G.S. §7B-2510(c) that the court may review probation “at any time during the period of probation or at the end of probation.” The Court compared the language of the Juvenile Code to the corresponding adult criminal statute, and held that the adult statute specifically prohibited modifying or extending probation prior to the expiration or termination of the probationary period.

## In the Matter of: H.D.H., \_\_\_\_ N.C. \_\_\_\_, No. COA19-490 (January 21, 2020)

Rule(s): When the court enters an order extending juvenile probation under NCGS 7B-2510(c), the court must make written findings of fact supporting the decision to extend probation.

The juvenile was adjudicated undisciplined and later found to have “violated a contempt warning” by failing to abide by the protective supervision order. The juvenile admitted to indirect contempt and was placed on probation as a delinquent juvenile. A motion for review was filed against the juvenile, not alleging any violation, but requesting the court to extend probation to allow for further supervision. The juvenile asked for supervision to be terminated, but the court extended probation, without including written findings or conclusions. The juvenile appealed, arguing that NCGS 7B-2510(c) requires the trial court to make written findings.

The court considered the statute and noted that it requires the court to find that probation extension is necessary either to protect the community or safeguard the welfare of the juvenile. The court then noted that the problem may have arisen due to the use of an outdated form which didn’t provide for a probation extension. A review of the current form revealed that space was provided on the form to make findings. As a result the court determined that the statute requires the trial court to make written findings to support extension of probation. Because there was information provided to the court which would support findings of extension, but the court did not make findings, the case was reversed and remanded for entry of a new order.

<http://appellate.nccourts.org/opinions/?c=2&pdf=38699>

# RAISE THE AGE

Rules concerning age of jurisdiction and the Juvenile Justice Reinvestment Act.

## [State v. Garrett](https://appellate.nccourts.org/opinions/?c=2&pdf=39547), 2021-NCCOA-591 (November 2,2021)

Rule(s): Prosecution of a 16 or 17 year old as an adult, if charged as such before the effective date of the Juvenile Justice Reinvestment Act, but prosecuted after its effective date, does not violate constitutional rights to equal protection, due process, or protection from cruel and unusual punishment

Summary: Defendant was charged on October 24, 2016, in Mecklenburg County Superior Court as an adult pursuant to the then-effective version of GS §7B-1604(a) with two class H felonies. At the time of the offense, the Defendant was sixteen years old. The Juvenile Justice Reinvestment Act (“JJRA”) was passed by the General Assembly in 2017, which raised the age of juvenile jurisdiction to include 16- and 17-year-old children. The JJRA became effective on December 1, 2019 and does not apply retroactively. Had the Defendant’s date of offense been after December 1, 2019, the matters would have been within the jurisdiction of the Juvenile Court with a discretionary process as to whether the matters would be transferred to Superior Court for sentencing as an adult. This matter was set for trial in late 2017. At trial, Defendant submitted a motion to dismiss alleging violations of his constitutional rights to equal protection, due process, and protection from cruel and unusual punishment under the US and NC constitutions as a result of being prosecuted as an adult in Superior Court. The trial court granted Defendant’s motion to dismiss and included 32 “findings of fact” and 10 “conclusions of law” in its written order. The State appealed the decision.

The Court of Appeals addressed each basis of the motion to dismiss individually. It held that “treating the same group of people differently at different times” did not constitute an equal protection violation, and no other classification was created between different groups of people. In regards to the cruel and unusual punishment argument, the court held that the Eighth Amendment does not apply in this situation because “the prosecution of juveniles as adults does not involve the substance of what is made criminal, and instead involves the procedure taken regarding a criminal offense alleged against juveniles,” and that the Defendant’s “prosecution as an adult does not criminalize a status, but instead punishes criminal behavior by juveniles according to the procedures in place at the time of the offense.” Finally, in addressing the right to due process, the Court began with a holding that the right to be tried as a juvenile in criminal cases is neither a fundamental right nor a is there a protected interest in it. The court distinguished between the statutory due process issue in *Kent v. United States*, 383 U.S. at 544, and the constitutional due process issue presented in this case. Thus, applying a “rational basis” standard, the Court found that the State “has a legitimate interest in promoting the permanency of a sentence” as well as “updating statues to reflect changing ideal of fairness,” and that no due process violation had occurred.

Outcome: Reversal of trial court’s dismissal and Remanded to trial court

<https://appellate.nccourts.org/opinions/?c=2&pdf=39547>

# RESTITUTION

Rules concerning criteria for restitution orders, including amounts and requisite findings of fact.

## In the matter of J.L.A.I., 2016 N.C. App. Lexis 266 (unpublished opinion)

Rule(s): The State may not introduce evidence after trial as a basis for a juvenile’s adjudication.

The State filed a petition, alleging that the juvenile committed the offense of injury to personal property in excess of $200. The juvenile was adjudicated delinquent and placed on probation for six months, received a curfew, ordered to perform community service and required the juvenile to pay restitution of an amount determined by the district attorney’s office.

The juvenile appealed first arguing that the State failed to present sufficient evidence of all the elements of injury to personal property. Specifically, he asserted that there was insufficient evidence to prove that: (1) the juvenile’s conduct was “willful and wanton,” and (2) the damage done to the victim’s property was in excess of $200.00.

The Court determined that the victim’s testimony, when considered in the light most favorable to the State, provided evidence to support the “willful and wanton” element of injury to personal property. However, the Court concluded that the State failed to present sufficient evidence that the damage done to the victim’s property exceed $200.00. According to the victim’s testimony, he took photographs of the damaged property, which were entered into evidence at trial. However, when the State asked the victim: “[D]o you know how much damage was caused to the scooter?” The victim responded “I don’t know, because I don’t know the prices of nothing on the scooter.” The State presented no additional evidence concerning the amount of damage to the scooter, or the estimated cost of repairs at the hearing. While the State argued that a letter it obtained after the hearing that indicated that the victim was charged $300.00 for repairs, constituted “substantial evidence in the record to determine that the damage to the victim’s property [was greater than] $200.00,” the Court found that evidence that was not presented at the hearing cannot constitute a basis for the juvenile’s adjudication. Therefore, the Court concluded that the State presented insufficient evidence to prove the scooter was damaged in excess of $200.00 pursuant to N.C.G.S. § 14-160(b). Further, the Court found that because the State failed to establish the damage amount, the juvenile should have been adjudicated delinquent pursuant to subsection 14-160(a), which requires only that one “wantonly and willfully injure the personal property of another.”

Next, the juvenile argued that he does not currently owe restitution. In the disposition order, the trial court ordered the juvenile to “pay restitution in the amount to be determined by the district attorney’s office. If the restitution is not determined within thirty days of this disposition, then no restitution is owed.” The Court found that there was no record of evidence that the District Attorney’s office determined the amount of restitution owed within thirty days of the date of the disposition order. Further, there was nothing in the record to indicate that the District Attorney’s office made any independent determination concerning the proper amount of restitution. Because of the foregoing, according to the disposition order, “no restitution is owed.”

Accordingly, the Court reversed the trial court’s adjudication order and remanded for imposition of a proper adjudication and disposition.

## In the matter of T.H. & A.M., 2015 N.C. App. LEXIS 599 (unpublished opinion)

Rule(s): Dispositional orders requiring restitution must include findings of fact demonstrating that the best interests of the juvenile are being served. Two juveniles (T.H. & A.M. are brothers) were adjudicated delinquent for committing larceny from a person and placed on probation for twelve months. The juveniles were also ordered to pay restitution in the amount of $70.00, jointly and severally.

The juveniles appealed first arguing that they received ineffective assistance of counsel (IAC) when their trial counsel was under an actual conflict of interest that adversely affected his performance. Specifically, T.H. asserted that “it should have been intuitively obvious to the judge that the potential for conflicts of interest would exist where one attorney represented two juveniles in a contested delinquency case” and the trial court should have conducted an inquiry because there was no record of evidence that he waived any potential conflicts, a reversal was warranted. Further, T.H. contended that his counsel was under an actual conflict of interest because he and A.M. had different, conflicting defenses.

In *State v. Wise*, the Court states that “unless the circumstances indicated otherwise, the state trial courts may assume either that multiple representation entails no conflict or that the lawyer and his clients knowingly accept such risk of conflict may exist.” Therefore, the Court found that the trial court was not on notice that the joint representation created a potential conflict and was not required to initiate an inquiry or act.

The Court also rejected T.H*.*’s argument that their counsel performed under an actual conflict because he and A.M. had conflicting defenses. The record showed that neither T.H. nor A.M. testified at their adjudication hearing. Thus, the juveniles’ counsel was not in a position where one client’s testimony was to the benefit or detriment to the other.

Next, A.M. that acting under a conflict, his counsel was unable to argue that there was no evidence that A.M.’s actions had the “intent to permanently deprive the owner of the property,” an essential element of larceny from the person. In *In re D.K.* the Court determined that “the intent to permanently deprive an owner of his property could be inferred where there was no evidence that the defendant ever intended to return the property, but instead showed a complete lack of concern as to whether the owner ever recovered the property.” In the present case, the Court found that the evidence sufficiently demonstrated that A.M. had a complete lack of concern and total indifference as to whether the victim recovered his property. Moreover, the Court concluded that A.M.’s argument was predicated on a misinterpretation of the law as the record did not show that an actual conflict of interest adversely affected the juveniles’ counsel’s performance.

The juveniles then asserted that they received IAC when their counsel failed to make a motion to dismiss at the conclusion of the evidence. The juveniles argue that there was insufficient evidence that they had the intent to permanently deprive the victim of his property.

“Where the juvenile moves to dismiss, the trial court must determine whether there is substantial evidence (1) of each essential element of the offense charged, . . . and (2) of [juvenile’s] being the perpetrator of such offense.” *State v. Heil*, 145 N.C. App. 24, 28, 550 S.E.2d 815, 819 (2001). Here, the juveniles both argue that there was insufficient evidence to support element (5). The Court disagreed finding that the evidence was sufficient to withstand a motion to dismiss. Therefore, even assuming arguendo that juveniles’ counsel erred by failing to make a motion to dismiss at the close of all the evidence, the Court concluded that the juveniles failed to establish that but for their counsel’s error, the result of their proceeding would have been different.

Finally, the juveniles contend that the trial court abused its discretion in ordering that the juveniles be jointly and severally liable for restitution in the amount of $70.00. The State conceded that there was no evidence in the record to support the trial court’s order. Further, the Court stated that the “trial court failed to make any findings of fact demonstrating that the best interest of the juveniles would be promoted by requiring them to pay restitution” as the Court decided in *In re Heil*.

Accordingly, the trial court’s orders were affirmed in part and vacated and remanded in part. http://appellate.nccourts.org/opinions/?c=2&pdf=32575

## In the matter of D.M.B., 676 S.E.2d 66, 2009 N.C. App. LEXIS 524

Rule(s):

1. N.C.G.S. § 15A-1222 does not apply when the judge’s comments are not made in the presence of the jury.
2. Review for plain error is reserved for jury instructions and admissibility of evidence, but not sufficiency of evidence.
3. “[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.” P.5 (citations omitted).

The juvenile was adjudicated of assault causing serious bodily injury after he admitted to hitting another juvenile, and causing two broken jaws and a facial fracture. The juvenile was ordered to pay $1000 in restitution, to serve 72 hours of community services, to serve 12 hours of supervised probation, and to not associate with the victim or witnesses.

The juvenile appealed, arguing that (1) the trial court was not fair and impartial as it made improper comments during the disposition; (2) the trial court should have dismissed the charge because there was not sufficient evidence of serious bodily injury; and (3) the trial committed reversible error when it failed to make findings of fact to support the restitution order. The Court of Appeals disagreed with the first two assignments of error.

As to the juvenile’s first argument, the Court relied upon N.C.G.S. § 15A-1222, which prohibits a trial judge from expressing any opinion on a question of fact to be decided by the jury. However, in this case, the Court pointed out that there was no jury. The Court also noted that if it reviewed the judge’s comments (explaining that he was required to enter a Level One or Two disposition despite an inclination to enter a harsher disposition) using a totality of the circumstances test, there was no indication that the judge was not impartial.

As to the juvenile’s second argument, the Court noted that the issue of sufficiency of evidence was not preserved for review, and that there was no basis for the case to be reviewed under the plain error doctrine.

Lastly, regarding the juvenile’s last argument, the Court agreed with the juvenile’s assignment of error, holding that requiring a juvenile to pay 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” (quoting *In re Berry*, 33 N.C. App. 356, 360, 235 S.E.2d 278, 280-281 (1977)). Accordingly, the Court remanded the case to the lower court for further action.

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## In the matter of A.C., 2008 N.C. App. LEXIS 1844 (unpublished opinion)

Rule(s):

1. When the court seeks the court counselor’s input regarding intermittent confinement, it does not have to specify a location for commitment or instruct the counselor on what should be considered.
2. Intermittent confinement may possibly be distinguished from placement in a residential treatment facility (pursuant to N.C.G.S. § 7B-2506(14)). The court may seek greater input from the court counselor regarding intermittent confinement than regarding placement in a residential treatment facility.
3. A trial court may defer to the court counselor’s opinion, so long as the court maintains authority by requiring that the counselor’s recommendation be approved by the court.
4. A court’s order that a juvenile not associate with “persons deemed to be a negative influence by parent” is specific enough to be enforced.
5. In determining whether to require restitution as a condition of probation, the court must consider the juvenile’s best interests and the ability to pay.

The juvenile was adjudicated delinquent of larceny and possession of stolen goods after the evidence at trial indicated that the juvenile was found to be in possession of a stolen cell phone.

The juvenile appealed, arguing that the court erred in denying his motion to dismiss because there was insufficient evidence to prove beyond a reasonable doubt that he had possession of the cell phone. The Court of Appeals disagreed, and found that pursuant to the doctrine of possession of recently stolen property, the evidence established that the cell phone was stolen, in the juvenile’s custody and control to the exclusion of others, and that the juvenile possessed the cell phone recently after the larceny.

Additionally, the juvenile argued that the court improperly delegated its authority in proceeding to disposition without the required risk and needs assessments. The Court of Appeals disagreed, and found that the record indicated that the assessments were completed and considered by the court.

Moreover, the juvenile argued that certain conditions of his probation were vague and burdensome. The first condition required intermittent confinement if deemed necessary by the court counselor and approved by the Court. Although the juvenile argued that the condition was not specific as to provide a situation or methodology for determining when intermittent confinement would be necessary, the Court of Appeals disagreed, and found that the requirements of N.C.G.S. §7B2506 (20) were satisfied. N.C.G.S. §7B-2506 (20) provides that the trial court may "[o]rder that the juvenile be confined in an approved juvenile detention facility for a term of up to 14 24-hour periods . . . . The timing of this confinement shall be determined by the court in its discretion."

Furthermore, the juvenile argued that the condition of probation was an improper delegation of the court’s authority. The Court of Appeals disagreed, and found that the court maintained its authority by requiring that the court approve the court counselor’s recommendation of intermittent confinement.

As to the juvenile’s argument that the order requiring that he perform community service was not specific, the Court of Appeals agreed as N.C.G.S. §7B2506 (23) requires that the nature of the work be specified. Consequently, the Court of Appeals remanded for a specific order regarding the nature of the community service.

Regarding the argument that the requirement, that he not associate with persons deemed to be a negative influence by a parent or court counselor, was not specific enough to be enforced, the Court of Appeals disagreed, and overruled this assignment of error.

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## In the matter of R.M., 138 N.C. App. 143, 530 S.E.2d 334 (2000), 2000 N.C. App.

LEXIS 550

Rule(s):

1. “[C]ompensation of victims should never become the only or paramount concern in the administration of juvenile justice.” P.4 (internal quotations and citations omitted).
2. Evidence as to the ability to make restitution includes the juvenile’s age, indigence, and representation by appointed counsel, as well as the amount of restitution.
3. “N.C.G.S. § 7A-649(2) does not authorize the juvenile court to consider the parents’ ability to make restitution when ordering juveniles to make restitution . . . as a condition of probation.” P.1.

The juveniles were adjudicated delinquent of injury to personal property. As part of disposition, the trial court ordered each juvenile to pay $539.50 in restitution to the victim.

The juveniles appealed, arguing that 1) the court did not consider their best interests and needs in determining the restitution, that 2) the court did not consider whether or not the juveniles had the means to make restitution and could reasonably acquire the means to do so, and 3) the court should not consider whether or not the parents had the ability to pay the restitution. The Court of Appeals agreed, finding that based on the pertinent statute and prior case law, the trial court erred in not considering the juveniles’ best interest or their ability to pay restitution. The Court also found that the statutes do not provide the court with the authority to inquire as to whether the parents have the ability to pay the juveniles’ restitution.

# REVOCATION OF POST-RELEASE SUPERVISION

Rules concerning standards for findings and legal conclusions in orders for revocation of post-release supervision.

## In the matter of D.M., 192 N.C. App. 729, 666 S.E.2d 501, 2008 N.C. App. LEXIS 1665 (unpublished opinion)

Rule(s): Revocation of a juvenile’s post-release supervision does not need to include the same findings and conclusions required of a dispositional order pursuant to N.C.G.S. § 7B-2512

The juvenile was found to be in violation of the conditions of the juvenile’s post-release supervision. The court made findings that the juvenile consistently violated the rules of his group home placement, and revoked the juvenile’s postrelease supervision.

The juvenile appealed, arguing that the trial court made insufficient findings of fact to support his recommitment to the YDC. The Court of Appeals disagreed and pointed to N.C.G.S. § 7B-2516 (b) and (c), which indicate that if the court determines by greater weight of the evidence that the juvenile violated the terms of his postrelease supervision, the court may revoke the supervision and return the juvenile to the YDC for an indefinite term of at least 90 days. The court indicated that N.C.G.S. §7B-2516 (b) and (c) were interpreted in 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 held that the trial court was required only to find that the juvenile violated the terms of post-release supervision. The Court of Appeals found that the findings were sufficient to support the trial court’s revocation of post-release supervision, and that once post-release supervision was revoked, return to the YDC was mandated by law.

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# SEARCH AND SEIZURE

Rules concerning definitions of, and justifications for, searches and seizures.

## In the matter of V.C.R., 2013 N.C. App. LEXIS 484

Rule(s): A search incident to arrest must accompany an actual arrest (i.e., supported by probable cause), and not a non-arrest seizure.

A petition was initially filed charging the juvenile with simple possession. In June 2010, an officer with the Raleigh Police Department approached a group of juveniles. The officer observed *V.C.R.* smoking a cigarette. He asked the juvenile her age and she responded that she was 15 years old. The officer then confiscated the cigarettes. As the officer departed, he heard someone shout obscenities. In response, the officer returned to the group of juveniles. He ordered all of the juveniles to leave except *V.C.R.* He then asked the juvenile for identification. At one point during their conversation, the officer observed what appeared to be a round bulge in the juvenile’s right front pocket. The officer instructed the juvenile to empty her pockets; revealing a bag of marijuana.

Prior to the adjudicatory hearing the juvenile filed a motion to suppress. Following the hearing, after considering the testimony from the juvenile and the officer, the trial court denied the motion to suppress and entered a dispositional order placing the juvenile on probation for six months and imposing five 24-hour periods of intermittent confinement in a delinquency facility.

The juvenile appealed and in an unpublished opinion, the Court remanded the case to the lower court so that appropriate findings of fact and conclusions of law could be entered. On remand, the trial court again denied the juvenile’s motion to suppress.

Juvenile now appeals from the denial of that motion, as well as the resulting dispositional and adjudication orders arguing that the marijuana seizure was the product of two encounters, both of which were illegal. The Court found that the officer had reasonable suspicion to approach the juvenile on both occasions. During the second encounter, however, the Court concluded that when the officer directed the juvenile’s companions to leave and began questioning her, the juvenile was seized and was not free to leave nor would any reasonable person feel differently. However, the seizure did not authorize a search of the juvenile as the officer was not threatened by her behavior. Thus, when the officer ordered the juvenile to empty her pockets, he conducted a search for which probable cause was lacking. Further, the Court stated that a search incident to arrest must accompany an actual arrest. In the present case, the officer was neither taking the juvenile into custody nor effecting an arrest. Accordingly, the order of the trial court denying the juvenile’s motion to suppress is reversed.

Concurrence: In a separate concurrence, one judge questioned the constitutionality of the officer’s second investigatory stop holding that the officer certainly would have been entitled to conduct an investigatory stop of the juvenile if he had suspected she was engaged in disorderly conduct under N.C.G.S. § 14288.4(a)(2). However, after reviewing of record the judge disagreed with the majority determining that the officer’s articulable suspicion for stopping the juvenile for disorderly conduct was unsupported by the findings of fact or the evidence before the court. In the absence of this evidence, nothing remains to support Juvenile’s adjudication. Accordingly, the judge would have also vacated the trial court’s orders adjudicating the juvenile delinquent and the entering of a level 1 disposition.

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## In the Matter of T.A.S., 2011 N.C. App. LEXIS 1472

Rule(s):

1. “Where the blanket search of [an] entire school lacked any individualized suspicion as to which students were responsible for [an] alleged infraction or any particularized reason to believe the contraband sought present[s] an imminent threat to school safety, the search of [a juvenile’s] bra [is] constitutionally unreasonable.”
2. A bra lift is a “quantum leap from outer clothes and backpacks.” P.15 (citations/quotation marks omitted).
3. “[A]ny differences in the level of exposure from one strip search toanother are not of kind, but degree.” P.15. A bra lift is thus of the same nature as any strip search.

A school-wide student search at an alternative school was conducted after a principal was informed by other students that pills that “would cause kids to be unsafe” were coming into the school in hidden places such as students’ shoe tongues, socks, bras, and underwear. Although there was no indication of the type of pills or to which students were bringing into the schools, all of the students were searched by a staff member in the presence of the school principal, school administrators, a school resource, and a male law enforcement officer. Following the search, the juvenile was adjudicated of possession of a Schedule II substance and drug paraphernalia after being searched beneath her outer clothing and being required to do a bra lift (i.e., pulled shirt out, shook it, and went underneath the middle of her bra with her thumb to pull it out) by school administrators. Following the trial court’s ruling, the juvenile admitted to the offenses while preserving her right to appeal the motion to dismiss.

The juvenile argued that the intrusive nature of the search conducted by the school violated her Fourth Amendment rights. The Court of Appeals agreed, holding that “[w]here the blanket search of the entire school lacked any individualized suspicion as to which students were responsible for the alleged infraction or any particularized reason to believe the contraband sought presented an imminent threat to school safety, the search of *T.A.S.*’s bra was constitutionally unreasonable.” On making its ruling, the Court looked to the two-prong inquiry from *New Jersey v. T.L.O.*, 469 U.S. 325, 341, 83 L. Ed. 2d 720, 734 (1985), which held that the student search is governed by a standard of reasonableness under a two-part inquiry: “(1) was the action ‘justified at its inception’ and (2) was the search, as actually conducted. . . reasonably related in scope to the circumstances which justified the interference in the first place.” The Court noted that while some aspects of the search may have been reasonable based upon information that pills were coming into the school and the method by which they were coming into the school, the search of the juvenile’s bra, without an individualized basis for believing that she had the pills on her person, was intrusive. Generalized suspicion for such an intimate search was no longer sufficient to justify the heightened intrusion, therefore making the search unreasonable.

The Court also noted that in *Redding*, U.S. , , 174, L.Ed. 2d 354, 365 (2009), the Supreme Court set forth a new standard for strip searches to be considered reasonable. The standard required the reasonable suspicion of danger or the use of underwear to hide evidence of wrongdoing before progressing to a more intimate search of outer clothing. In this case, there was no reasonable suspicion of danger as there was no specific ground to believe the pills were dangerous, illegal, or in violation of school policy other than the vague notion that they “would cause kids to be unsafe.” Furthermore, the Court also questioned the veracity of the information provided by the student informants that pills were coming into the school as the record did not identify whom the informants were or that the school officials took any measures to assess the reliability of the information prior to the school-wide search, requiring strip searches of female students in the presence of officials of the opposite sex. Although neither *T.L.O.* nor Redding had addressed whether strip searches could be justified in the absence of individualized suspicion of the student subjected to the search, the Court held that for any search that goes beyond a student’s outer clothing at the very least, school officials must suspect the particular student to be offending a school rule. Accordingly, the Court reversed the trial court’s order denying the juvenile’s motion to suppress. Note: The Court noted that school resource officers are law enforcement officers first (as opposed to school administrators).

Concurrence: There was one concurrence that noted that the NC Constitution provides greater protection for individual state basic rights, including protection against warrantless searches “by any officer or other person such as school boards.”

Dissent: There was one dissent in the case, holding that the trial court did not err in denying the juvenile’s motion to suppress. The grounds for the dissent were that the juvenile’s attendance at an alternative school led to a diminished privacy interest, the juvenile was only subject to a minimal intrusion during the search, the governmental concern in conducting the search was significant and immediate, and the search effectively addressed the government’s concern regarding pills coming into the school.

The Supreme Court’s decision vacated the Court of Appeals’ opinion and remanded to the trial court to make additional findings of fact, including but not necessarily limited to: the names, occupations, genders, and involvement of all the individuals physically present at the “bra lift” search of T.A.S.; whether T.A.S. was advised before the search of the Academy’s “no penalty” policy; and whether the “bra lift” search of T.A.S. qualified as a “more intrusive” search under the Academy’s Safe School Plan.

Order:

http://appellate.nccourts.org/opinions/?c=1&pdf=MjAxMi8zMzJBMTEtMS5wZGY N.C.C.O.A. opinion:

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## In the matter of D.B., 2011 N.C. App. LEXIS 1745

Rule(s):

1. “[A]n indictment for larceny must allege the owner or person in lawful possession of the stolen property. If the entity named in the indictment is not a person, it must be alleged that the victim was a legal entity capable of owning property.” P.6 (citations omitted).
2. Searching a person for identification exceeds the scope of a Terry frisk, which may be used only to determine whether someone is armed.
3. Where the sole evidence of possession of stolen property is the result of an unlawful search or seizure, denying the juvenile’s motion to dismiss is reversible error.

The juvenile was adjudicated of felony breaking and entering, felony larceny pursuant to breaking and entering, and misdemeanor possession of stolen goods, and the court entered a Level 2 disposition.

The juvenile appealed, arguing that (1) the petition was fatally defective because it did not contain an allegation that the alleged victim, a corporation, was a legal entity capable of owning property; (2) the trial court erred by admitting evidence of a stolen bank card obtained by an officer in a search for identification that unlawfully exceeded the scope of a Terry frisk; and (3) the adjudication order contained clerical errors.

As to the juvenile’s first argument, the Court of Appeals held that because the victim was a corporation, the petition must have alleged that the victim was a legal entity capable of owning property to avoid being fatally defective. As the petition failed to do so, the Court vacated the adjudication and disposition for the felony larceny pursuant to breaking and entering charge.

Regarding the juvenile’s next argument, the Court of Appeals agreed that the search exceeded the scope of a Terry frisk, and was therefore unconstitutional. The Court held that a Terry frisk may only be used to determine whether a suspect is armed and thereafter, to confiscate contraband that is immediately identifiable during the frisk. As the juvenile was searched for an identification card, and not a weapon, the search exceeded the scope of a Terry frisk. Moreover, the error was not harmless beyond a reasonable doubt. Accordingly, the Court reversed the misdemeanor possession of stolen property offense.

The juvenile’s last argument was that the adjudication order contained clerical errors because one of the findings incorrectly indicated that the juvenile admitted to the alleged offenses and a conclusion of law indicated that the juvenile committed a serious offense. The Court of Appeals agreed that the finding on the adjudication order indicating that the juvenile admitted the alleged offenses was a clerical error. However, it found that the argument regarding the classification of the offense was without merit as the juvenile committed a Class H felony, breaking and entering.

Accordingly, the Court remanded the case for correction of the adjudication order. http://appellate.nccourts.org/opinions/?c=2&pdf=MjAxMS8xMC0xNDc2LTEucGR m

## In the matter of J.M., 2011 N.C. App. LEXIS 2064 (unpublished opinion)

Rule(s):

1. Because interrupting the discharge of an official duty is an element of delaying or obstructing an officer (as prohibited by N.C.G.S. § 14-223), a petition for such “must . . . indicate the official duty being discharged . . . . [T]he particular duty that the officer is performing while being resisted is of paramount importance and is very material to the preparation of the defendant’s defense.” P.6–7 (citations omitted).
2. Where an officer conducts a search incident to arrest and the arrest is unlawful, the search is also unlawful. Evidence from such a search is excluded.

The juvenile was adjudicated delinquent of resisting, delaying, and obstructing a public officer and carrying a concealed weapon, and placed on a Level 2 disposition with continued probation.

The juvenile appealed, arguing that the trial court erred by (1) finding that he was responsible for resisting, delaying, and obstructing a public officer because the juvenile petition alleging such was fatally defective and that the evidence did not support the court’s determination that he committed the offense and (2) admitting testimony that a set of brass knuckles were found on him during a search incident to arrest. The Court of Appeals agreed with both arguments.

As to the juvenile’s first argument, the Court agreed that the petition failed to allege properly the duty that the officer was discharging or attempting to discharge at the time of the juvenile’s alleged misconduct. Instead, the petition focused on the juvenile’s misconduct of failing to stop running as demanded. Accordingly, the Court held that because the elements of the offense were not satisfied, the trial court lacked jurisdiction over the juvenile, thereby rendering that portion of the adjudication and disposition orders void for lack of jurisdiction. Therefore, the Court reversed the adjudication and disposition orders relating to the resisting, delaying, and obstructing a public officer.

Regarding the juvenile’s second argument concerning the concealed weapon charge, the Court noted that because the juvenile failed to object to the admission of the officers’ testimony at the adjudication hearing or to suppress the evidence seized, he failed to preserve the issue for appeal. Therefore, the Court reviewed the juvenile’s argument under the plain error standard of review. After its analysis, the Court agreed with the juvenile’s argument that because he was unlawfully arrested for resisting, delaying, and obstructing a public officer, the search incident to arrest resulting in the seizure of the brass knuckles was also unlawful. The Court held that in order for the juvenile to have been lawfully arrested for resisting, delaying, and obstructing a public officer, the officer must have had probable cause to believe that the juvenile fled from a lawful investigative detention, and not a consensual encounter.

The Court further held that prior to fleeing, the juvenile had not been detained properly by the officer, and therefore, a reasonable person would have believed he was at liberty “to go about his business rather than complying” with the officer’s instructions. The Court pointed out that the officer had no previous dealings with the juvenile, had not observed any drug-related activity, or received any information regarding drug-related activity. Thus, the only justification for the stop was that the juvenile was in a “known drug area.” Any investigatory stop based on this rationale alone would have been impermissible. As the juvenile was unlawfully arrested for resisting, delaying, and obstructing a public officer, the search incident to arrest resulting in the seizure of the brass knuckles was unlawful as well. Because the only evidence regarding the concealed weapon was provided by the officer’s testimony, a different result would have been reached but for the trial court’s commission of plain error in admitting the testimony. Consequently, the Court found that the order adjudicating the juvenile delinquent for carrying a concealed weapon should be reversed and remanded for further proceedings.

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## In the matter of D.L.D., 2010 N.C. App. LEXIS 683

Rule(s):

1. “[R]he legality of a search of a student should depend simply on the reasonableness, under all the circumstances, of the search.” P.5 (citations omitted). This includes searches conducted by law enforcement officers.
2. Reasonableness is determined under a twofold inquiry: “[W]hether the . . . action was justified at its inception [and] whether the search as actually conducted was reasonably related in scope to the circumstances which justified the interference . . . .”
3. Where there is reasonable suspicion that the search would yield evidence of possession of controlled substances on school property, the search is justified at its inception. Reasonable suspicion that the search would yield evidence of possession of controlled substances on controlled property.
4. The search is “permissible in its scope when the measures adopted are reasonably related to the objectives of the search and not excessively intrusive in light of the age and sex of the student and the nature of the infraction.” Id. (citations omitted).
5. An officer’s pat-down upon detection of a strong odor of marijuana is not excessively intrusive and satisfies the second prong of the reasonableness standard (depending on the student’s age and gender).

After noticing three juveniles looking “fishy” on a school camera near a restroom where juveniles had been arrested for drug offenses in the past, the assistant principal indicated that he and the school resource officer should go to the scene and “check on it.” Upon nearing the students, one of the students ran into the restroom and seemed to place something in his pants. While frisking the juvenile as directed by the assistant principal, the school resource officer found a container with three individually wrapped bags of marijuana. Upon searching the juvenile in a conference room, the school resource officer found $59.00 that he identified as his mother’s rent money and not money from selling drugs. The juvenile was arrested, and a petition was filed. The juvenile filed a motion to suppress statements and evidence, which was denied. Subsequently, the juvenile was adjudicated delinquent of possession with intent to sell or deliver marijuana. The court entered a Level 2 disposition, placed the juvenile under a court counselor’s supervision for 12 months, and entered other specific conditions.

The juvenile appealed, arguing that the trial court erred by denying his motion to suppress physical evidence as the search violated his Fourth and Fifth Amendment rights. The Court of Appeals disagreed, finding that the search was reasonable under New Jersey v. T.L.O, 469 U.S. 325, 341, 105 S. Ct. 733, 742-43. 83 L. Ed 2d 720, 734 (1985), since the search was “justified at its inception” (i.e., it was thought that there would be evidence of violating the law or school rules) and the search “was reasonably related in scope to the circumstances which justified the interference in the first place” (i.e., juvenile’s behavior including finding marijuana during the frisk). The Court also found that the search in the conference room, which uncovered $59 was justified as the school resource officer had just found a controlled substance on the juvenile.

The juvenile’s next argument was that the trial court erred in denying his motion to suppress his statement to the school resource officer. The Court of Appeals disagreed, finding that the statement regarding the money being for rent money and not from selling drugs was an excited utterance, and therefore admissible as it was “unsolicited and spontaneous.” State v. Hall, 131 N.C. App. 427, 436, 508 S.E.2d 8, 14 (1998).

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## In the matter of S.M.D., 2010 N.C. App. LEXIS 2091 (unpublished opinion)

Rule(s):

1. Under N.C.G.S. § 7B-1900 and § 7B-1501(27)(a) (2009), a juvenile may be taken into temporary custody if there are reasonable grounds to believe that the juvenile is between 6 and 16 years old and has run away from home for a period of more than 24 hours.
2. Where an officer sees a juvenile in the same location twice in two days and the area is known for drug-dealing and prostitution, this does not satisfy Terry standards, but satisfies the undisciplined-juvenile analysis. This gives rise to lawful detainment and bars the juvenile from forceful resistance.

The juvenile was adjudicated delinquent of two counts of assault against a government official after kicking two law enforcement officers attempting to place her in a patrol car.

The juvenile appealed, arguing that the trial court erred by denying her motion to suppress the stop and seizure and her motion to dismiss the assault petitions. Specifically, the juvenile argued that the officers lacked reasonable suspicion for the stop, and that there was no probable cause for her to be detained, and therefore she used reasonable force to resist unlawful detainment. The Court disagreed, concluding that there was a reasonable basis as the juvenile had been observed on the street for two consecutive days in a high-crime area where prostitution occurred. The Court noted that when the officer asked for the juvenile’s name, she was not seized, and was free to leave as she did, because at this point, there was no justification to investigate further.

However, pursuant to N.C.G.S. § 7B-1900, the Court also noted that officers were authorized to take the juvenile into temporary custody, as she appeared to be a minor, indicating that she was 14 years old and it was reasonable to believe that she may have been a runaway given her location. As the officers took the juvenile into temporary custody in accordance with statute, the Court held that the juvenile had no right to resist detainment. Accordingly, the Court affirmed the decision.

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## In the matter of M.B.M., 2007 N.C. App. LEXIS 2348 (unpublished opinion)

Rule(s): Knowledge that a juvenile is in a gang, regularly carries a weapon, and has a record of assaultive behavior, the officer has a reasonable and articulable suspicion sufficient to justify a pat-down.

The juvenile was adjudicated of carrying a concealed weapon.

The juvenile appealed, arguing that the trial erred by not granting the juvenile’s motion to suppress the evidence seized as a result of a routine traffic stop in which the juvenile was a passenger. The Court of Appeals disagreed, finding that law enforcement may lawfully request passengers to exit a stopped vehicle, and then pat down the passengers if the officer has a reasonable, articulable suspicion that the passenger is armed and dangerous. The Court held that because the officer in the case knew that the juvenile belonged to a gang, regularly carried a weapon, and had a prior record of assaultive behavior, the officer had a reasonable and articulable suspicion for patting down the juvenile.

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## In the matter of I.R.T., 184 N.C. App. 579, 647 S.E.2d 129 (2007), 2007 N.C.

App. LEXIS 1624

Rule(s):

1. “‘The question of defendant’s capacity is within the trial judge’s discretion and his determination thereof, if supported by the evidence, is conclusive on appeal.’” P.4.
2. The age of a juvenile is a relevant factor in determining whether a reasonable person would feel free to leave upon being stopped by law enforcement.
3. A juvenile’s conduct and other circumstances may suffice to establish reasonable suspicion.
4. In considering a motion to dismiss for insufficient evidence, the trial court is to “determine whether, in the light most favorable to the State, there was substantial evidence supporting each element of the charged offense. ‘Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.’” P.13 (citations omitted).

The juvenile was adjudicated of possession of cocaine with the intent to sell or distribute.

The juvenile appealed, first arguing that the juvenile was not competent to stand trial. The Court of Appeals disagreed, finding that the trial court did not abuse its discretion in finding that the juvenile was competent to stand trial, after considering the testimony of two psychologists.

The juvenile next argued that the trial court erred in denying the juvenile’s motion to suppress evidence of the cocaine. The Court reviewed state and federal law and found that there had not been a holding from a North Carolina state court as to whether the age of a juvenile was a relevant inquiry in determining whether a seizure has occurred within the meaning of the Fourth Amendment. The Court then held that the age of a juvenile is a relevant factor in determining whether a reasonable person would feel free to leave upon being stopped by law enforcement. The Court found that the juvenile was seized, but that the juvenile’s conduct and other circumstances surrounding the seizure were sufficient to establish reasonable suspicion to be seized by the officer. The court also found that the officer had probable cause, based on the same factors finding reasonable suspicion, to search the juvenile. The court therefore upheld the trial court’s ruling denying the juvenile’s motion to suppress.

Finally, the juvenile argued that the trial court erred in denying the juvenile’s motion to dismiss the charge. The Court agreed, finding that upon viewing all of the evidence there was not enough evidence to demonstrate intent. The court then removed the case for disposition based on an adjudication for simple possession of cocaine. In a separate concurrence, one judge questioned the authority of one of the witnesses as to the juvenile’s competency, but ultimately found that the trial court did not abuse its discretion.

In a separate concurrence and dissent, another judge concurred that the juvenile was competent to stand trial and that the trial court error in denying the juvenile’s motion to dismiss. However, the judge dissented from the determination that the search and seizure of the juvenile was justified because of the lack of reasonable suspicion to stop the juvenile and the lack of probable cause to search the juvenile.

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## In the matter of J.L.B.M., 176 N.C. App. 613, 627 S.E.2d 239, 2006 N.C. App. LEXIS 590

Rule(s): When there is a report of a suspicious person of a particular race and gender (without report of criminal activity) and an officer detains a juvenile who is wearing baggy clothing and walks away from the officer’s patrol car, the officer “ha[s] only a generalized suspicion of criminal behavior,” P.1, rather than a reasonable and articulable suspicion.

The juvenile was adjudicated delinquent of carrying a concealed weapon, resisting, delaying and obstructing a law enforcement officer, injury to real property, and burning a government building.

The juvenile appealed, making several arguments. One argument made by the juvenile was that the trial court erred in denying the juvenile's motions to suppress evidence obtained as a result of the juvenile being stopped and searched by law enforcement. In the facts presented, the officer received a call reporting a "suspicious person" who was a "Hispanic male." No other description was given of the person. The officer, 27-year veteran of the police department, also was aware that the area of activity was known for criminal behavior, including gang and graffiti activity. The officer went to the location and found the juvenile, wearing "gang attire" which consisted of large, baggy clothes. When the juvenile saw the officer, he walked over to a vehicle, spoke to someone, and then began walking away from the officer's patrol car. The officer pulled up beside the juvenile and stopped him. The juvenile argued that this information was not enough for the officer to form a reasonable, articulable suspicion to stop the juvenile. The Court agreed, finding that the dispatch call did not allege that the "suspicious person" was engaged in criminal activity, there were no physical characteristics given as part of the description, no criminal activity had been reported in the area, and the officer did not observe the juvenile committing any criminal acts. Therefore, the officer could not form a reasonable, articulable suspicion to stop the juvenile. The Court also agreed with juvenile that due to the illegal stop, the can of spray paint and box cutter found on the juvenile as a result of the officer’s search were inadmissible as fruits of the illegal stop.

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## In the matters of J.F.M. and T.J.B., 168 N.C. App. 143, 607 S.E.2d 304 (2005), 2005 N.C. App. LEXIS 166, review denied by, motion granted by In re J.F.M., 359 N.C. 411, 612 S.E.2d 320 (2005), 2005 N.C. App. LEXIS 424

Rule(s):

1. The *New Jersey v. T.L.O.* reasonableness standard applies to searches conducted by officers working “in conjunction with school officials,” P.6, (citations/quotation marks omitted) and to detainment of students (i.e., not just searches).
2. Whether an officer is working “in conjunction with school officials” may be informed by how the officer learned about related incidents, whether the encounter took place on school property, whether the officer was on duty, how close in time the encounter was to the school day, and whether the officer intended to take the juvenile to see a school official.
3. Specifically, the standard allows an officer "to detain a student outside the presence of an administrator for the purpose of presenting them to an administrator. P.8.
4. Where a school official informs an officer that a juvenile was involved with an affray being investigated and the juvenile ignores the officer’s instructions to stop, the detainment will probably be lawful in its inception.
5. Where there is a “danger of allowing the matter to carry over into another school day,” P.12, a male officer grabbing a 13-year-old girl’s arm may be reasonable in scop.e

The juveniles were adjudicated of resisting, delaying, and obstructing a law enforcement officer and assault on a law enforcement officer.

The juveniles appealed, arguing that the arrest by the officer, a school resource officer, was unlawful and therefore the juveniles had the right to resist the arrest. The juveniles contended that the arrest was unlawful because the officer did not have the authority to detain one of the juveniles without probable cause. The Court of Appeals disagreed, stating that prior law has determined that detainment by a school resource officer, acting “in conjunction with school officials,” need only be reasonable under the circumstances. The Court found the seizure to be lawful, stating that the officer was attempting to detain one of the juveniles in order to investigate an early incident the juvenile was involved in, as well as quelling a possible future disruption.

## In the matter of S.W., 614 S.E.2d 424, 171 N.C. App. 335, 614 S.E.2d 424, 2005 N.C. App. LEXIS 1261

Rule(s): An officer is working “in conjunction with school officials” she is assigned to a school permanently and full-time, assists school officials with disciplinary matters, teaches subjects related to law enforcement, and acting in her official capacity when she stops a juvenile.

The juvenile was adjudicated for possession with intent to sell or deliver marijuana. At the adjudicatory hearing, the juvenile moved to suppress the evidence (marijuana) obtained by the law enforcement officer, a deputy sheriff assigned as the school resource officer. The trial court denied the motion to suppress, and the juvenile appealed.

The Court of Appeals affirmed the trial court, first holding that the *New Jersey v. T.L.O.* standard (search by a teacher or other school official must be justified at its inception and its scope must be reasonably related to the objectives of the search and not be unnecessarily intrusive in light of the student’s age, sex, etc.) applied in this matter. Furthermore, that under *In re J.F.M.*, 607 S.E.2d 304, disc. rev. denied, 359 N.C. 411, 612 S.E.2d 321 (2005), the Court held that this standard applies to school resource officers working “in conjunction with school officials.” Applying these rulings to the facts of the instant case, the Court found that the school resource officer was acting in conjunction with school officials because 1) his assignment to the school was permanent and full-time, 2) he assisted school officials with school discipline matters and taught law enforcement related subjects, and 3) was exclusively a school resource officer who was patrolling the hallway during school hours furthering the school’s educational goals when he stopped the juvenile, not acting as an “outside officer conducting an investigation.” Concluding, the Court found that the search was reasonable at its inception and not unduly intrusive in light of the circumstances.

## In the matter of D.D., 146 N.C. App. 309, 554 S.E.2d 346 (2001), 2001 N.C. App. LEXIS 942

Rule(s): Where officers act “in conjunction with school officials,” P.13 (citations/quotation marks omitted), the New Jersey v. T.L.O. reasonableness standard applies even when the juvenile is not a student at the school at which she is searched.

The juvenile was adjudicated of possession of a weapon (knife) in school property. The facts indicated that the principal was notified by a substitute teacher that a fight was to occur between students of the school and another group of students (including the juvenile at issue). The principal and the school resource officer waited outside the school to prevent the meeting. The juvenile was approached and questioned by the principal, when she provided false or misleading information regarding her identity. One girl, not the juvenile, was searched and revealed a box cutter in her purse. Upon taking all the girls to the office, the juvenile revealed she had a knife in her pocket.

The juvenile appealed, arguing that the trial court should have suppressed the evidence of the knife. The Court of Appeals disagreed, finding that the New Jersey v. T.L.O. standard applied, even though the juvenile was not a student of the school at which she was searched. The Court also held that the search was valid, even though the school resource officer was involved because the interaction was “in conjunction with” school officials and minimal in relation to the principal’s actions.

## In the matter of P.J.M., 136 N.C. App. 648, 525 S.E.2d 496 (2000),

2000 N.C. App. LEXIS 113

Rule(s):

1. Reasonableness is determined under a twofold inquiry: “[W]hether the . . . action was justified at its inception [and] whether the search as actually conducted was reasonably related in scope to the circumstances which justified the interference . . . .”
2. Where a school official attempts to take a backpack and the juvenile responds by “clamp[ing] down on it,” P.2, a search of the backpack conducted by a school resource officer is probably reasonable in scope.

The juvenile was adjudicated of possession of a weapon (pellet gun) on school property. The facts indicated that the assistant principal of the school was notified by a student that the juvenile had revealed that he had something in his book bag “he should not have at school.” After inquiring into the contents of the bag, the assistant principal took the juvenile to the office, where the gun was obtained after the juvenile “clamped down” on his book bag and the school resource officer handcuffed the juvenile.

On appeal, the juvenile argued that the trial court should have suppressed the results of the search, but the Court of Appeals disagreed, reviewing the facts under the standard set by the U.S. Supreme Court in New Jersey v. T.L.O., 469 U.S. 325, 83 L. Ed. 2d 720, 105 S. Ct. 733 (1985) since the search was performed by a school official, not law enforcement. The Court of Appeals found that 1) the search was reasonable at its inception due to the tip and the juvenile’s actions once confronted, and 2) the search was conducted in a reasonable manner due to the juvenile’s attempt to prevent the school resource officer from investigating the contents of the book bag.

## In re D.A.H., \_\_\_\_ N.C. App. \_\_\_\_ , No. COA20-212 (filed April 20, 2021)

<https://appellate.nccourts.org/opinions/?c=2&pdf=39944> - Trial court relied on an improper legal test in determining that the juvenile was not entitled to *Miranda* warnings, reversed and remanded for further proceedings.

Rule(s):

1. School interrogations are unique in determining whether or not a student is in a custodial situation requiring *Miranda* warnings.
2. No single factor is controlling, and the inquiry is whether the totality of the circumstances surrounding the questioning constitute a custodial interrogation.
3. The proper legal standard that should be used in analyzing the factors in determining whether a youth was subjected to a custodial interrogation is objective, not subjective.

Facts:

A middle school student was found with marijuana on the school bus. After questioning from the principal and school resource officer (SRO), the student said that he had arranged to buy marijuana from another student, Deacon, that morning. Deacon was absent from school the following two days. When he returned to school, he was called to the principal’s office, and both the principal and the SRO were present while the principal questioned Deacon. During testimony the SRO gave three slightly different versions of what happened during Deacon’s questioning. Eventually Deacon stated that he had sold the other student marijuana. Deacon’s guardian was not contacted until after Deacon’s confession, and he then repeated his statement in her presence. At no point was Deacon read his *Miranda* rights, told he did not have to answer questions, or that he was free to leave. A petition was filed against Deacon alleging he had sold and delivered a schedule VI substance (marijuana). Deacon filed a motion to suppress his statement arguing that his statements to the principal and SRO were inadmissible due to a violation of his *Miranda* rights. The trial court heard the motion and denied the motion to suppress concluding that Deacon was not entitled to *Miranda* warnings because the meeting with the principal was not a custodial interrogation. After an adjudicatory hearing, Deacon was found responsible for the sale and delivery of marijuana.

Opinion

In addition to traditional *Miranda* rights afforded to youth in custodial interrogations, NC has provided additional statutory protections for youth who face custodial interrogations (§ 7B-2101(a)(1)–(4) (2019)) and even greater protections for youth under 16 years of age (§ 7B-2101(b)). However, these protections are only triggered when the youth is subjected to a custodial interrogation which typically is initiated by law enforcement after a person has been taken into custody or otherwise been deprived of his/her freedom of action.

Questioning youth in the context of school presents unique *Miranda* considerations, in part because students inherently shed some of their freedom when they enter the school. A child is only under custodial interrogation in school when that child is subjected to additional restraints beyond those generally imposed during school.

However, 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 during questioning by school officials and does not participate in the questioning, or participates in a limited way, may qualify as a custodial interrogation requiring *Miranda* warnings. The Court has found that the presence of a SRO can create a coercive environment that goes beyond the restraints generally imposed during school and that a reasonable student would not readily believe s/he is free to leave.

Presence of a SRO or other law enforcement when a student is being interrogated weighs heavily in the determination of whether or not an encounter is a custodial interrogation, but it is not dispositive. All remaining *Miranda* factors must be considered in determining whether or not the statement a student makes is the product of a custodial interrogation. The remaining factors the court considers most relevant to address custody include:

1. traditional indicia of arrest;
2. location of the interview;
3. length of the interview;
4. the student’s age;
5. what the student is told about the interview;
6. people present during the interview; and
7. purposes of the questioning.

When determining whether the encounter constitutes an interrogation in the school setting, the court identified the following factors as most relevant:

1. the nature of the questions asked (interrogative or mandatory);
2. willingness of the juvenile’s responses; and
3. the extent of the SRO’s involvement.

The court noted that as with the reasonable adult standard, no single factor is controlling in determining whether or not the statements made by the youth are a product of a custodial interrogation. The inquiry is whether the totality of the circumstances surrounding the questioning add up to custody.

The court applied the above factors to the facts in its analysis of Deacon’s case and determined that no reasonable 13-year-old would have felt free to leave, concluding that Deacon was in custody. With regard to whether or not Deacon was interrogated, the court determined that Deacon was subjected to interrogation due to the nature of the questions asked, length of the interview, extent of the SRO’s involvement, and the difference in treatment in questioning the first student who was questioned regarding the marijuana.

The court also noted that the trial court applied the wrong legal standard in its analysis of the issue. The court noted that the trial court’s decision to deny the motion to suppress was based on assumed familiarity between the student and the SRO. The correct *Miranda* analysis is objective and not subjective in nature. The focus is whether a reasonable 13-year-old would have felt free to end the interrogation and leave under the circumstances. Therefore, the trial court erred in concluding that Deacon’s confession was not the product of a custodial interrogation and in denying the motion to suppress Deacon’s confession. Reversed and remanded.

# SELF-INCRIMINATION

Rules concerning attempts to consider refusal to admit guilt in determining custody, sentences, and probationary terms.

## In the Matter of J.B., N.C. September 18, 2018, (published opinion) COA17-1373, Mecklenburg County

Rule (s):

(1) The trial court must advise the juvenile of their right against self-incrimination prior to testimony.

An adjudication hearing was held on a petition that alleged the juvenile had committed an assault against a government official.

The juvenile made a motion to dismiss at the close of the State’s case, and the trial court denied the motion. The defense asked to call the juvenile to the stand as a witness and the trial court agreed. The juvenile gave testimony admitting that he intended to hit his teacher with a milk carton out of anger. After the juvenile testified, the trial court informed him that it had forgotten to advise him of his right against self-incrimination prior to his testimony and asked him if he understood that right, to which he replied “yes”. Defense counsel moved to dismiss on the grounds that the juvenile was not previously informed of his rights, but the trial court denied the motion. The judge found the juvenile responsible and adjudicated him delinquent. The judge entered a level 3 disposition, incarcerating the juvenile for six months at a youth development center.

The juvenile appealed arguing that the testimony was incriminating and therefore the violation constituted reversible error. Prior case law dictates that the court has a statutory mandate to protect the juvenile’s constitutional right against self-incrimination. Because the juvenile’s testimony was incriminating, the use of his testimony was found to be prejudicial and the trial court’s orders of adjudication and delinquency were reversed and remanded for a new trial.

<https://appellate.nccourts.org/opinions/?c=2&pdf=37352>

## In the matter of J.D.L., 154 N.C. App. 246, 572 S.E.2d 229 (2002), 2002 N.C. App. LEXIS 1456

Rule(s): Considering a juvenile’s refusal to admit to adjudicated offenses when determining whether or not to release the juvenile pending appeal violates the juvenile’s Fifth Amendment right against self-incrimination

The juvenile was adjudicated of second-degree sex offense and indecent liberties between children. One of the conditions of the juvenile’s probation was to participate in outpatient sex offender specific treatment. A probation violation was filed against the juvenile alleging that the juvenile had not attended his treatment. The juvenile was found to be in violation of probation and was committed to a youth development center in order to complete the sex offender treatment. The juvenile requested to be released from secure custody pending his appeal. The trial court denied his release.

The juvenile appealed, arguing that the trial court should not have considered his refusal to admit to his adjudicated offenses in determining whether or not to release the juvenile pending appeal. The Court of Appeals agreed with the juvenile, holding that the trial court’s decision that the juvenile remain in secure custody pending his appeal based on his refusal to admit responsibility for which he was adjudicated delinquent violated his right against self-incrimination. The Court found that the juvenile should not be faced with the choice of either waiving his right against self-incrimination by admitting responsibility or accepting confinement.

*In the matter of Butts*, 157 N.C. App. 609, 582 S.E.2d 279 (2003), 2003 N.C.

App. LEXIS 928

Rule(s):

1. Requiring a juvenile to admit guilt as part of sex-offender treatment is “functionally equivalent,” P.19, to considering the juvenile’s refusal to admit to offenses in determining whether or not to release him pending appeal (as barred by In the matter of J.D.L., 154 N.C. App. 246, 572 S.E.2d 229 (2002)).
2. Therefore, the court may not condition the juvenile’s probation “on his express admission of the underlying offense.” P.19–20.

The juvenile was adjudicated of first-degree sex offense. Among other issues, the juvenile argued that the court erred by imposing a condition of probation that the juvenile must admit his guilt in order to participate in sex offender treatment.

The juvenile argued that this condition violated his Fifth Amendment right protecting against self-incrimination as stated under the United States Constitution. The Court of Appeals agreed, analogizing the case to the rule of law in adult criminal court, which protects a convicted sex offender's right not to admit guilt for the purpose of sex offender treatment. The court did note, however, that though the juvenile need not admit guilt as a condition of probation, the court can still order the juvenile engage honestly as part of any treatment or counseling. The Supreme Court affirmed the Court of Appeals decision, noting that review had been improperly granted.

## In the Matter of T.T.W., 2016 N.C. App COA 15-1360 (unpublished opinion)

Rule(s):

(1) Despite an error by both the defendant juvenile and the officer indicating that the juvenile’s mother was present during the interrogation on the juvenile waiver form, if a juvenile is advised of his right to have a parent or attorney present during interrogation and his waiver was knowing, voluntary, and intelligent, his statements may not be suppressed.

On July 8, 2014, the 16-year-old juvenile was arrested for armed robbery and questioned by law enforcement. He was read his rights by the detective who conducted the interrogation and confirmed with the juvenile that he understood his rights and he could read the documents presented to him, including a Juvenile Waiver of Rights Form, which includes the right for him to have a parent, guardian, or custodian present during questioning. The officer erroneously marked the box on the form indicating that juvenile’s mother was present during the interrogation and the juvenile initialed the box. Following his indictment on charges of attempted robbery with a dangerous weapon, the juvenile moved to suppress his statements on the grounds that they were obtained in violation of his constitutional rights. The judge found that the initialing of the form was in error of both the juvenile and the detective, but because the juvenile was advised of his rights, there was no evidence suggesting that he requested his mother be present, and he voluntarily and knowingly waived the rights, it was concluded that “any statements made thereafter are admissible” and the juvenile’s motion to suppress was denied.

The juvenile contended that his statutory rights were violated pursuant to the fact that he was questioned without his parent present and he “unambiguously indicated that he wanted his mother present during questioning” by initialing the box that stated that she was present, and he had not chosen to waive his right to counsel. The juvenile also asserted that even if his invocation of his rights were ambiguous, the detective’s failure to clarify if he desired to have his mother present during interrogation constituted sufficient evidence to suppress any incriminating statements. N.C. Gen. Stat. 7B-2101 states that the State must show that the juvenile made “a knowing and intelligent waiver of his rights” and prior case law states that the juvenile may not be interrogated any further until counsel (or a parent) arrives after they have requested to have them present for any questioning unless the juvenile initiates the communications themselves. The factual finding of the trial court showed that despite an error by both the officer and the defendant juvenile indicating that the juvenile’s mother was present for the interrogation on the juvenile waiver form, the juvenile understood his rights and that there was no request made for his mother to be present. The court concluded that the juvenile did not invoke his right and validly waived his right to have a parent present. Therefore, the trial court’s denial of the juvenile’s motion to suppress statements made to law enforcement is affirmed.

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# SERVICE

Rules concerning requirements for proper service, appearance in court, and personal jurisdiction.

## In the matter of A.B., 2010 N.C. App. LEXIS 633 (unpublished opinion)

Rule(s):

1. Improper service under N.C.G.S. § 7B-1806 concerns obtaining personal jurisdiction – not subject matter jurisdiction.
2. A general appearance by a party constitutes a submission to the jurisdiction of the court, waiving improper service.

On November 3, 2008, several petitions were filed against the juvenile. On November 5, 2008, the juvenile’s mother was served with a juvenile summons and notice of hearing. On November 13, 2008, a hearing was held without the juvenile present. The juvenile’s mother indicated that the juvenile was missing, and that she would like him picked up. Although juvenile’s counsel objected to the issuance of the order based on the lack of service on the juvenile, a secure custody order was entered. Juvenile was placed in secure custody and subsequently adjudicated delinquent.

Juvenile appealed, arguing that the trial court improperly denied his motion to dismiss based on lack of subject matter jurisdiction because he had not been served properly with a summons and petition prior to the hearing. Juvenile’s argument was based on N.C.G.S. § 7B-1806, which states, “The summons and petition shall be personally served upon the parent, the guardian, or custodian and the juvenile not less than five days prior to the date of the scheduled hearing.” The Court of Appeals disagreed with the argument stipulating that N.C.G.S. § 7B-1806 alludes to personal jurisdiction, and not subject matter jurisdiction as the summons “affects jurisdiction over the person rather than the subject matter.” The Court held further that as the juvenile made several appearances before the trial court, he subjected himself to personal jurisdiction of the court, and waived his right to service. Therefore, the Court held that the trial court had personal jurisdiction and properly denied the motion to dismiss.

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## In the matter of M.S., 2009 N.C. App. LEXIS 288 (unpublished opinion)

Rule(s):

1. “According to N.C.G.S. § 7B-2508(f), where a juvenile has a high delinquency history and has committed a violent offense, the trial court is required to impose a Level 3 disposition.” P.4.
2. “Under N.C.G.S. § 7B-2508(e), “[a] trial court exercising jurisdiction over a juvenile who has been adjudicated delinquent under a Level 3 disposition ‘shall commit the juvenile to the Department for placement in a youth development center.’” . . . . . It is only when the trial court makes specific written findings substantiating the extraordinary needs on the part of the offending juvenile that the trial court may use its discretion and impose a Level 2 disposition instead.” Id.

The juvenile was adjudicated of robbery with a dangerous weapon, and the court entered a Level 3 disposition committing the juvenile to a youth development center (“YDC”) until his 18th birthday.

The juvenile appealed, arguing that (1) the trial court failed to use its discretion in sentencing and instead chose commitment because the offense was an armed robbery; (2) the trial court erred in proceeding with the hearing where the summons issued no service; and (3) counsel was ineffective in failing to object to the lack of service of the summons. The court disagreed with the juvenile’s first argument, finding that the court was required to enter a Level 3 disposition due to the juvenile’s high delinquency history and the fact that he committed a violent offense. Additionally, the court indicated that the court considered the required statutory factors (which include the seriousness of the offense; the need to hold the juvenile accountable; the importance of protection public safety; the degree of culpability indicated by the circumstances of the particular case; and the rehabilitative and treatment needs of the juvenile indicated by a risk and needs assessment), and made a specific finding of fact regarding the gravity of the offense.

Regarding the juvenile’s second argument, the Court disagreed, finding that the juvenile waived the lack of personal jurisdiction by appearing and participating in the hearing without objecting.

Lastly, the court found that counsel’s performance did not fall below and objective standard of reasonableness and did not prejudice the juvenile.

Consequently, the court affirmed the trial court’s order.

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## In the matter of S.C.B., 2006 N.C. App. LEXIS 1159 (2006) (unpublished opinion)

Rule(s): Service is not made improper by serving two petitions in one summons.

The juvenile admitted to carrying a concealed weapon and possession of a handgun by a minor. The juvenile and the juvenile’s mother were served with one summons for both offenses.

The juvenile appealed, arguing that the court lacked subject matter jurisdiction by failing to serve the juvenile with two summonses, one for each petition. The Court of Appeals disagreed, finding that although juveniles are guaranteed the right to notice, the fact that both petitions were served on the juvenile, even with one summons, satisfied the notice requirement and the juvenile was properly notified of the charges pending.

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## In the matter of D.S.B., 179 N.C. App. 577, 634 S.E.2d 633, 2006 N.C. App. LEXIS 1961

Rule(s): A general appearance by a party constitutes a submission to the jurisdiction of the court, waiving improper service.

The juvenile was adjudicated of second-degree rape.

The juvenile appealed, arguing that he was never properly served, since the juvenile and parent were served with the summons and notice of hearing on the day of the juvenile’s first hearing (a secure custody hearing). The Court of Appeals noted that under N.C. Gen. Stat § 7B-1806 the juvenile is to be served no less than five days prior to the scheduled hearing. However, the Court also found that prior decisions have held that delinquency proceedings are governed by the Rules of Civil Procedure, which dictate that a general appearance by a party constitutes a submission to the jurisdiction of the court. Relying on In re Hodge, 153 N.C. App. 102, 568 S.E. 2d 878 (2002), the Court found that the juvenile’s appearance at the first appearance, secure custody and subsequent hearings without contesting the process or jurisdiction constituted a general appearance for the purposes of waiving any defect in service.

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## In the matter of D.J.H., 153 N.C. App. 102, 568 S.E.2d 878 (2002), 2002 N.C. App. LEXIS 1086 Rule(s):

1. The time of an assault is not essential to the allegation, and failure to state the exact date is not fatal.
2. Where the juvenile makes a general appearance, the court has jurisdiction, even if the court has not already gained jurisdiction by service of process.

The juvenile was petitioned for simple assault. The allegations in the petition stated that the offense occurred “between 1 April 2000 and 15 July 2000.” The juvenile was adjudicated of simple assault.

The juvenile appealed, arguing that the petition was fatally defective because it did not allege a specific date for the offense. The Court of Appeals disagreed, holding that the time of the offense was not essential to the assault allegation, and that the juvenile failed to argue that the lack of specificity misled or prejudiced the juvenile. The juvenile’s presence at the hearing and participation in the hearing constituted a waiver of lack of service and jurisdiction.

# SEX OFFENSES

Rules concerning what qualifies as a juvenile sex offense.

## In the Matter of S.A.A., 2016 App N.C. COA16-540 (published opinion)

Rule(s):

1. The State must provide sufficient evidence that the juvenile touched someone for the purpose of sexual gratification, sexual arousal, or sexual abuse in order to adjudicate him on the charge of sexual battery.
2. The juvenile must move to dismiss at the close of all evidence in order to properly preserve the argument.

On October 31, 2014, the 13-year-old juvenile was out with his friends, trick-or-treating and walking around in a neighborhood where many of their classmates also gathered. The juvenile approached two younger girls and put his arms around their shoulders, rubbing a glowing liquid leaking from his Halloween costume onto their clothes, around their shoulders and collarbones. After the girls reported to their parents and a school resource officer (SRO) that the juvenile had “touched their chest/boobs”, an incident report was filed. The juvenile admitted to putting the glowing liquid on the girls, but denied touching their breasts when questioned by the SRO.

On April 20 and May 26, 2015 the State filed petitions against the juvenile for two counts of sexual battery and simple assault. During the adjudication hearing, witnesses testified that the juvenile did not touch the breasts of the girls, had not made sexual statements toward them during or prior to the incident, and had apologized to them when they requested that he leave them alone. The judge adjudicated the juvenile delinquent on all charges. After the case was transferred to another county for disposition, the juvenile was sentenced to 12 months of probation. The juvenile gave oral notice of appeal at the close of the dispositional hearing.

The juvenile argued that the trial court erred by denying his motion to dismiss charges of sexual battery because the State failed to prove that he had touched the girls’ breasts for sexual arousal or sexual gratification. He also argued that the court failed to make findings of fact in support of the dispositional order. Despite the fact that prior case law states that if a juvenile fails to move to dismiss the action at the close of evidence, he may not challenge the sufficiency of the evidence to prove the crime charged on appeal. However the court invoked Rule 2 to review the merits of the appeal in order to prevent manifest injustice. Therefore, the adjudication of sexual battery was vacated, the adjudication of simple assault was affirmed, and the case was remanded for entry of a new dispositional order.

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## In the matter of A.A.P., 2014 N.C. App. LEXIS 323 (unpublished opinion)

Rule(s):

1. Establishing sexual purpose in a sexual-battery case requires “some evidence of the child’s maturity, intent, experience, or other factor indicating his purpose in acting . . . .”
2. The State may show sufficient evidence of sexual purpose where the juvenile repeated the conduct, used sexual language, and demonstrated a pattern of inappropriately touching others.

The juvenile was adjudicated delinquent for two counts of sexual battery. The trial court entered a Level 2 disposition which included fourteen days of intermittent confinement and nine months of probation.

The juvenile appealed arguing that the trial court erred by denying the juvenile’s motion to dismiss the charges of sexual battery because there was insufficient evidence of a sexual purpose. The juvenile asserted that the evidence showed that the juvenile’s actions were merely horseplay. On the question of sexual purpose, the Court has held “that such a purpose does not exist without some evidence of the child’s maturity, intent, experience or other factor indicating his purpose in acting.” In the present case, the Court found that the evidence showed that the juvenile’s conduct was repeated; the juvenile used sexual language; and the juvenile showed a pattern of inappropriately touching other boys and when the evidence is viewed in the light most favorable to the State, it could be inferred from the evidence that the juvenile acted for the purpose of sexual arousal or sexual abuse. Accordingly, the Court concluded that the evidence was sufficient to withstand the juvenile’s motion to dismiss, and affirmed the adjudication and disposition.

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## In the matter of S.R.H., 2013 N.C. App. LEXIS 773 (unpublished opinion)

Rule(s):

1. In a sexual-battery case, “the element of intent may not be inferred solely from the act itself.” P.10 (citations/quotations marks omitted).
2. Sufficient evidence of maturity and intent may be offered by way of the age disparity between the juvenile and the victim, the control by the juvenile, the location and secretive nature of the juvenile’s actions, the juvenile’s attitude, physical force exerted over the victim, and the location of the placement of the juvenile’s hands on the victim.
3. Testimony that the juvenile “touched the victim’s ‘sexual organ, . . . breast, groin, or buttocks’ with his hand through her clothing,” P.13 (quoting N.C.G.S. § 14-27.1(5)), taken in the light most favorable to the state, may be sufficient evidence for the element of sexual contact.
4. The State may show sufficient evidence of the element of acting by force where the victim testifies that the juvenile exerted physical force on her, such as by pulling her towards himself.

The juvenile was adjudicated delinquent for committing the offense of sexual battery. At the adjudication hearing the state presented testimony from the alleged victim, R.C., that the juvenile went inside of a custodial closet with R.C. and closed the door. R.C. testified that the juvenile then grabbed the bottom of her shirt and pulled her to the juvenile. R.C. went on to testify that the juvenile touched her in her lower front and back “private” areas outside of her clothing. R.C. testified that she had never talked to the juvenile before the alleged incident. At the close of the State’s evidence, the juvenile made a motion to dismiss, arguing the State presented insufficient evidence of sexual battery. The juvenile testified in his own defense at the adjudication hearing, telling the court that he did not go into the closet with R.C. or otherwise speak to or touch R.C. At the close of all the evidence, the juvenile did not renew his motion to dismiss the petition.

Juvenile appealed arguing that the trial court erred in denying his motion to dismiss for insufficient evidence. The Court has held that “if a defendant [or juvenile] fails to move to dismiss the action . . . at the close of all the evidence, he may not challenge on appeal the sufficiency of the evidence to prove the crime charged.” However, because the juvenile simultaneously asserted that he was denied effective assistance of counsel because of the failure to renew the motion to dismiss at the close of all the evidence, the Court reviewed the appeal on the merits of the juvenile’s challenge to the sufficiency of the evidence together with his ineffective assistance of counsel argument.

Pursuant to N.C.G.S. § 14-27.5A(a)(1) “a person is guilty of sexual battery if the person, for the purpose of sexual arousal, sexual gratification, or sexual abuse, engages in sexual contact with another person . . . by force and against the will of the other person.” The juvenile argues the State failed to present sufficient evidence of all three elements in the present case.

Regarding the element of sexual gratification, the Court observed that “the age disparity, the control by the juvenile, the location and secretive nature of the juvenile’s actions, and the attitude of the juvenile was evidence of maturity and intent of the juvenile” for the purpose of satisfying the element of intent.

As to the element requiring sexual contact, the juvenile argued that the testimonial evidence was insufficient to prove that any touching of the body parts prohibited under the statute occurred. The Court disagreed finding that R.C.’s testimony, “taken in the light most favorable to the state” was sufficient to satisfy the element of sexual contact. In re B.D.N., 186 N.C. App. 108, 111-12, 649 S.E.2d 913, 915 (2007).

Finally, the juvenile argued that the State failed to present sufficient evidence that he ‘acted by force.” The Court concluded that R.C.’s testimony “taken in the light most favorable to the State, the evidence was sufficient to satisfy the element that the juvenile exerted force over R.C. in pulling her to him and grabbing her private areas despite her resistance to the juvenile.” Consequently, the Court found that State presented sufficient evidence to satisfy all three elements of the offense, therefore, the trial court properly denied the juvenile’s motion to dismiss.

Regarding the juvenile’s claim of ineffective assistance of counsel, the Court has previously held that “if the evidence is sufficient to support a conviction, the defendant [or juvenile] is not prejudiced by his counsel’s failure to make a motion to dismiss at the close of all the evidence.” In the present case, since the Court found that the evidence was sufficient to support the adjudication, the juvenile did not show that counsel's assistance was constitutionally inadequate and thus concluded that his argument was without merit.

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## In the matter of C.L.K.C., 2012 N.C. App. LEXIS 927 (unpublished opinion)

Rule(s):

1. Under N.C.G.S. § 7B-2407(c), the factual basis for an admission must include factual allegations related to each essential element of the violation at issue.
2. “[W]hen a trial court plans to impose a disposition level higher than that set out in the [transcript of admission], the juvenile must be given a chance to withdraw his plea ….”

A petition was filed alleging that the juvenile unlawfully, willfully, and feloniously engaged in a sexual act with a victim that was under the age of thirteen years. The petition further alleged a violation of N.C.G.S. § 14-27.4(a)(1), asserting the juvenile committed the delinquent act when he was under the age of sixteen but was at least four years older than the victim. The juvenile admitted to the charge of first degree statutory sex offense “in exchange for…the disposition of probation, specifically to placement in Keys of the Carolinas.” The trial court accepted and signed the juvenile’s admission on October 6, 2011. After the October 6, 2011 hearing, the trial court adjudicated the juvenile delinquent of first degree sex offense of a child and proceeded to the disposition; which was continued until November 8, 2011. The trial court then changed its order, finding it was in the best interest of the juvenile to be placed in a youth development center for a minimum of six months and a maximum of his 21st birthday.

The juvenile appealed arguing the trial court erred by accepting his admission without receiving a proper factual basis to establish all of the elements of the offense as outlined in N.C.G.S. § 7B-2407(c). The Court found that there was no statement or sworn testimony regarding the victim’s age; an element required in N.C.G.S. 14-

27.4(a)(1), therefore, the trial court could not have made a proper factual determination without such evidence. The State conceded this argument, and the Court agreed with the juvenile and the State.

The juvenile also argued that the trial court erred by accepting the juvenile’s admission pursuant to a plea arrangement that imposed a Level II disposition, and then rejecting his plea arrangement to instead impose a Level III disposition. The Court agreed, finding that under In re D.A.F., 179 N.C. App. 832, 836,635 S.E.2d 509, 511 (2006) (citing In re W.H., 166 N.C. App. 643, 647, 603 S.E.2d 356, 359 (2004), “when a trial court plans to impose a disposition level higher than that set out in the [transcript of admission], the juvenile must be given a chance to withdraw his plea…”

Lastly, the juvenile contended the trial court abused its discretion by imposing a Level III disposition without making sufficient findings of fact to show that it had considered the factors listed in N.C.G.S. 75-2501(c). The Court agreed holding that there were no additional written findings beyond the checkmarks placed beside the pre-printed portions of the order.

Accordingly, the Court vacated the juvenile’s admission of guilt, reversed the trial court’s dispositional order and remanded the matter for a new adjudication and dispositional hearing.

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## In the matter of D.A.F., 635 S.E.2d 509 (2006), 2006 N.C. App. LEXIS 2154

Rule(s): If a juvenile defendant is misinformed as to the maximum commitment for an offense, the juvenile’s admission is not made knowingly and voluntarily.

The juvenile admitted to one count of first-degree sex offense. The transcript of admission presented to the court and signed by the juvenile indicated the most restrictive disposition facing the juvenile would be commitment to a youth development center for a minimum of six months and a maximum of the juvenile’s 19th birthday. After the juvenile’s oral admission to the court, the court informed the juvenile that the maximum the juvenile could be committed would be until the juvenile’s 21st birthday.

The juvenile appealed, arguing that the maximum term of commitment was not known to the juvenile at the time the transcript was signed. The Court of Appeals agreed, finding that in In re W.H., 166 N.C. App. 643, 603 S.E.2d 356 (2004), the Court held that a juvenile must be given a chance to withdraw the plea if the admission was not made knowingly and voluntarily. The Court found that because the juvenile’s admission was based on knowledge that the maximum commitment the juvenile was facing was the juvenile’s 19th, not 21st, birthday, the case should be reversed and remanded.

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## In the matter of A.W., 2011 N.C. App. LEXIS 215

Rule(s):

1. For the charge of a second-degree sexual offense, the State must provide evidence that the victim was “mentally disabled, mentally incapacitated, or physically helpless.”
2. For the charge of indecent liberties between children, the element of “purpose to arouse or gratify his sexual desires” may be evidenced by the following: the juvenile’s age and maturity, the method used to engage the victim in the act; and evidence of prior sexual activity with another child.
3. Because an incident’s date is not an element of the charge of indecent liberties between children, slight discrepancies in dates do not bar adjudication.
4. Preventing a juvenile’s counsel from making a closing argument constitutes denial of the juvenile’s right to counsel.

The juvenile was adjudicated of second-degree sexual offense, indecent liberties between children, and breaking and entering. A Level 3 disposition was entered.

Juvenile appealed, arguing that the State presented insufficient evidence that he committed second-degree sexual offense and indecent liberties between children. Because the juvenile failed to challenge the sufficiency of the evidence at the close of all of the evidence (which would bar him from challenging the sufficiency of the evidence on appeal), the juvenile argued that there was ineffective assistance of counsel. Alternatively, the juvenile requested review pursuant to Rule 2 of the North Carolina Rules of Appellate Procedure, which allows an appellate court to modify the provisions of the rules of appellate procedure to preclude “manifest injustice.”

Finding that there was insufficient evidence to support the adjudication, the Court reviewed the case pursuant to Rule 2. In reviewing the case, the Court of Appeals held that the evidence was insufficient to prove the elements of second-degree sexual offense, as there was no evidence that the victim was “mentally disabled, mentally incapacitated, or physically helpless.” Accordingly, the Court vacated the second-degree sexual offense adjudication, and remanded for dismissal.

Regarding the adjudication for indecent liberties between children, the Court held that there was sufficient evidence as all elements of the offense were met, including “with a purpose to arouse or gratify his sexual desires.” Specifically, the Court held that the juvenile’s age and maturity, including the age disparity between the juvenile and victim (13-year old juvenile and 3-year old victim); the method he used to engage the victim in the act (by telling him his private parts tasted like candy); and evidence of prior sexual activity with another child a few months before the incident in question indicated that he acted for the purpose to arouse or gratify sexual desires.

Regarding an alternative argument that the indecent liberties between children should have been dismissed due to a discrepancy between the date upon which the offense was alleged to have occurred, the Court held that the date was not an element of the crime, and therefore not grounds for dismissal (particularly where the discrepancy was slight and did not affect the juvenile’s ability to provide a defense).

The juvenile’s last argument was that he was entitled to a new adjudicatory hearing on the charge of indecent liberties between children because the trial court denied his counsel the opportunity to make a closing argument. The Court agreed, citing cases that held that denial to make a closing argument was a denial of the right to have assistance of counsel. Consequently, the Court vacated the adjudication finding the juvenile delinquent of incident liberties between children and remanded the case for a new adjudication hearing on that charge and the felonious breaking and entering charge.

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## In the matter of J.J.D.L., 189 N.C. App. 777, 659 S.E.2d 757 (2008), 2008 N.C. App. LEXIS 693

Rule(s): Where a juvenile does not challenge the trial court’s findings of fact and a court denies the juvenile’s motion for release pending appeal and, the requirement of stating a compelling reason for denial is satisfied by citing the offense of first-degree sex offense with a child.

The juvenile was adjudicated delinquent of three counts of first-degree sex offense.

The juvenile appealed, first arguing that the trial court erred by denying the juvenile’s motion for release pending appeal by stating no reason for denying the motion. The Court of Appeals disagreed, finding that on the appellate entries form, the trial court stated as a compelling reason for maintaining the juvenile in custody that the juvenile was adjudicated of “first-degree sex offense with a child § 1727.4(a)(1).”

The juvenile next argued that the trial court erred in admitting into evidence a summary of the juvenile’s statement to a law enforcement officer in which the juvenile admitted some of the allegations. The juvenile argued that the state failed to establish the summary as an accurate account of the statement and that the document entered constituted hearsay. The Court disagreed, finding that the officer’s testimony as to what was in the document was admissible under both the rules of evidence and the rules governing the acceptance of juvenile admissions.

Finally, the juvenile argued that the trial court erred by holding the dispositional hearing prior to receiving the results of a court ordered sex offender evaluation. The Court held that the juvenile failed to raise the argument at trial, and therefore was procedurally barred from bringing the argument on appeal. Furthermore, on review of the claim, the Court found that the juvenile failed to show how the absence of the report hindered the trial court in making its determination at disposition.

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## In the matter of D.G., 191 N.C. App. 752, 663 S.E.2d 458 (2008), 2008 N.C. App. LEXIS 1478 Rule(s):

1. If the court’s factual findings are supported by competent evidence, they are conclusive on appeal, even though there is evidence to the contrary. P.4 (internal citations omitted).
2. Under state and federal law, North Carolina cannot be compelled to provide services in the nature of a Level 3 placement for undocumented aliens. This includes residential sex offender treatment.
3. Elimination of funding for treatment “constitute[s] a change in circumstance within the intent and meaning of N.C.G.S. § 7B-2600(a),” justifying a modification of the dispositional order. P.6.

The juvenile admitted to first-degree sex offense and placed in a residential sex offender specific facility. A motion for review was filed, stating that the funds were no longer available to support placement of the juvenile because the juvenile was not a qualified alien. The trial court reviewed the matter and finding no other placement option, committed the juvenile to a youth development center.

The juvenile appealed, arguing that the trial court erred in its finding that there was a lack of funding and in modifying the court order committing the juvenile. The Court of Appeals disagreed, finding there was competent evidence to support the trial court’s finding, based on evidence presented at the hearing.

Judge Wynn dissented, stating that the issue of funding could not be determined by the judiciary in the absence of administrative or statutory law, and that the trial court did not make sufficient findings because there was not sufficient evidence that the funding could not be provided.

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## In the matter of D.S.B., 179 N.C. App. 577, 634 S.E.2d 633, 2006 N.C. App. LEXIS 1961

Rule(s): A general appearance by a party constitutes a submission to the jurisdiction of the court, waiving improper service.

The juvenile was adjudicated of second-degree rape.

The juvenile appealed, arguing that he was never properly served, since the juvenile and parent were served with the summons and notice of hearing on the day of the juvenile’s first hearing (a secure custody hearing). The Court of Appeals noted that under N.C. Gen. Stat § 7B-1806 the juvenile is to be served no less than five days prior to the scheduled hearing. However, the Court also found that prior decisions have held that delinquency proceedings are governed by the Rules of Civil Procedure, which dictate that a general appearance by a party constitutes a submission to the jurisdiction of the court. Relying on In re Hodge, 153 N.C. App. 102, 568 S.E. 2d 878 (2002), the Court found that the juvenile’s appearance at the first appearance, secure custody and subsequent hearings without contesting the process or jurisdiction constituted a general appearance for the purposes of waiving any defect in service.

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## In the matter of S.S., 666 S.E.2d 870, 2008 N.C. App. LEXIS 1738

Rule(s):

Where the trial court continues a case for longer than six months so that a juvenile may testify in another case, N.C.G.S. § 7B-2501(d) does not eliminate the court’s subject matter jurisdiction over the juvenile’s case.

The State filed juvenile petitions alleging that the juvenile committed indecent liberties between children, sex offense with a child under the age of 13 years, and first-degree rape. Pursuant to an agreement with the State, the juvenile admitted that he committed the offenses of second-degree kidnapping, crime against nature, and sexual battery. As part of the agreement, the State agreed to reduce the juvenile’s charges and to recommend Level 2 disposition in exchange for the juvenile agreeing to testify in the trial of a co-defendant. The disposition was scheduled for two months later, but the case was continued to allow the juvenile the opportunity to testify against the co-defendant. The juvenile’s disposition hearing was held, and the juvenile made a motion to dismiss based on N.C.G.S. § 7B-2501, arguing that the dispositional hearing had not taken place within six months. The court denied the motion and entered a Level 2 disposition of one-year probation.

The juvenile appealed, arguing that the trial court erred in denying his motion to dismiss pursuant to N.C.G.S. § 7B-2501(d) (which permits the court to continue the case for no more than six months, after adjudication, to allow the family an opportunity to meet the needs of the juvenile through more adequate home supervision or another plan approved by the court) since the court failed to hold a dispositional hearing within six months, and therefore lost subject matter jurisdiction. After considering N.C.G.S. § 7B-2501(d), the Court of Appeals disagreed, and ruled that the purpose of N.C.G.S. § 7B-2501(d) is to provide an opportunity for families to seek non-judicial resolutions for juveniles, and not to limit the jurisdiction of trial courts in juvenile matters.

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## In the matter of J.K.C., 2013 N.C. App. LEXIS 1024 (unpublished opinion)

Rule(s):

1. “Where a lay witness testifies as to his recollection of events, such testimony is within Rule 701 as it is based on the perception and personal knowledge of that witness.” P.1
2. Assessment of a child’s competence to testify at trial “‘rests in the sound discretion of the trial judge in the light of his examination and observation of the particular witness.’” P.9.
3. “A child witness who can demonstrate an understanding of the requirement of veracity for testimony is deemed competent to testify.” P.1–2.
4. Under N.C.G.S. § 15A-924(a)(6), neither errors in nor omissions of citations are grounds for dismissal or reversal.
5. In ruling on a motion to dismiss, “the question for the Court is whether there is substantial evidence (1) of each essential element of the offense charged, or of a lesser offense included therein, and (2) of [juvenile’s] being the perpetrator of such offense.” P.13.

Five petitions were filed against the juvenile alleging two counts of first-degree sexual offense, two counts of crime against nature and one count of indecent liberties against children. During the adjudication hearing, the victim, age 3 at the time of the incident, testified that the juvenile “licked [her] private while in the bathroom.” The victim’s father also testified regarding the sequence of events that occurred on the night of the incident in question. At the trial, the juvenile did not offer any evidence. The juvenile was found responsible for two counts of first-degree sexual offense and one count of crime against nature. The trial court entered a Level 2 disposition and placed the juvenile on supervised probation.

The juvenile appealed arguing first that the trial court committed reversible error by allowing the victim’s father to testify that he believed the victim was telling the truth. The juvenile contended that the admission of the victim’s testimony was improperly admitted because it was barred under Rule 701 of the Rules of Evidence which limits testimony by a lay witness to testimony “in the form of opinions or inferences . . . which are (a) rationally based on the perception of the witness and (b) helpful to a clear understanding of his testimony or the determination of a fact in issue.” The Court disagreed, finding that the testimony of the victim’s father was proper lay witness testimony because it was meant not to establish the credibility of the victim’s statements, but to reveal the victim’s father’s perception of and response to the events of that night.

The juvenile next argued that the trial court committed reversible error in ruling that the victim was competent to testify. Specifically, the juvenile asserted that during the victim’s voir dire, the victim demonstrated her incompetence because she showed an inability to distinguish between fact and fiction. The Court found that the issue of whether a child is competent to testify at trial “is a matter which rests in the sound discretion of the trial judge in the light of his examination and observation of the particular witness.” The record revealed that the trial court made detailed findings of fact in open court following the completion of the victim’s voir dire and determined that despite giving contradictory testimony in response to questioning, the victim was competent to testify. Accordingly, as the decision of the trial court to admit the victim’s testimony was based upon the trial court’s personal observations of the victim during voir dire, and finding her sufficiently competent to testify, the Court determined that the trial court did not err in admitting the victim’s testimony. The third argument the juvenile raised was the trial court lacked jurisdiction because the juvenile petitions charging her referenced subsection N.C.G.S. § 1427.4A(a)(2), while the allegations in the petitions tracked the language of N.C.G.S. § 14-27.4A(a)(1). However, the Court has found that under N.C.G.S. § 15A-924(a)(6) (2011), regarding content of criminal pleadings, “[e]rror in the citation or its omission is not ground for dismissal of the charges or for reversal of a conviction.” In the present case, the Court found that it was clear from the petitions that although a typographical error was made, citing to N.C.G.S. § 14-27.4A(a)(2), which pertains to an offender 18 years old or older, rather than to the correct statute, N.C.G.S. § 1427.4A(a)(1), the language used in the petitions clearly follows that of the appropriate statute, N.C.G.S. § 14-27.4A(a)(1). Therefore, the petitions, as alleged, were valid and sufficient to properly charge the juvenile with two counts of first-degree sexual offense. Accordingly, the Court overruled the argument.

Fourth, the juvenile argued that the trial court committed reversible error by denying the motion to dismiss the charges where the State failed to present sufficient evidence of each and every element of the offense. The Court disagreed noting that in ruling on a motion to dismiss, “the question for the Court is whether there is substantial evidence (1) of each essential element of the offense charged, or of a lesser offense included therein, and (2) of [juvenile’s] being the perpetrator of such offense. If so, the motion was properly denied.” In the present case, the juvenile argues that the State presented insufficient evidence that the juvenile committed a first-degree sexual offense. N.C.G.S. § 14-27.1(4) (2011) defines a sexual act is as “cunnilingus, fellatio, analingus or anal intercourse, but does not include vaginal intercourse.” In the present case, the Court found that the victim repeated testified that the juvenile performed cunnilingus on her. Further, the victim’s statements to others, as well as her trial testimony, was consistent regarding the juvenile’s sexual act of digital penetration. Viewing the evidence in the light most favorable to the State, the Court found that the evidence was sufficient to prove each element of each count of first-degree sexual offense.

The juvenile further argued that because no specific act constituting crime against nature was alleged in the petition, the trial court adjudicated the juvenile’s charges on alternate theories. The Court found that the evidence supported separate sexual acts, either of which can support a charge of crime against nature. Therefore, in the light most favorable to the State, sufficient evidence was presented to permit the trial court to find the juvenile responsible as to each of the charges of first-degree sexual office and crime against nature. Accordingly, the trial court did not err in denying the juvenile’s motion to dismiss the charges.

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## In the matter of K.C., 2013 N.C. App. LEXIS 385

Rule(s):

1. The element of purpose, as required for an adjudication of sexual battery, “may not be inferred solely from the act itself,” P.8, but must be inferred from factors like age disparity, control by the juvenile, the location and secretive nature of the juvenile’s actions, and the attitude of the juvenile.
2. “[T]he gist of the action for battery is not the hostile intent of the defendant, but rather the absence of consent to the contact on the part of the plaintiff.” P.13 (citations omitted). Therefore, regardless of intent or effect, touching without consent is sufficient to survive a request for review under N.C. R. App. 2 if the juvenile does not move to dismiss at the hearing.
3. The court must consider the dispositional factors listed in N.C.G.S. § 7B2501(c) in selecting the disposition.

A petition was filed alleging the juvenile committed the offenses of simple assault and sexual battery. During the adjudicatory hearing, the prosecuting witness testified that the juvenile “touched and grabbed” her when she bent over to shelve a book. The prosecuting witness reported the incident and the school resource officer (SRO) investigated the matter. At the hearing, the SRO testified that Karen had seemed ‘a little upset’ when she informed him that the juvenile “grabbed and squeezed [her buttocks].” The SRO further testified that the juvenile admitted to touching the prosecuting witness on the buttocks, “but he said it was an accident.” When testifying in his own defense, the juvenile explained that he had been sitting in his seat when he dropped his pencil and came into contact with the prosecuting witness during the process of leaning down to pick it up, stating “when I picked my pencil up, I accidently hit [her] butt, but I didn’t squeeze it.” The juvenile was subsequently adjudicated delinquent with respect to the misdemeanor sexual battery offense. The court said nothing during the hearing regarding the charge of simple assault. In the written order, however, the court concluded that the juvenile was delinquent with regard to sexual battery and simple assault and placed on 9 months of probation and directed to submit to a juvenile sex offender evaluation and comply with treatment recommendations.

A juvenile can be found delinquent of sexual battery if, “for the purpose of sexual arousal, sexual arousal, sexual gratification, or sexual abuse, [the juvenile] engages in sexual contact with another person…[b]y force and against the will of the other person. As both parties testified to the fact that the juvenile made contact with the prosecuting witness’s buttocks, the Court concluded that there was sufficient evidence of sexual contact. However, regarding the question of sexual purpose, the Court has held that the element of purpose “may not be inferred solely from the act itself.” Rather, factors like age disparity, control by the juvenile, the location and secretive nature of the juvenile’s actions, and the attitude of the juvenile should be taken into account. In the present case the Court found that the evidence is not sufficient to raise more than a suspicion or possibility that the juvenile committed sexual battery. The question of whether the contact between Keith and Karen was intended “for the purpose of sexual arousal, sexual gratification, or sexual abuse” is disputed by the parties and there is no third party observer to provide additional context. Because the mere act of touching is not enough to show purpose, the Court vacated the sexual battery adjudication.

The juvenile also contended that the trial court erred by finding that he committed simple assault. The Court found that “the gist of the action for battery is not the hostile intent of the defendant, but rather the absence of consent to the contact on the part of the plaintiff.” In this case, both parties admit that the juvenile touched the prosecuting witness’s buttocks. Though there is contradictory evidence as to whether Keith intended to make contact with Karen, the mere fact that he touched her without her consent is sufficient to preclude further review. The juvenile also argued that the court’s adjudication of simple assault was not supported by sufficient findings of fact. N.C.G.S. § 7B-2411 lays out the requirements of juvenile adjudications, providing:

if the court finds that the allegations in the petition have been proved [beyond a reasonable doubt], the court shall so state in a written order of adjudication, which shall include, but not be limited to, the date of the offense, the misdemeanor or felony classification of the offense, and the date of adjudication.

In examining the record the Court found that the juvenile’s written adjudication order regarding the simple assault included information such as the date of the offense, the fact that the assault is a class 2 misdemeanor, the date of the adjudication and clearly states the court considered the evidence and adjudicated the juvenile delinquent as to the allegation of simple assault beyond a reasonable doubt, which satisfies N.C.G.S. § 7B-2411. Accordingly, the Court affirmed the simple assault adjudication order.

Next, the juvenile maintained that the disposition order failed to address certain factors required by N.C.G.S. § 7B-2501. The Court found that the record did not establish that the trial court considered all of the factors, and thus, held that that the trial court failed to make sufficient findings of fact under section N.C.G.S. § 7B-

2501 and remanded to the district court for additional findings of fact on disposition. Lastly, the juvenile argued that he received Ineffective Assistance of Counsel (IAC) because his counselor “failed to make proper motions to preserve the issue of sufficiency of the evidence for appellate review.” The Court refrained from addressing the question as to either sexual battery or simple assault. The Court concluded that the issue of IAC related to the sexual battery allegation was moot because a decision on the matter would have had no practical effect on the existing controversy as the delinquency adjudication was vacated. As to the simple assault, the Court refrained from addressing the juvenile’s argument of IAC because it was premature. IAC requires that the juvenile show that (1) his attorney’s performance was deficient and (2) such deficient performance prejudiced his defense. Because of the nature of IAC claims, the juvenile will not likely be in a position to adequately develop the claims on direct appeal. “Should the reviewing court determine that IAC claims have been prematurely asserted on direct appeal, it shall dismiss those claims without prejudice to the [juvenile’s] right to reassert them during a subsequent proceeding. In this case, the record is unclear on whether the performance of the juvenile’s attorney fell below an objective standard of reasonableness or prejudiced his case as to the charge of simple assault. Accordingly, the Court dismissed the issue without prejudice.

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## In the matter of J.D.L., 154 N.C. App. 246, 572 S.E.2d 229 (2002), 2002 N.C. App. LEXIS 1456

Rule(s): Considering a juvenile’s refusal to admit to adjudicated offenses when determining whether or not to release the juvenile pending appeal violates the juvenile’s Fifth Amendment right against self-incrimination

The juvenile was adjudicated of second-degree sex offense and indecent liberties between children. One of the conditions of the juvenile’s probation was to participate in outpatient sex offender specific treatment. A probation violation was filed against the juvenile alleging that the juvenile had not attended his treatment.

The juvenile was found to be in violation of probation and was committed to a youth development center in order to complete the sex offender treatment. The juvenile requested to be released from secure custody pending his appeal. The trial court denied his release.

The juvenile appealed, arguing that the trial court should not have considered his refusal to admit to his adjudicated offenses in determining whether or not to release the juvenile pending appeal. The Court of Appeals agreed with the juvenile, holding that the trial court’s decision that the juvenile remain in secure custody pending his appeal based on his refusal to admit responsibility for which he was adjudicated delinquent violated his right against self-incrimination. The Court found that the juvenile should not be faced with the choice of either waiving his right against self-incrimination by admitting responsibility or accepting confinement. http://appellate.nccourts.org/opinions/?c=2&pdf=MjAwMi8wMi0xMTMtMS5wZG Y

## In the matter of N.J., 135 N.C. App. 400, 520 S.E.2d 787 (1999), 1999 N.C. App. LEXIS 1158 Rule(s):

1. In order to be constitutional, a petition alleging delinquency “must set forth the alleged misconduct with particularity.” P.4 (citations omitted).
2. This entails “asserting facts supporting every element of a criminal offense and the juvenile’s commission thereof . . . .” P.4 (quoting N.C.G.S. § 7A-560).
3. Where the ages of the juvenile and victim are essential to the offense, failure to state those ages is a fatal defect.

The juvenile was charged with five counts of sexual offenses. The juvenile was adjudicated of four counts of first-degree sex offense and one count of first-degree rape.

The juvenile appealed, arguing that 1) the first four petitions were deficient on their face because they did not allege a crime; 2) the fifth petition was improperly allowed to be amended prior to trial; and 3) the State failed to prove every element of the offense.

The Court of Appeals agreed with the first contention, finding the first four petitions fatally defective by failing to state with particularity the nature of juvenile’s acts as well as allegations regarding the juvenile or alleged victim’s ages.

The Court determined it did not need to rule on the second argument, holding that the State failed to offer evidence of the juvenile’s age, an element necessary to prove the allegation of first-degree rape.

## In the matter of D.G.G., 162 N.C. App. 487, 592 S.E.2d 12 (2004), 2004 N.C. App. LEXIS 172

Rule(s): A petition alleging delinquency must “assert[] facts supporting every element of a criminal offense and the juvenile’s commission thereof . . . .” P.8 (quoting N.C.G.S. § 7B-1802 (2003)).

The juvenile was adjudicated of first-degree sex offense. The juvenile petition alleged that the sex offense was perpetrated "by force against the victim's will," per

N.C.G.S. §14-27.4(2). However, the state presented no evidence under this theory, instead prosecuting under subsection (1) of §14-27.4, requiring a specific age difference between the parties.

The Court of Appeals vacated the adjudication and disposition, finding that a petition in a juvenile case serves essentially the same function as an indictment in an adult felony case, and therefore must allege every element of the offense the state intends to prove at trial.

## In the matter of K.H., 2009 N.C. App. LEXIS 322 (unpublished opinion)

Rule(s):

1. Where evidence is offered to show duress and is erroneously excluded, the error is not prejudicial if the evidence would not have sufficiently established duress.
2. Under N.C.G.S. § 15-144.2(a), the language of a short-form sex-offense indictment (which alleges a “sexual offense,” but does not use the language of “sexual act”) is sufficient for purposes of a valid petition.

The juvenile was adjudicated of second-degree sexual offense.

The juvenile appealed, arguing: First, that the trial court erred by excluding evidence that may have shown he was under duress due to an alleged violation of the notice requirement of N.C.G.S. § 15A-905(c)(1); and, second, that the court lacked jurisdiction because the petition failed to allege that he engaged in a sexual act.

Regarding the first argument, the juvenile contended that the trial court erroneously believed that the notice requirements of that N.C.G.S. § 15A-905(c) (1) applied to juvenile cases, and therefore, the court’s ruling excluding evidence in support of duress constituted error. The Court of Appeals stipulated that if it assumed that there was error in excluding the evidence, the evidence still would not have supported a finding that the juvenile was not delinquent. Therefore, the Court of Appeals found that it could find no prejudicial error.

Regarding the second argument, the juvenile argued that the petition was fatally defective as it did not allege an essential element of second-degree sexual offense, and that the language of a “short form” sex offense indictment was not valid for delinquency proceedings. The Court of Appeals disagreed, finding that allowing petitions worded in the same manner as short form indictments was consistent with the rule that “juvenile petitions are generally held to the standards of a criminal indictment.”

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## In the matter of M.S., 681 S.E.2d 441, 2009 N.C. App. LEXIS 1364

Rule(s):

1. “[W]hen an indictment is alleged to be facially invalid, thereby depriving the trial court of jurisdiction, the indictment may be challenged at any time.” P.4 (citations omitted).
2. Naming the victim in an indictment of sexual offense is not merely evidentiary. For the indictment to be valid, “there must be some attempt to name the victim.” P.9. Failure to name the victim makes the indictment facially invalid.

Four petitions were filed alleging that the juvenile was delinquent for committing four counts of first-degree sexual offense. The juvenile admitted to two counts of first-degree sexual offense in return for the State’s promise to dismiss the other two counts of sexual offense. After the court accepted the juvenile’s admission, he was adjudicated delinquent of two counts of first-degree sexual offense, and placed on Level 2 probation for 12 months.

The juvenile appealed, arguing that the petitions were fatally defective under N.C.G.S. 15-144.2(b) as they failed to name the alleged victims. The Court of Appeals agreed finding that (1) a challenge to the facial validity of a juvenile petition depriving the court of jurisdiction may be raised at any time including after a transcript of admission has been filed, and therefore review was not waived by the juvenile’s failure to object; (2) the petition’s reference to the victims as “a child” without alleging the victims’ names was fatally defective as for a sexual offense indictment to be legally valid under N.C.G.S. 15-144.2(b), it must contain the victim’s name, identifying initials or some form of the name that can be tested under the Coker and Lowe tests, even if the indictment is in approved short form; and (3) the victim’s name is not merely evidentiary, but critical to avoid double jeopardy and other legal issues. As the petitions in the case were found to be fatally defective, thereby depriving the court of subject matter jurisdiction, the Court of Appeals vacated the trial court’s orders.

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## In the matter of R.L.C., 179 N.C. App. 311, 635 S.E.2d 1, 2006 N.C. App. LEXIS 1913, affirmed by, In re R.L.C., 361 N.C. 287; 643 S.E.2d 920 (2007), 2007 N.C. LEXIS 417

Rule(s):

1. Private, consensual, non-procreative sexual activity between minors can be regulated due to the legitimate government interest in promoting physically and mentally healthy young citizenry and in preventing sexual activity between minors in order to halt the spread of sexually transmitted diseases. N.C.G.S. § 14-77 therefore survives rational-basis review and does not fail for lack of due process.
2. N.C.G.S. § 14-77 contains no element of age difference and should be so interpreted under its plain meaning.

The juvenile was adjudicated delinquent for committing crime against nature (N.C.G.S. § 14-77) by having oral sex with a 12 year old when he was 14 years old in a vehicle parked in a public lot.

The juvenile appealed, arguing that because no statutes were violated specifically prohibiting non-procreative sexual conduct between minors, then the criminalization of private, consensual, non-procreative sexual conduct between minors would be a violation of the Due Process Clause of the 14th Amendment of the U.S. Constitution, as held by the U.S. Supreme Court in Lawrence v. Texas. The Court of Appeals upheld the statute as it applies to minors and public activity, stating that Lawrence was only applicable to consenting adults, and that the statute had a legitimate state interest to regulate prostitution, non-consensual sexual acts, public sexual acts and sexual acts between minors. The dissent disagreed with the majority that all sexual conduct between minors may be regulated by N.C. Gen. Stat § 14-77, without regard to the circumstances, as the General Assembly has stated in other statutes that there is a legitimate state interest in the regulation of the sexual conduct between minors when there is a certain difference in age.

The Supreme Court of North Carolina agreed with the Court of Appeals' majority opinion, holding that private, consensual, non-procreative sexual activity between minors can be regulated due to the legitimate government interest in promoting physically and mentally healthy young citizenry and in preventing sexual activity between minors in order to halt the spread of sexually transmitted diseases. Also, despite the existence of statutes regulating intercourse between minors less than three years apart in age, because N.C. Gen. Stat § 14-77 contains no age differential element, it should be interpreted as it is written by its plain meaning, without reference to any variance in age.

Finally, the dissent stated that the application of N.C. Gen. Stat § 14-77 to minors conflicts with the more specific statutes regarding sexual conduct between minors, which intend to protect young victims or to prevent underage pregnancies. http://appellate.nccourts.org/opinions/?c=2&pdf=MjAwNi8wNS0xMTIwLTEucGR m

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## In the matter of H.D., 2005 N.C. App. LEXIS 2598 (unpublished opinion)

Rule(s):

1. Upon disposition, a court must state, in writing, “sufficient findings of fact to support its conclusions of law pursuant to N.C.G.S. § 7B-2501.”
2. Choosing between two appropriate dispositional levels is within the trial court’s discretion.
3. When ordering that a juvenile be placed on the juvenile sex offender registry, the court is not required to include written findings that the juvenile is a danger to the community.

The juvenile was adjudicated delinquent of attempted second-degree sexual offense. Between adjudication and disposition, the juvenile was placed in a secure residential treatment facility to receive sex offender treatment. At disposition, the court committed the juvenile to a youth development center and ordered the juvenile be placed on the juvenile sex offender registry.

The juvenile appealed, arguing that the court failed to make competent findings of fact, made conclusions of law unsupported by the findings, failed to find the juvenile had extraordinary needs that compelled a Level 2 disposition, and erred in ordering the juvenile to register as a sex offender when the court made no findings of fact that the juvenile was a danger to the community.

The Court of Appeals reviewed the first two arguments and noted that part of the order “merely summarized” the treatment facilities’ report, and did not include any analysis. However, the Court then noted that the trial court found a number of facts that amounted to more than mere recitation of the allegations. The Court stated “while we reiterate the need to make specific findings of fact, the trial court made sufficient findings of fact to support its conclusions of law pursuant to N.C.G.S. § 7B-2501.”

The Court next considered the juvenile’s argument that the trial court failed to enter a Level 2 disposition based on the juvenile’s extraordinary needs, specifically that the juvenile was being treated at a secure facility and several parties testified that the placement met the needs of the juvenile. The Court stated that the choice between two appropriate dispositional levels is within the trial court’s discretion, and that the decision should be overturned only when an abuse of discretion is found. The Court noted that the trial court considered testimony and arguments from all parties and made a decision that was reasoned based on all of the evidence.

As to the juvenile’s fourth argument, the Court ruled that the sex offender registry statute does not require the trial court to make written findings that the juvenile is a danger to the community, nor must the court use the language “danger to the community” in its findings. The Court found that the statement “he’s admitted to sexual conduct in public places, so I’m going to allow that registration” satisfied the requirements of the statute.

## In the matter of K.L.D., 210 N.C. App. 747; 709 S.E.2d 409; 2011 N.C. App. LEXIS 598

Rule(s): Choosing between two appropriate dispositional levels is within the trial court’s discretion. (“The decision to impose a statutorily permissible disposition is vested in the discretion of the juvenile court and will not be disturbed absent clear evidence that the decision was manifestly unsupported by reason.” P.5.)

The juvenile was adjudicated delinquent of sexual battery and simple assault, and placed on a Level 2 disposition.

The juvenile appealed, arguing that the trial court erred in concluding that it was mandated to enter a Level 2 intermediate disposition without first taking into consideration a Level 1 community disposition. The Court of Appeals disagreed, citing In re N.B., 167 N.C. App. 305, 605 S.E. 2d 488 (2004), which held that “The decision to impose a statutorily permissible disposition is vested in the discretion of the court, and will not be disturbed absent clear evidence that the decision was manifestly unsupported by reason.” Upon reviewing the juvenile’s prior delinquency history, the Court held that the trial court was authorized to enter either a Level 1 or Level 2 disposition because the juvenile was adjudicated of a serious offense (sexual battery), and had a delinquency level of low due to prior delinquency history. As the court’s decision was not “manifestly unsupported by reason, and within the court’s discretion, the Court of Appeals affirmed the trial court’s decision.

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## In the matter of J.S.W., 211 N.C. App. 620; 711 S.E.2d 471; 2011 N.C. App. LEXIS 839

Rule(s):

1. Under § 7B-2513(g), the court maintains continuing jurisdiction over a juvenile upon committing the juvenile for placement in a youth development center.
2. Under N.C.G.S. § 7B-2600(a), “the court may modify or vacate the order in light of changes in circumstances or needs of the juvenile.”
3. The court must consider the dispositional factors listed in N.C.G.S. § 7B2501(c) selecting the disposition, but is not limited to those factors.

In 2007, the juvenile was adjudicated delinquent of first-degree rape, and the court entered a Level 3 disposition committing the juvenile to a youth development center (YDC) for a minimum period of six months and for a total period of commitment that was indefinite. The court also ordered that the juvenile remain in YDC for the maximum time allowed by law. Approximately two years later in 2009, at a motion for review to extend the juvenile’s commitment, the court ordered that the juvenile remain in YDC until his 21st birthday as originally ordered, and held that it would entertain an earlier release upon successful completion of the sex offender specific treatment it ordered in 2007. In 2010, following a motion for review, the court found that the juvenile had completed the sex offender specific treatment, and ordered that the juvenile remain in YDC until his 21st birthday. A month later, another motion for review was filed seeking clarification as to whether the juvenile could participate in an off-campus job and home visits. Following the hearing, the court held that the juvenile could work off campus if he was not around anyone 25 years of age or younger; that he could not participate in home visits; and that he could participate in outings with the YDC if there was direct supervision.

The juvenile appealed, arguing that the court erred by ordering that he have no home or overnight visits and by ordering that he can only work off campus if he is not around anyone 25 years of age or younger because the conditional language prevented him from working off campus entirely. Specifically, the juvenile argued that because the Department of Juvenile Justice and Delinquency Prevention (Department) had authority over services, privileges, or punishments he should receive while in custody, the court lacked subject matter jurisdiction to make decisions addressing services, privileges, or punishments. The Court of Appeals disagreed, pointing at North Carolina statutory law such as “The court has exclusive, original jurisdiction over any case involving a juvenile who is alleged to be delinquent.” (N.C.G.S. § 7B-1601(a)); When committed to the Department for placement in a YDC “for an offense that would be…first-degree rape pursuant to N.C. Gen. Stat 14-27.2 …if committed by an adult, jurisdiction shall continue until terminated by the order of the court or until the juvenile reaches the age of 21 years, whichever occurs first.” (N.C.G.S. § 7B-1602(a)); “Commitment of a juvenile to the Department for placement in a YDC does not terminate the court’s continuing jurisdiction over the juvenile and the juvenile’s parent, guardian, or custodian” (N.C.G.S. § 7B-2513(g)); “Commitment of a juvenile to a YDC transfers only physical custody of the juvenile.” (N.C.G.S. § 7B-2513(g)); and Upon a motion for review and “after notice, the court may conduct a review hearing to determine whether the order of the court is in the best interests of the juvenile, and the court may modify or vacate the order in light of changes in circumstances or needs of the juvenile.” (N.C.G.S. § 7B-2600(a)). Furthermore, the Court also noted that the Supreme Court had previously held that “The North Carolina Juvenile Code patently provides for jurisdiction to lie exclusively in the district court between the stages of allegation and the final release of the juvenile” (In re Doe, 329 N.C. 743, 748, 407 S.E.2d 798, 801 (1991).

The juvenile’s next argument was that the district court abused its discretion by considering punishment as a purpose of the Juvenile Code rather than the mandated factors under N.C.G.S. § 7B-2501(c). The Court of Appeals disagreed, finding that the court considered the mandated factors based upon the court’s statement about the juvenile’s rehabilitation and punishment. Accordingly, the Court found no error.

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## In the matter S.C.U., 2011 N.C. App. LEXIS 159 (unpublished opinion)

Rule(s): In a sexual-battery case, the element of sexual gratification or arousal may be supported by sufficient evidence where the juvenile approached the victim from behind while a teacher was not looking, instructed the victim not to tell others, committed another count of the offense after being punished by a school for the first incident, and denied the act before being approached about it.

The juvenile was adjudicated delinquent for two counts of sexual battery, and the court entered a Level 2 disposition order.

The juvenile appealed, arguing that the State erred by denying his motion to dismiss for insufficiency of the evidence because it failed to present sufficient evidence to support a conclusion that his actions were committed for the purpose of sexual gratification or arousal. The Court of Appeals disagreed, holding that there was sufficient evidence to indicate that the juvenile acted for sexual gratification or arousal. As its rationale, the Court pointed toward: (1) the way that the juvenile approached the victim from behind when the teacher was not facing the class, indicating both maturity and intent; (2) the juvenile’s request that the victim not tell on him following the first incident of sexual battery, indicating that his actions were wrongful; (3) the fact that the juvenile committed another count of sexual battery against the victim despite the repercussions associated with the first count of sexual battery; and (4) the juvenile’s haste to proclaim innocence prior to being questioned by the teacher, indicating that he understood the nature of his actions and acted with the intent necessary to commit sexual battery. Accordingly, the decision was affirmed.

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## In the matter of A.W., 2011 N.C. App. LEXIS 215

Rule(s):

1. For the charge of a second-degree sexual offense, the State must provide evidence that the victim was “mentally disabled, mentally incapacitated, or physically helpless.”
2. For the charge of indecent liberties between children, the element of “purpose to arouse or gratify his sexual desires” may be evidenced by the following: the juvenile’s age and maturity, the method used to engage the victim in the act; and evidence of prior sexual activity with another child.
3. Because an incident’s date is not an element of the charge of indecent liberties between children, slight discrepancies in dates do not bar adjudication.
4. Preventing a juvenile’s counsel from making a closing argument constitutes denial of the juvenile’s right to counsel.

The juvenile was adjudicated of second-degree sexual offense, indecent liberties between children, and breaking and entering. A Level 3 disposition was entered.

Juvenile appealed, arguing that the State presented insufficient evidence that he committed second-degree sexual offense and indecent liberties between children. Because the juvenile failed to challenge the sufficiency of the evidence at the close of all of the evidence (which would bar him from challenging the sufficiency of the evidence on appeal), the juvenile argued that there was ineffective assistance of counsel. Alternatively, the juvenile requested review pursuant to Rule 2 of the North Carolina Rules of Appellate Procedure, which allows an appellate court to modify the provisions of the rules of appellate procedure to preclude “manifest injustice.”

Finding that there was insufficient evidence to support the adjudication, the Court reviewed the case pursuant to Rule 2. In reviewing the case, the Court of Appeals held that the evidence was insufficient to prove the elements of seconddegree sexual offense, as there was no evidence that the victim was “mentally disabled, mentally incapacitated, or physically helpless.” Accordingly, the Court vacated the second-degree sexual offense adjudication, and remanded for dismissal.

Regarding the adjudication for indecent liberties between children, the Court held that there was sufficient evidence as all elements of the offense were met, including “with a purpose to arouse or gratify his sexual desires.” Specifically, the Court held that the juvenile’s age and maturity, including the age disparity between the juvenile and victim (13-year old juvenile and 3-year old victim); the method he used to engage the victim in the act (by telling him his private parts tasted like candy); and evidence of prior sexual activity with another child a few months before the incident in question indicated that he acted for the purpose to arouse or gratify sexual desires.

Regarding an alternative argument that the indecent liberties between children should have been dismissed due to a discrepancy between the date upon which the offense was alleged to have occurred, the Court held that the date was not an element of the crime, and therefore not grounds for dismissal (particularly where the discrepancy was slight and did not affect the juvenile’s ability to provide a defense).

The juvenile’s last argument was that he was entitled to a new adjudicatory hearing on the charge of indecent liberties between children because the trial court denied his counsel the opportunity to make a closing argument. The Court agreed, citing cases that held that denial to make a closing argument was a denial of the right to have assistance of counsel. Consequently, the Court vacated the adjudication finding the juvenile delinquent of incident liberties between children and remanded the case for a new adjudication hearing on that charge and the felonious breaking and entering charge.

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## In the matter of D.B., 2011 N.C. App. LEXIS 1938 (unpublished opinion)

Rule(s): Because “asportation [of a rape victim] is separate and independent of the rape [and] is removal for the purpose of facilitating the felony of rape,” P.7 (citations/quotation marks omitted), evidence tending to show that the juvenile moved a victim inside and up three flights of stairs is sufficient to establish the element of moving the victim beyond whatever movement is entailed by the commission of another felony.

The juvenile was adjudicated of first degree kidnapping and aiding and abetting attempted rape, and placed on probation for 12 months.

The juvenile appealed, arguing that the trial court erred by denying his motion to dismiss the petition for first degree kidnapping as the kidnapping was part of the attempted rape. The Court of Appeals, first noted, that the issue had not been preserved on appeal. Because the issue had not been preserved for appeal, the juvenile requested that the Court consider his argument pursuant to Rule 2 of the Rules of Appellate Procedure, which allows an appellate court to modify the provisions of the rules of appellate procedure to preclude “manifest injustice.” Upon review, the Court concluded that it did not believe it was necessary to consider the juvenile’s argument to preclude “manifest injustice.”

The Court noted however, that even if it suspended the rules under Rule 2, the juvenile’s argument was without merit because there was substantial evidence of kidnapping apart from the attempted rape. The Court based its conclusion on the fact that the asportation of the victim from the porch into the house, and up three flights of stairs, was separate and apart from the attempted rape. Consequently, the Court dismissed the case.

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## In the matter of R.N., 2010 N.C. App. LEXIS 1545

Rule(s):

1. In a charge for a crime against nature, “[t]he essential element of the offense is some penetration, however slight, of a natural orifice of the body.” P.5 (internal citations/quotations omitted).
2. “[E]vidence tending to show that [the juvenile] ‘licked’ [the victim’s] ‘private area] does not, without more, support a reasonable inference that penetration occurred. P.8.

The juvenile was adjudicated of two counts of crime against nature, and placed on a Level 2 disposition.

The juvenile appealed, arguing that the trial court erred by failing to dismiss the petitions for insufficient evidence that penetration, an essential element of crime against nature, occurred during the alleged incidents. The Court of Appeals agreed with the juvenile as to the first incident, but found that defects in the transcript prevented meaningful appellate review of the evidence for the second incident.

As to the first allegation where the petition alleged that the juvenile licked the victim’s genital area while fully clothed, the Court found that the evidence indicating that the victim was fully clothed during the incident was insufficient to show that the juvenile penetrated the victim in the particular case.

As to the second allegation where the petition alleged that the juvenile placed his penis in the victim’s mouth, after reviewing the record, the Court found that the available testimony indicated that the juvenile forced the victim’s head down to his “private area” and that the victim saw his “private area,” but not that penetration occurred. The Court found that when the Child Protective Services' social worker was asked about the second allegation and whether the victim indicated that penetration occurred, her response was unclear. The Court noted that it was defense counsel’s duty to prepare and docket a true transcript of the record and case on appeal in a criminal case, and that it was both the defense counsel’s and the district attorney’s duty to correct errors in the transcript.

The Court also noted that in compliance with Rules of Appellate Procedure, the parties should have prepared a narrative of the social worker’s testimony. Accordingly, the Court reversed in part and vacated and remanded in part to reconstruct the social worker’s testimonial evidence regarding the second allegation. The Court held that on remand, the parties could stipulate to the narrative or have the trial court settle the record if the parties could not agree. http://appellate.nccourts.org/opinions/?c=2&pdf=MjAxMC8wOS0xNDA2LTEucG

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## In the matter of D.S., 694 S.E.2d 758, 2010 N.C. LEXIS 434

Rule(s):

1. For purposes of juvenile adjudication, the definition of “complaint” is “a written and sworn document whose primary purpose is to articulate specific allegation(s) of delinquency to the JCC.” P.8.
2. Because the time limit set forth in N.C.G.S. § 7B-1703 (15 days, plus a 15day extension) is not jurisdictional, courts do not lack jurisdiction over petitions filed after that deadline.

The juvenile was adjudicated of sexual battery and simple assault.

The juvenile appealed arguing that (1) the trial court lacked subject matter jurisdiction because the sexual battery petition was not filed timely pursuant to N.C.G.S. § 7B-1703 (i.e., within 15 days after the complaint is received, or within 30 days if the chief court counselor grants an extension within the first 15 day requirement); (2) there was a fatal variance between the acts alleged in the petition and the evidenced presented at the hearing; and (3) the trial court erred in making a finding of fact 3(c) absent supporting evidence at the hearing.

Regarding the first argument, the Court of Appeals agreed with the juvenile, finding that the court counselor failed to act timely when filing the second petition 50 days after the complaint was received. Accordingly, the Court of Appeals vacated the order adjudicating the juvenile delinquent of sexual battery.

Regarding the juvenile’s second argument, the juvenile argued error because the simple assault petition alleged that he touched the victim with his hands, whereas the evidence indicated that he touched the victim with a Pixy Stix. The Court disagreed, and overruled the assignment of error finding that the variance between the petition and the evidence presented at the hearing did not prevent the juvenile from preparing a defense for simple assault.

Regarding the juvenile’s last argument that there was no evidence that he touched the victim, the Court disagreed. The Court found that there was “clear, cogent and convincing evidence to support the findings of fact and conclusions of law by the trial court” that the juvenile assaulted the victim.

In July 2009, the State filed a petition for discretionary review seeking review of whether the Court of Appeals erred by holding (1) that provisions of N.C.G.S. § 7B1703 were prerequisites in juvenile delinquency cases, and (2) that the trial court had no jurisdiction where the complaint alleging sexual battery was received by the Department of Juvenile Justice and Delinquency Prevention one day prior to the filing of the juvenile petition even if N.C.G.S. § 7B-1703 is considered a jurisdictional statute. First, the Supreme Court determined that the juvenile court counselor filed the petition timely because he filed the petition alleging sexual battery after the new complaint of sexual battery was received. The Court held that the meaning “complaint” is a written and sworn document asserting specific allegations of delinquency” and that “when the complaint is received” in N.C.G.S. § 7B-1703 is the “date on which the juvenile court counselor’s office receives a document alleging that a juvenile is delinquent.” The Supreme Court reasoned that the court counselor in his ministerial capacity (i.e. of receiving complaints, performing intake, and determining whether to file petitions considering charges alleged) would not been able to file a petition for sexual battery based upon receiving a complaint for simple assault. The Supreme Court reasoned that the Court of Appeal’s conclusion regarding timeliness was a result of treating the “underlying allegations, rather than the document itself, as the complaint.” Reasoning that the court counselor was only authorized to determine whether the complaint before him should be filed as a petition, diverted, or resolved without further action, the Court held that the court counselor was not required to file a petition alleging sexual battery at the time of filing the petition for simple assault. The Court also noted that the purpose of the Juvenile Code not only provides for cases to be resolved expeditiously, but also provides for protection of the public, deterrence of crime, rehabilitative services, as well as an effective and equitable system. Moreover, the Court also noted that nothing in the provisions indicate a legislative intent to elevate expediency over other specified purposes of the Code. Last, the Court held that the legislature did not intend for the timing requirements of N.C.G.S. § 7B-1703 to be jurisdictional as the statute does not mention jurisdiction or that failure to meet timelines divests the district court of subject matter jurisdiction. The Court compared the timing requirements to those governing abuse, neglect, and dependency cases wherein timing requirements are considered “directory rather than mandatory.” Accordingly, the Supreme Court reversed the decision, and remanded the case to the Court of Appeals to address assignments of error related to the sexual battery adjudication.

Upon remand, the Court of Appeals held that the trial court erroneously failed to grant the juvenile’s motion to dismiss as to the sexual battery charge. Relying on In re T.S., 133 N.C. App. 272, 515 S.E.2d 230 (1999), the Court of Appeals found that there was no proof that the juvenile was acting for a sexual purpose and that the juvenile’s actions without the purpose of sexual arousal, sexual gratification, or sexual abuse failed to constitute sexual battery. Consequently, the Court reversed and remanded for entry of dismissal.

Supreme Court of NC:

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## In the matter of J.T.W., 671 S.E.2d 378, 2008 N.C. App. LEXIS 2135 (unpublished opinion)

Rule(s): For the charges of sexual battery and indecent liberties between children, the element of “purpose to arouse or gratify his sexual desires” is supported by sufficient evidence where there was an eight-year age disparity between the children, the juvenile touched the victim on her chest and buttocks while the two were alone in a room, and the juvenile jumped when he saw the victim’s mother, and the juvenile immediately denies wrongdoing.

The juvenile was adjudicated of sexual battery and indecent liberties between children.

The juvenile appealed, arguing that the trial court erred in denying his motion to dismiss both charges because the State did not present evidence that he committed the offenses for purposes of sexual gratification. The Court of Appeals disagreed, ruling that the essential elements of both offenses, including that the action by the juvenile was for the purpose of arousing or gratifying sexual desire, were met. Unlike in adult proceedings, the juvenile’s intent to act for the purpose of arousal or sexual gratification is not inferred from the act itself, but can be shown by the age disparity between the juvenile and the victim, the control exercised by the juvenile, the location and secretive nature of the actions, and the attitude of the juvenile. In this case, there was an eight year age disparity between the juvenile and the victim; the juvenile touched the victim on her chest and buttocks while they were alone in the room; the victim’s mother saw the juvenile’s hand underneath the victim’s shorts when she walked into the room; the juvenile jumped up when he saw the victim’s mother walk into the room, as if involved in suspicious behavior; and the juvenile immediately denied that there was any inappropriate conduct when the mother inquired, attempting to avoid being caught. The Court ruled that these facts were sufficient to prove that the juvenile made sexual contact with the victim for the purpose of arousal or sexual gratification, and affirmed the trial court’s decision.

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## In the matter of M.E.W., 2006 N.C. App. LEXIS 1888 (unpublished opinion)

Rule(s):

1. The evidence in a sexual-battery case is sufficient to establish the element of sexual arousal or gratification in a sexual-battery case the juvenile brought a condom to school, talked about whom he planned to use the condom on, and attempted to hide the condom wrapper in the bathroom immediately after the assistant principal asked him about it, and that the juvenile did this the day after touching a classmate between her legs and laughing.
2. The evidence in a sexual-battery case is sufficient to establish the element of the contact being against the victim’s will where testimony tends to show that the victim did not want to be touched between her legs, told the juvenile to stop and leave her alone, was embarrassed by the location of the touching, immediately told her teacher what had happened, and also told her mother upon returning home.

The juvenile was adjudicated of sexual battery. The following facts were found by the trial court: the day before the incident the juvenile (nine years old) brought a condom to school, told other students with whom he was going to use the condom, and attempted to hide the condom wrapper when asked by the assistant principal whether or not the juvenile “had anything he was not supposed to have at school.” The trial court also found that on the day of the offense, the juvenile laughed after the juvenile touched the victim on her private parts.

The juvenile appealed, arguing that the State failed to prove the element of committing the battery for the purpose of gratifying sexual desire. The Court of Appeals disagreed, holding that a reasonable inference of intent to gratify sexual desire could be drawn by the facts presented at trial.

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## In the matter of D.W., 171 N.C. App. 496, 615 S.E.2d 90, 2005 N.C. App. LEXIS 1358

Rule(s):

1. For a charge of attempted first-degree rape, sufficient evidence of the element of intent to engage in sexual intercourse may be found in the juvenile’s age of 14, his instruction to the victim to come into his room, his removing the victim’s pants, his touching her vagina with his penis, and his hiding in the closet when his mother approached.
2. For a charge of indecent liberties between children, sufficient evidence of the intent to gratify sexual desire may be found in the juvenile’s running into the closet while pulling up his pants and the victim being found in the juvenile’s bed undressed from the waist down.

The juvenile was adjudicated of attempted first-degree rape and indecent liberties between children.

The juvenile appealed, arguing that the trial court should have granted the motion to dismiss at the end of all the evidence presented at trial. The Court of Appeals upheld the trial court decision, finding that the evidence was sufficient to adjudicate on both counts.

As to the attempted first-degree rape charge, the Court found the following evidence sufficient to adjudicate as to the intent to engage in sexual intercourse element: the age of the juvenile (14), the juvenile telling the victim to come into his room, removing her pants and touching her vagina with his penis, and the juvenile hiding in the closet as his mother approached.

As to the indecent liberties between children charge, the Court compared the instant case to the facts in In re T.C.S., 148 N.C. App. 297, 558 S.E.2d 251 (2002), and found the following evidence sufficient to adjudicate as to the intent to gratify sexual desire: the juvenile running into the closet while pulling up his pants and the victim being found in the juvenile’s bed undressed from the waist down.

The juvenile also argued on appeal that the decision should be remanded because the direct testimony of the juvenile had inadvertently failed to be recorded. The Court of Appeals disagreed, stating that a “meaningful appellate review” could still be made of the case because the juvenile’s only other argument on appeal is trial court’s denial of his motion to dismiss, and that the transcript did include the crossexamination of the juvenile, which can provide a partial reconstruction of the juvenile’s account of the facts.

## In the matter of T.C.S., 148 N.C. App. 297, 558 S.E.2d 251 (2002), 2002 N.C. App. LEXIS 12

Rule(s): In a case of liberties between children, “[the seven-year] age disparity, the control by the juvenile, the location and secretive nature of their actions, and the attitude of the juvenile is evidence of the maturity and intent of the juvenile,” constituting evidence sufficient to withstand a motion to dismiss.

The juvenile was adjudicated of indecent liberties between children.

The juvenile appealed, arguing that the evidence presented did not support the intent element of gratifying sexual desires. The Court of Appeals upheld the adjudication. The Court found evidence of gratifying sexual desires from the following facts: the age disparity between the juvenile and the victim (12 versus 5), the location of the act (a wooded area) and the secretive nature of the juvenile's actions (juvenile told the mother of the victim that his activities with the victim were “none of her business”).

## In the matter of T.S., 133 N.C. App. 272, 515 S.E.2d 230 (1999), 1999 N.C. App.

LEXIS 408

Rule(s):

1. In a case of indecent liberties between children, “[a]lthough intent may be inferred from the act itself under the adult statute, sexual ambitions must not be assigned to a child’s actions without some evidence of the child’s maturity, intent, experience, or other factor indicating his purpose in acting.” P.1.
2. The mere fact that a juvenile performed fellatio on a younger juvenile does not satisfy the element of intent, and the State lacks evidence sufficient to withstand a motion to dismiss.

The juvenile was adjudicated of indecent liberties between children.

The juvenile appealed, arguing that the evidence presented (performing fellatio on a younger neighbor) did not support the intent element of gratifying sexual desires. The Court of Appeals reversed the trial court decision, holding that for adjudication, there must be evidence presented showing the juvenile's maturity, intent, experience, or other factor indicating intent to gratify sexual desires. The evidence indicated that the juvenile had seen other children engaging in a similar activity.

## In the matter of A.W., 2011 N.C. App. LEXIS 215

Rule(s):

1. For the charge of a second-degree sexual offense, the State must provide evidence that the victim was “mentally disabled, mentally incapacitated, or physically helpless.”
2. For the charge of indecent liberties between children, the element of “purpose to arouse or gratify his sexual desires” may be evidenced by the following: the juvenile’s age and maturity, the method used to engage the victim in the act; and evidence of prior sexual activity with another child.
3. Because an incident’s date is not an element of the charge of indecent liberties between children, slight discrepancies in dates do not bar adjudication.
4. Preventing a juvenile’s counsel from making a closing argument constitutes denial of the juvenile’s right to counsel.

The juvenile was adjudicated of second-degree sexual offense, indecent liberties between children, and breaking and entering. A Level 3 disposition was entered.

Juvenile appealed, arguing that the State presented insufficient evidence that he committed second-degree sexual offense and indecent liberties between children. Because the juvenile failed to challenge the sufficiency of the evidence at the close of all of the evidence (which would bar him from challenging the sufficiency of the evidence on appeal), the juvenile argued that there was ineffective assistance of counsel. Alternatively, the juvenile requested review pursuant to Rule 2 of the North Carolina Rules of Appellate Procedure, which allows an appellate court to modify the provisions of the rules of appellate procedure to preclude “manifest injustice.”

Finding that there was insufficient evidence to support the adjudication, the Court reviewed the case pursuant to Rule 2. In reviewing the case, the Court of Appeals held that the evidence was insufficient to prove the elements of second-degree sexual offense, as there was no evidence that the victim was “mentally disabled, mentally incapacitated, or physically helpless.” Accordingly, the Court vacated the second-degree sexual offense adjudication, and remanded for dismissal.

Regarding the adjudication for indecent liberties between children, the Court held that there was sufficient evidence as all elements of the offense were met, including “with a purpose to arouse or gratify his sexual desires.” Specifically, the Court held that the juvenile’s age and maturity, including the age disparity between the juvenile and victim (13-year old juvenile and 3-year old victim); the method he used to engage the victim in the act (by telling him his private parts tasted like candy); and evidence of prior sexual activity with another child a few months before the incident in question indicated that he acted for the purpose to arouse or gratify sexual desires.

Regarding an alternative argument that the indecent liberties between children should have been dismissed due to a discrepancy between the date upon which the offense was alleged to have occurred, the Court held that the date was not an element of the crime, and therefore not grounds for dismissal (particularly where the discrepancy was slight and did not affect the juvenile’s ability to provide a defense).

The juvenile’s last argument was that he was entitled to a new adjudicatory hearing on the charge of indecent liberties between children because the trial court denied his counsel the opportunity to make a closing argument. The Court agreed, citing cases that held that denial to make a closing argument was a denial of the right to have assistance of counsel. Consequently, the Court vacated the adjudication finding the juvenile delinquent of incident liberties between children and remanded the case for a new adjudication hearing on that charge and the felonious breaking and entering charge.

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## State v. Tucker, 154 N.C. App. 653, 573 S.E.2d 197 (2002), 2002 N.C. App. LEXIS 1540

Rule(s): For firs purposes, an offense that occurs while a person is serving a sentence at a youth development center may not be treated as having occurred during a sentence of imprisonment.

The defendant was convicted of one count of second-degree sex offense, one count of crime against nature and one count of attempted crime against nature. The offenses occurred at a youth development center. At sentencing, the defendant was given an additional prior record point because the superior court found that the offense occurred while the defendant was serving a sentence of imprisonment.

The defendant appealed, arguing that his stay at the youth development center was not equal to a “sentence of imprisonment.” The Court of Appeals agreed, finding that “the objectives of confinement under the Juvenile Code significantly differ from those for imprisonment under our criminal statutes,” and that there is a “fundamental legal difference” between a sentence of imprisonment and commitment to a youth development center.

# SUFFICIENCY OF THE EVIDENCE

Rules concerning what constitutes evidence (of the elements of various violations) sufficient to withstand motions to dismiss.

## In the Matter of S.A.A., 2016 App N.C. COA16-540 (published opinion)

Rule(s):

1. The State must provide sufficient evidence that the juvenile touched someone for the purpose of sexual gratification, sexual arousal, or sexual abuse in order to adjudicate him on the charge of sexual battery.
2. The juvenile must move to dismiss at the close of all evidence in order to properly preserve the argument.

On October 31, 2014, the 13-year-old juvenile was out with his friends, trickor-treating and walking around in a neighborhood where many of their classmates also gathered. The juvenile approached two younger girls and put his arms around their shoulders, rubbing a glowing liquid leaking from his Halloween costume onto their clothes, around their shoulders and collarbones. After the girls reported to their parents and a school resource officer (SRO) that the juvenile had “touched their chest/boobs”, an incident report was filed. The juvenile admitted to putting the glowing liquid on the girls, but denied touching their breasts when questioned by the SRO.

On April 20 and May 26, 2015 the State filed petitions against the juvenile for two counts of sexual battery and simple assault. During the adjudication hearing, witnesses testified that the juvenile did not touch the breasts of the girls, had not made sexual statements toward them during or prior to the incident, and had apologized to them when they requested that he leave them alone. The judge adjudicated the juvenile delinquent on all charges. After the case was transferred to another county for disposition, the juvenile was sentenced to 12 months of probation. The juvenile gave oral notice of appeal at the close of the dispositional hearing.

The juvenile argued that the trial court erred by denying his motion to dismiss charges of sexual battery because the State failed to prove that he had touched the girls’ breasts for sexual arousal or sexual gratification. He also argued that the court failed to make findings of fact in support of the dispositional order. Despite the fact that prior case law states that if a juvenile fails to move to dismiss the action at the close of evidence, he may not challenge the sufficiency of the evidence to prove the crime charged on appeal. However the court invoked Rule 2 to review the merits of the appeal in order to prevent manifest injustice. Therefore, the adjudication of sexual battery was vacated, the adjudication of simple assault was affirmed, and the case was remanded for entry of a new dispositional order.

https://appellate.nccourts.org/opinions/?c=2&pdf=34834

## In re J.M.C., 2016 N.C. App LEXIS 1176 (unpublished opinion)

Rule(s):

1. In a motion to dismiss, all contradictions are resolved in favor of the state.
2. A disposition and commitment order must fully comply with all elements of statute N.C. Gen. Stat. § 7B-2501.
3. If an order is not properly appealed, the court has no jurisdiction to review the matter.

The Department of Juvenile Justice and Delinquency Prevention filed a petition against the juvenile which alleged that he willfully injured the personal property of another and a second petition was filed alleging assault with a deadly weapon inflicting serious injury. During the adjudication hearing, the State dismissed the charge of willful injury to personal property, but pursued the charge of assault with a deadly weapon.

A detective testified that he had identified the juvenile as the attacker on a videotape obtained from the location of the assault. During the testimony of the complaining witness, he stated that he had consumed “a few beers” and “about three” tequila shots prior to the attack. The videotape of the assault was shown and the witness identified the juvenile in court as the one who stabbed him, however the assailant’s face was not shown in the footage.

The juvenile motioned to dismiss the charges twice citing unreliable testimony due to the complaining witness being intoxicated, inconsistencies in the witness’ testimony, the fact that he had never met the juvenile prior to the hearing, the testimonies given by alibi witnesses, and insufficient evidence from the videotape. The trial court denied the motions. The trial court adjudicated the juvenile delinquent on the charge of assault with a deadly weapon inflicting serious injury.

The juvenile gave oral notice of appeal.

The trial court entered a disposition and commitment order for the charge and indicated that it had received, considered and incorporated by reference the predisposition report, risk assessment, and needs assessment. The reports were not attached to the disposition and commitment order which provided that the juvenile be committed to a youth development center indefinitely.

The juvenile’s initial notice of appeal was ruled insufficient. The juvenile later filed a writ of certiorari for appellate review of the adjudication, disposition, and commitment orders.

Prior case law states that substantial evidence must be provided for each essential element of the offenses being charged and prove that the juvenile is the perpetrator of the crime. Prior case law also states that failure to follow statutory mandates is a question of law.

The juvenile argued that the trial court erred by denying his motion to dismiss the juvenile petition for insufficient evidence, however the court held that in a motion to dismiss, all contradictions are resolved in favor of the state. As a result, the court ruled that the testimony of the victim and the detective’s identification of the juvenile by videotape were sufficient to show evidence that the juvenile had committed the offense.

The juvenile also argued that the trial court failed to enter its disposition in accordance with N.C. Gen. Stat. § 7B-2501 because the trial court did not address certain factors of the statute. While it did comply with the first section of the statute, the disposition and commitment order fails to address the other sections of the statute. The court held that the trial court erred in failing to provide the requisite finding of facts in its disposition and commitment order and remanded to the trial court for further findings of fact as to the disposition.

The juvenile contended that the trial court failed to either release him pending appeal or enter compelling reasons for denying release. Although the juvenile did petition for a writ of certiorari, there was nothing on the record to indicate that the order was properly appealed, so the appellate court had no jurisdiction to review the matter. Therefore the issue on appeal was dismissed. http://appellate.nccourts.org/opinions/?c=2&pdf=34768

## In the matter of A.O.A., 2016 N.C. App. LEXIS 744 (unpublished opinion)

Rule(s):

(1)“To sustain a conviction of possession of drug paraphernalia, the State must demonstrate that the defendant: (1) knowingly, (2) possessed drug paraphernalia, and (3) used or intended to use that paraphernalia in connection with a controlled substance.” P.6.

The juvenile was adjudicated delinquent for possession of drug paraphernalia.

The juvenile appealed the trial court’s denial of a motion to dismiss the petition for insufficiency of the evidence. The Court of Appeals agreed holding that the trial court erred in denying the motion and vacated the orders for adjudication and disposition.

The testimony presented at adjudication that the juvenile possessed a device used or intended to be used to smoke marijuana raised no more than suspicion or conjecture about how the juvenile used the device. Even when viewed in the light most favorable to the state, the evidence presented failed to establish the crucial element that the juvenile intended to use the device in connection with a controlled substance. There was nothing to indicate that the device was used with marijuana or any other controlled substance, that the device was found along with other items considered drug paraphernalia, or that the juvenile was under the influence of marijuana. Absent such evidence linking the device with the use or intended use of marijuana the state could not meet its burden.

http://appellate.nccourts.org/opinions/?c=2&pdf=33909

## In the matter of C.L.-H., 2015 N.C. App. LEXIS 160 (unpublished opinion)

Rule: Regardless of a child’s biological age, the determination of whether a child is competent to testify “rests in the sound discretion of the trial court…” The juvenile was adjudicated delinquent for two counts of crimes against nature and the trial court entered a Level 2 disposition, which included twelve months of probation and placement into a Level 4 residential facility.

The State’s evidence tended to show that at the time of the incidents alleged in the petition the victims were nine and “four or five” years old, respectively. At the close of the State’s evidence, the juvenile moved to dismiss both charges due to insufficient evidence of penetration. The court denied these motions. The juvenile did not testify on his own behalf but his motions to dismiss were renewed at the close of all the evidence.

On appeal, the juvenile first contended that the trial court abused its discretion by admitting the testimony of the 6 year old victim over objection on the grounds that the victim was incompetent to testify. In State v. Reeves, the Court held that “there is no age below which one is competent to testify.” In juvenile proceedings, the presumption of the competency of a witness will generally be upheld under an abuse-of-discretion review on appeal, absent circumstances sufficient to rebut the presumption. In the present case, the Court found that the juvenile failed to show that the determination could not have been the result of a reasoned decision and, therefore, that the trial court abused its discretion.

Next, the juvenile argued that the trial court erred in denying his motion to dismiss the crime against nature charge as to the 6 year old victim for insufficient evidence of penetration. The Court has held that “in reviewing a challenge to the sufficiency of evidence, it is not our duty to weigh the evidence, but to determine whether there was substantial evidence to support the adjudication, viewing the evidence in the light most favorable to the State, and giving it the benefit of all reasonable inferences.” An essential element of crime against nature is “some penetration, however slight, of a natural orifice.” In the present case, the trial transcript reveals that the State elicited testimony from the 6 year old victim that, when viewed in the light most favorable to the State, granting it the benefit of all reasonable inferences, the evidence supported the trial court’s finding that the juvenile penetrated the victim.

Accordingly, the trial court’s adjudication order and disposition order were affirmed. http://appellate.nccourts.org/opinions/?c=2&pdf=32713

## In the matter of K.J.C., 2014 N.C. App. LEXIS 1331 (unpublished opinion)

Rule(s): A person may be found guilty of committing a crime if he is at the scene, although the other person does all the acts necessary to commit the crime. Trial court adjudicated both the juvenile and D.D. delinquent for robbery with a dangerous weapon (RWDW), finding D.D. to be “the principle [sic] participant” in the robbery and juvenile to be responsible for “acting in concert with him.” The juvenile appealed arguing that the trial court’s denial of his motion to dismiss the RWDW charge for insufficient evidence.

The Court found that the trial court based its adjudication on the doctrine of concerted action, under which “a person may be found guilty of committing a crime if he is at the scene acting together with another person with a common plan to commit the crime, although the other person does all the acts necessary to commit the crime.” The Court found that the record suggests no innocent purpose for the juvenile to have approached complainant with D.D. The Court concluded that by standing within arm’s length of D.D. as he demanded the complainant’s phone at gunpoint, the juvenile evinced his unwillingness “to lend assistance when and if it should become necessary.” The evidence thus supports a reasonable inference that juvenile acted in concert with D.D. to commit the robbery.

Because the Court concluded that the State adduced sufficient evidence to withstand a motion to dismiss, the held that counsel’s failure to renew juvenile’s motion at the conclusion of the evidence cannot support a claim of ineffective assistance of counsel. Accordingly, the district court’s order was affirmed.

## In the matter of A.A.P., 2014 N.C. App. LEXIS 323 (unpublished opinion)

Rule(s):

1. Establishing sexual purpose in a sexual-battery case requires “some evidence of the child’s maturity, intent, experience, or other factor indicating his purpose in acting . . . .”
2. The State may show sufficient evidence of sexual purpose where the juvenile repeated the conduct, used sexual language, and demonstrated a pattern of inappropriately touching others.

The juvenile was adjudicated delinquent for two counts of sexual battery. The trial court entered a Level 2 disposition which included fourteen days of intermittent confinement and nine months of probation.

The juvenile appealed arguing that the trial court erred by denying the juvenile’s motion to dismiss the charges of sexual battery because there was insufficient evidence of a sexual purpose. The juvenile asserted that the evidence showed that the juvenile’s actions were merely horseplay. On the question of sexual purpose, the Court has held “that such a purpose does not exist without some evidence of the child’s maturity, intent, experience or other factor indicating his purpose in acting.” In the present case, the Court found that the evidence showed that the juvenile’s conduct was repeated; the juvenile used sexual language; and the juvenile showed a pattern of inappropriately touching other boys and when the evidence is viewed in the light most favorable to the State, it could be inferred from the evidence that the juvenile acted for the purpose of sexual arousal or sexual abuse. Accordingly, the Court concluded that the evidence was sufficient to withstand the juvenile’s motion to dismiss, and affirmed the adjudication and disposition.

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## In the matter of S.R.H., 2013 N.C. App. LEXIS 773 (unpublished opinion)

Rule(s):

1. In a sexual-battery case, “the element of intent may not be inferred solely from the act itself.” P.10 (citations/quotations marks omitted).
2. Sufficient evidence of maturity and intent may be offered by way of the age disparity between the juvenile and the victim, the control by the juvenile, the location and secretive nature of the juvenile’s actions, the juvenile’s attitude, physical force exerted over the victim, and the location of the placement of the juvenile’s hands on the victim.
3. Testimony that the juvenile “touched the victim’s ‘sexual organ. . . breast, groin, or buttocks’ with his hand through her clothing,” P.13 (quoting N.C.G.S. § 14-27.1(5)), taken in the light most favorable to the state, may be sufficient evidence for the element of sexual contact.
4. The State may show sufficient evidence of the element of acting by force where the victim testifies that the juvenile exerted physical force on her, such as by pulling her towards himself.

The juvenile was adjudicated delinquent for committing the offense of sexual battery. At the adjudication hearing the state presented testimony from the alleged victim, R.C., that the juvenile went inside of a custodial closet with R.C. and closed the door. R.C. testified that the juvenile then grabbed the bottom of her shirt and pulled her to the juvenile. R.C. went on to testify that the juvenile touched her in her lower front and back “private” areas outside of her clothing. R.C. testified that she had never talked to the juvenile before the alleged incident. At the close of the State’s evidence, the juvenile made a motion to dismiss, arguing the State presented insufficient evidence of sexual battery. The juvenile testified in his own defense at the adjudication hearing, telling the court that he did not go into the closet with R.C. or otherwise speak to or touch R.C. At the close of all the evidence, the juvenile did not renew his motion to dismiss the petition.

Juvenile appealed arguing that the trial court erred in denying his motion to dismiss for insufficient evidence. The Court has held that “if a defendant [or juvenile] fails to move to dismiss the action . . . at the close of all the evidence, he may not challenge on appeal the sufficiency of the evidence to prove the crime charged.” However, because the juvenile simultaneously asserted that he was denied effective assistance of counsel because of the failure to renew the motion to dismiss at the close of all the evidence, the Court reviewed the appeal on the merits of the juvenile’s challenge to the sufficiency of the evidence together with his ineffective assistance of counsel argument.

Pursuant to N.C.G.S. § 14-27.5A(a)(1) “a person is guilty of sexual battery if the person, for the purpose of sexual arousal, sexual gratification, or sexual abuse, engages in sexual contact with another person . . . by force and against the will of the other person.” The juvenile argues the State failed to present sufficient evidence of all three elements in the present case.

Regarding the element of sexual gratification, the Court observed that “the age disparity, the control by the juvenile, the location and secretive nature of the juvenile’s actions, and the attitude of the juvenile was evidence of maturity and intent of the juvenile” for the purpose of satisfying the element of intent.

As to the element requiring sexual contact, the juvenile argued that the testimonial evidence was insufficient to prove that any touching of the body parts prohibited under the statute occurred. The Court disagreed finding that R.C.’s testimony, “taken in the light most favorable to the state” was sufficient to satisfy the element of sexual contact. *In re B.D.N.*, 186 N.C. App. 108, 111-12, 649 S.E.2d 913, 915 (2007).

Finally, the juvenile argued that the State failed to present sufficient evidence that he ‘acted by force.” The Court concluded that R.C.’s testimony “taken in the light most favorable to the State, the evidence was sufficient to satisfy the element that the juvenile exerted force over R.C. in pulling her to him and grabbing her private areas despite her resistance to the juvenile.” Consequently, the Court found that State presented sufficient evidence to satisfy all three elements of the offense, therefore, the trial court properly denied the juvenile’s motion to dismiss.

Regarding the juvenile’s claim of ineffective assistance of counsel, the Court has previously held that “if the evidence is sufficient to support a conviction, the defendant [or juvenile] is not prejudiced by his counsel’s failure to make a motion to dismiss at the close of all the evidence.” In the present case, since the Court found that the evidence was sufficient to support the adjudication, the juvenile did not show that counsel's assistance was constitutionally inadequate and thus concluded that his argument was without merit.

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## In the matter of J.D.O., 2013 N.C. App. LEXIS 43 (unpublished)

Rule(s):

1. The trial court abuses its discretion where it allows a school principal with limited experience concerning substance identification to offer expert testimony in identifying marijuana.
2. Where the State presents no evidence concerning a substance’s identification beyond a principal’s testimony, there is insufficient evidence of possession of marijuana.

Petitions were filed alleging possession of drug paraphernalia and possession of marijuana related to a substance that was found by the Principal of the juvenile’s school. When the matter was heard, the State presented testimony from the Principal that, in his opinion, the substance was marijuana. After sustaining each of the juvenile’s objections to such testimony, the court allowed counsel’s request for voir dire on the issue of whether the Principal’s training and experience qualified him to render an opinion identifying the substance as marijuana. The Court allowed the Principal’s testimony, determining that he had “more than the average juror [sic] information on marijuana.” The Principal also testified that the juvenile admitted that the substance belonged to him. At the close of the State’s evidence, the juvenile moved to dismiss on the grounds that the Principal’s opinion was not sufficient to establish the identity of the substance as marijuana, and that the juvenile’s admission that the recovered items belonged to him was not sufficient to establish that he “ever possessed any drug paraphernalia and drugs.” The motion was denied and the juvenile was adjudicated delinquent and placed on supervised probation.

The juvenile appealed arguing that the trial court abused its discretion by allowing the Principal to testify. In light of the Principal’s limited training and experience, the Court concluded that the trial court could not have found the Principal’s opinion helpful in determining whether the substance recovered had been shown to be marijuana. Consequently, the Court held that the trial court abused its discretion by admitting the Principal’s opinion testimony.

Secondly, the juvenile contended that the trial court erred by denying his motion to dismiss because the State did not present any corroborative evidence— independent from the juvenile’s extrajudicial confession—to establish the juvenile possessed the substance. However, because the Court already determined that the State failed to present evidence identifying the substance, they didn’t need to consider whether there was sufficient evidence to establish that the juvenile actually or constructively possessed either the unidentified substance or the accompanying item. Accordingly, the Court reversed the trial court’s order adjudicating the juvenile delinquent for possessing drug paraphernalia and possession.

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## In the matter of N.E., 2013 N.C. App. LEXIS 30 (unpublished opinion)

Rule(s): In a stalking case where the State presents evidence that the juvenile follows a victim around after being asked to stop, lies about conversations with the victim, and keeps an extensive collection of photographs of the victim without authorization, the evidence is sufficient to defeat a motion to dismiss.

A petition was filed alleging the juvenile committed misdemeanor stalking. The trial court entered an order adjudicating the juvenile delinquent and placing her on probation subject to certain terms and conditions. The juvenile appealed arguing the court erred by denying her motion to dismiss the petition for insufficient evidence. In order to support the denial of a motion to dismiss a petition alleging delinquent conduct by a juvenile, the State must present substantial evidence of each element of the offense and the juvenile’s commission thereof. Pursuant to N.C.G.S. § 14-277.3A a person commits the offense of stalking if he or she:

willfully on more than one occasion harasses another person without legal purpose or willfully engages in a course of conduct directed at a specific person without legal purpose and the defendant knows or should know that the harassment or the course of conduct would cause a reasonable person to do any of the following: (1) fear for the person’s safety or the safety of the person’s immediate family or close personal associates. (2) Suffer substantial emotional distress by placing that person in fear of death, bodily injury, or continued harassment.

After reviewing the record, the Court concluded that a reasonable finder of fact could readily determine that the juvenile willfully engaged in the conduct. As a result, the Court held that the trial court properly denied the juvenile’s motion to dismiss and affirmed the trial court’s orders.

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*In the matter S.C.U.*, 2011 N.C. App. LEXIS 159 (unpublished opinion)

Rule(s): In a sexual-battery case, the element of sexual gratification or arousal may be supported by sufficient evidence where the juvenile approached the victim from behind while a teacher was not looking, instructed the victim not to tell others, committed another count of the offense after being punished by a school for the first incident, and denied the act before being approached about it.

The juvenile was adjudicated delinquent for two counts of sexual battery, and the court entered a Level 2 disposition order.

The juvenile appealed, arguing that the State erred by denying his motion to dismiss for insufficiency of the evidence because it failed to present sufficient evidence to support a conclusion that his actions were committed for the purpose of sexual gratification or arousal. The Court of Appeals disagreed, holding that there was sufficient evidence to indicate that the juvenile acted for sexual gratification or arousal. As its rationale, the Court pointed toward: (1) the way that the juvenile approached the victim from behind when the teacher was not facing the class, indicating both maturity and intent; (2) the juvenile’s request that the victim not tell on him following the first incident of sexual battery, indicating that his actions were wrongful; (3) the fact that the juvenile committed another count of sexual battery against the victim despite the repercussions associated with the first count of sexual battery; and (4) the juvenile’s haste to proclaim innocence prior to being questioned by the teacher, indicating that he understood the nature of his actions and acted with the intent necessary to commit sexual battery. Accordingly, the decision was affirmed.

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## In the matter of A.W., 2011 N.C. App. LEXIS 215

Rule(s):

1. For the charge of a second-degree sexual offense, the State must provide evidence that the victim was “mentally disabled, mentally incapacitated, or physically helpless.”
2. For the charge of indecent liberties between children, the element of “purpose to arouse or gratify his sexual desires” may be evidenced by the following: the juvenile’s age and maturity, the method used to engage the victim in the act; and evidence of prior sexual activity with another child.
3. Because an incident’s date is not an element of the charge of indecent liberties between children, slight discrepancies in dates do not bar adjudication.
4. Preventing a juvenile’s counsel from making a closing argument constitutes denial of the juvenile’s right to counsel.

The juvenile was adjudicated of second-degree sexual offense, indecent liberties between children, and breaking and entering. A Level 3 disposition was entered.

Juvenile appealed, arguing that the State presented insufficient evidence that he committed second-degree sexual offense and indecent liberties between children. Because the juvenile failed to challenge the sufficiency of the evidence at the close of all of the evidence (which would bar him from challenging the sufficiency of the evidence on appeal), the juvenile argued that there was ineffective assistance of counsel. Alternatively, the juvenile requested review pursuant to Rule 2 of the North Carolina Rules of Appellate Procedure, which allows an appellate court to modify the provisions of the rules of appellate procedure to preclude “manifest injustice.”

Finding that there was insufficient evidence to support the adjudication, the Court reviewed the case pursuant to Rule 2. In reviewing the case, the Court of Appeals held that the evidence was insufficient to prove the elements of seconddegree sexual offense, as there was no evidence that the victim was “mentally disabled, mentally incapacitated, or physically helpless.” Accordingly, the Court vacated the second-degree sexual offense adjudication, and remanded for dismissal.

Regarding the adjudication for indecent liberties between children, the Court held that there was sufficient evidence as all elements of the offense were met, including “with a purpose to arouse or gratify his sexual desires.” Specifically, the Court held that the juvenile’s age and maturity, including the age disparity between the juvenile and victim (13-year old juvenile and 3-year old victim); the method he used to engage the victim in the act (by telling him his private parts tasted like candy); and evidence of prior sexual activity with another child a few months before the incident in question indicated that he acted for the purpose to arouse or gratify sexual desires.

Regarding an alternative argument that the indecent liberties between children should have been dismissed due to a discrepancy between the date upon which the offense was alleged to have occurred, the Court held that the date was not an element of the crime, and therefore not grounds for dismissal (particularly where the discrepancy was slight and did not affect the juvenile’s ability to provide a defense).

The juvenile’s last argument was that he was entitled to a new adjudicatory hearing on the charge of indecent liberties between children because the trial court denied his counsel the opportunity to make a closing argument. The Court agreed, citing cases that held that denial to make a closing argument was a denial of the right to have assistance of counsel. Consequently, the Court vacated the adjudication finding the juvenile delinquent of incident liberties between children and remanded the case for a new adjudication hearing on that charge and the felonious breaking and entering charge.

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## In the matter of M.J.L., 2011 N.C. App. LEXIS 489 (unpublished opinion)

Rule(s): Under the doctrine of recent possession, “the [accused’s] possession of the fruits of the crime recently after its commission [justify] the inference of guilt on his trial for larceny,” P.4 (citations/quotation marks omitted), so a juvenile’s possession of a recently stolen backpack support a reasonable inference that he stole the backpack.

The juvenile was adjudicated of misdemeanor larceny and misdemeanor possession of stolen property, and placed on probation.

The juvenile appealed, arguing that the trial court erred by denying his motion to dismiss at the close of the evidence. Specifically, the juvenile argued that the bookbag that he was alleged to have stolen was not produced as evidence at the hearing, that it was not established that he took and carried away the bookbag, and that his possession of the items inside the bookbag was insufficient to indicate his guilt. The Court of Appeals disagreed, finding that there was sufficient evidence to withstand the motion to dismiss. Pointing to the doctrine of recent possession, the Court indicated that the juvenile who owned the bookbag testified that the bookbag disappeared without his permission, and that he saw M.J.L. with the bookbag before it was retrieved by a deputy. Moreover, the owner accurately described the contents of the bookbag. Accordingly, as there was sufficient evidence to deny the motion to dismiss, the adjudication and disposition orders were affirmed.

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## In the matter of A.J. M.-B, 2011 N.C. App. LEXIS 1167

Rule(s):

1. “One element of [resisting an officer] presupposes lawful conduct by the officer and reasonable suspicion requires that a tip be reliable in its assertion of illegality.” P.1.
2. Where there are “insufficient indicia,: P.16, that a tip is reliable in its assertion of criminal activity, the State presents insufficient evidence that an officer had reasonable suspicion to conduct an investigatory stop.
3. Where the State presents insufficient evidence that the officer acted lawfully in stopping the juvenile, the evidence is insufficient to show that the juvenile resisted an officer lawfully attempting to discharge a duty of his office.

Following release from a youth development center, the juvenile was adjudicated of resisting a public officer. On the day of the adjudication hearing, the court counselor filed a motion for review seeking a revocation of the juvenile’s postrelease supervision. At the disposition hearing, the trial court dismissed the resisting a public officer case since the juvenile had violated the terms of his post-release supervision. Consequently, the trial court ordered that the juvenile be committed to a youth development center for a minimum of 90 days, and a period not to exceed his 18th birthday.

The juvenile appealed. Since the resisting a public officer case had been dismissed, the Court of Appeals first analyzed whether the case was properly before the Court of Appeals. The Court found that although the adjudication order was dismissed, the only way to appeal the adjudication of a case that was dismissed was to appeal the final order of disposition. Accordingly, the Court found that the case was properly before it, and proceeded to review the juvenile’s arguments.

First, the juvenile argued that the trial court erred by denying his motion to dismiss the resisting a public officer charge at the adjudication hearing. The Court agreed, finding that all of the elements of resisting a public officer were not met (i.e., the officer was “discharging or attempting to discharge a duty of his office”). Specifically, the Court held that since the State did not present sufficient articulable facts to warrant stopping the juvenile for possession of a firearm and only relied upon an unverified anonymous phone call, the juvenile’s detention and arrest were not justified. Moreover, the Court held that there was no indication that the person making the anonymous phone call was aware of concealed criminal activity.

The Court also found that because the tip was not reliable in its assertion of illegality, the State presented insufficient evidence that the officer acted lawfully in “discharging or attempting to discharge a duty of his office.” Therefore, the Court reversed the trial court’s denial of the motion to dismiss and the adjudication order.

The Court, however, disagreed with the juvenile’s next argument that the trial court’s order revoking post-release supervision should be reversed and remanded because the new adjudication was the basis for the revocation of post-release supervision and that case was dismissed. The Court noted that the juvenile failed to include the standard of review for this issue, and therefore the argument was dismissed. Nonetheless, the Court noted that if the argument was considered, the revocation of post-release supervision was proper because the court found that the juvenile had violated one or more of the conditions of his post-release supervision when he missed school and was suspended for the remainder of the school year. Thus, the Court affirmed the trial court’s order to commit the juvenile to a youth development center.

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Rm

## In the matter of M.D., Jr., 2011 N.C. App. LEXIS 1214 (unpublished opinion)

Rule(s):

1. The time of an assault is not essential to the allegation, and failure to state the exact date is not fatal.
2. Where juvenile in an assault case claims that contact was “incidental, rather than intentional,” P.5, testimony that the juvenile “pushed” the victim is sufficient to establish intent when taken in the light most favorable to the State.

The juvenile was adjudicated of assault on a government officer, and a Level 2 disposition was ordered. The juvenile appealed, arguing that the trial court failed to grant his motion to dismiss because there was a fatal variance between the evidence presented and the allegations in the petition. The Court disagreed, finding that the difference between the date of the offense on the petition and date of the incident presented at trial did not present a fatal variance because the exact date is not an element of assault on a government official. The Court, therefore, overruled the juvenile’s first argument.

Regarding his second argument that the trial court erred by denying his motion to dismiss because there was insufficient evidence of his intent to commit the assault, the Court also disagreed. The Court held that the testimony of the teachers was sufficient to show that the juvenile’s actions were intentional rather than incidental. Accordingly, the Court overruled the second assignment of error and affirmed the trial court’s decision.

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## In the matter of N.T., 214 N.C. App. 136 (N.C. Ct. App. 2011)

Rule(s): Because the statutory language of N.C.G.S. § 14-34 bars pointing a “gun” at another person, the State’s evidence cannot be sufficient to meet that element if the juvenile pointed an air rifle, which our state has held not to be a “gun” (but may count as a “deadly weapon”).

The juvenile was adjudicated of assault by pointing a gun in violation of N.C.G.S. § 14-34., which prohibits “point[ing] any gun or pistol at any person, either in fun or otherwise, whether such gun or pistol be loaded or not loaded,” and placed on a Level 1 disposition.

The juvenile appealed, arguing that the device in question was an airsoft pump action imitation rifle using plastic pellets, and did not a constitute a gun as referenced under N.C.G.S. § 14-34. The Court of Appeals agreed, following an analysis using statutory construction to determine whether the device in question should be considered a gun. The Court of Appeals concluded that based upon the definitions provided in Black’s Law Dictionary and the New Oxford American Dictionary, guns were equated with firearms, and there was an emphasis on the use of explosive force as opposed to the other motivating agents such as air pressure as used by an airsoft pump action imitation rifle. The Court also noted that that prior appellate decisions had a tendency to treat the word “gun” as synonym for “firearm,” and that in accordance with the rule of lenity, the Court was required to interpret ambiguous statutes to limit the reach of the statute unless there was a valid reason to do otherwise. Holding that the criminal offense penalized in N.C.G.S. § 14-34 did not include pointing an imitation firearm, the Court reversed the adjudication and disposition orders of the trial court.

The Court noted that its holding had no bearing on whether the juvenile on the issue of whether the juvenile might be found delinquent for another offense such as assault with a deadly weapon inflicting serious injury, assault with a deadly weapon, assault inflicting serous injury, or assault on a child under the age of twelve.

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## In the matter of J.Y., 2011 N.C. App. LEXIS 1662 (unpublished opinion)

Rule(s): Where the State offers no evidence as to an essential element of the offense (here, identity) and the juvenile’s counsel does not move to dismiss for insufficient evidence, this constitutes ineffective assistance, satisfying both steps of analysis.

The juvenile was adjudicated of committing injury to another’s personal property, and placed on a Level 1 disposition.

The juvenile appealed, arguing that because he was never identified by any of the State’s witnesses at the trial, which is an essential element of the offense, trial counsel should have moved to dismiss the petition. The juvenile argued that failure to make such a motion denied him effective assistance of counsel. After determining that the ineffective assistance claim required no further investigation and could be reviewed by considering the record on appeal and the verbatim transcript of the proceedings, the Court agreed that the juvenile was denied effective assistance of counsel. The Court held that because the record indicated that the State failed to introduce sufficient evidence that the juvenile committed the offense, trial counsel should have moved to dismiss the charges due to insufficient evidence, even if only to preserve the issue for appeal. Accordingly, the Court found that trial counsel’s performance fell below the objective standard of reasonableness, and prejudiced the juvenile as it is likely that the motion to dismiss due to insufficient evidence would have been granted, and if not, it would have at least been reserved for appeal. For those reasons, the Court vacated and remanded the case.

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## In the matter of D.B., 2011 N.C. App. LEXIS 1938 (unpublished opinion)

Rule(s): Because “asportation [of a rape victim] is separate and independent of the rape [and] is removal for the purpose of facilitating the felony of rape,” P.7 (citations/quotation marks omitted), evidence tending to show that the juvenile moved a victim inside and up three flights of stairs is sufficient to establish the element of moving the victim beyond whatever movement is entailed by the commission of another felony.

The juvenile was adjudicated of first degree kidnapping and aiding and abetting attempted rape, and placed on probation for 12 months.

The juvenile appealed, arguing that the trial court erred by denying his motion to dismiss the petition for first degree kidnapping as the kidnapping was part of the attempted rape. The Court of Appeals, first noted, that the issue had not been preserved on appeal. Because the issue had not been preserved for appeal, the juvenile requested that the Court consider his argument pursuant to Rule 2 of the Rules of Appellate Procedure, which allows an appellate court to modify the provisions of the rules of appellate procedure to preclude “manifest injustice.” Upon review, the Court concluded that it did not believe it was necessary to consider the juvenile’s argument to preclude “manifest injustice.”

The Court noted however, that even if it suspended the rules under Rule 2, the juvenile’s argument was without merit because there was substantial evidence of kidnapping apart from the attempted rape. The Court based its conclusion on the fact that the asportation of the victim from the porch into the house, and up three flights of stairs, was separate and apart from the attempted rape. Consequently, the Court dismissed the case.

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## In the matter of J.M., 2011 N.C. App. LEXIS 2064 (unpublished opinion)

Rule(s):

1. Because interrupting the discharge of an official duty is an element of delaying or obstructing an officer (as prohibited by N.C.G.S. § 14-223), a petition for such “must . . . indicate the official duty being discharged . . . . [T]he particular duty that the officer is performing while being resisted is of paramount importance and is very material to the preparation of the defendant’s defense.” P.6–7 (citations omitted).
2. Where an officer conducts a search incident to arrest and the arrest is unlawful, the search is also unlawful. Evidence from such a search is excluded.

The juvenile was adjudicated delinquent of resisting, delaying, and obstructing a public officer and carrying a concealed weapon, and placed on a Level 2 disposition with continued probation.

The juvenile appealed, arguing that the trial court erred by (1) finding that he was responsible for resisting, delaying, and obstructing a public officer because the juvenile petition alleging such was fatally defective and that the evidence did not support the court’s determination that he committed the offense and (2) admitting testimony that a set of brass knuckles were found on him during a search incident to arrest. The Court of Appeals agreed with both arguments.

As to the juvenile’s first argument, the Court agreed that the petition failed to allege properly the duty that the officer was discharging or attempting to discharge at the time of the juvenile’s alleged misconduct. Instead, the petition focused on the juvenile’s misconduct of failing to stop running as demanded. Accordingly, the Court held that because the elements of the offense were not satisfied, the trial court lacked jurisdiction over the juvenile, thereby rendering that portion of the adjudication and disposition orders void for lack of jurisdiction. Therefore, the Court reversed the adjudication and disposition orders relating to the resisting, delaying, and obstructing a public officer.

Regarding the juvenile’s second argument concerning the concealed weapon charge, the Court noted that because the juvenile failed to object to the admission of the officers’ testimony at the adjudication hearing or to suppress the evidence seized, he failed to preserve the issue for appeal. Therefore, the Court reviewed the juvenile’s argument under the plain error standard of review. After its analysis, the Court agreed with the juvenile’s argument that because he was unlawfully arrested for resisting, delaying, and obstructing a public officer, the search incident to arrest resulting in the seizure of the brass knuckles was also unlawful. The Court held that in order for the juvenile to have been lawfully arrested for resisting, delaying, and obstructing a public officer, the officer must have had probable cause to believe that the juvenile fled from a lawful investigative detention, and not a consensual encounter.

The Court further held that prior to fleeing, the juvenile had not been detained properly by the officer, and therefore, a reasonable person would have believed he was at liberty “to go about his business rather than complying” with the officer’s instructions. The Court pointed out that the officer had no previous dealings with the juvenile, had not observed any drug-related activity, or received any information regarding drug-related activity. Thus, the only justification for the stop was that the juvenile was in a “known drug area.” Any investigatory stop based on this rationale alone would have been impermissible. As the juvenile was unlawfully arrested for resisting, delaying, and obstructing a public officer, the search incident to arrest resulting in the seizure of the brass knuckles was unlawful as well. Because the only evidence regarding the concealed weapon was provided by the officer’s testimony, a different result would have been reached but for the trial court’s commission of plain error in admitting the testimony. Consequently, the Court found that the order adjudicating the juvenile delinquent for carrying a concealed weapon should be reversed and remanded for further proceedings.

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## In the matter T.H., 2011 N.C. App. LEXIS 75

Rule(s): Where the juvenile is charged for simple assault and common-law robbery and the victim twice identifies the juvenile as having been part of a group of individuals who beat him up and stole his possessions, the evidence is sufficient to establish that the juvenile engaged in an overt act of immediate physical violence (satisfying the elements of simple assault) and also engaged in the non-consensual taking of property from another by means of violence (satisfying the elements of common-law robbery).

Petitions were filed alleging that the juvenile committed simple assault and common law robbery. Following approval of the petitions, the juvenile’s counsel moved to dismiss the charges due to a violation of 7B-1702. The motion was denied, and the juvenile was adjudicated of simple assault and common law robbery. The court entered a Level 2 disposition, placing the juvenile on probation with multiple conditions.

The juvenile appealed, arguing that (1) the trial court erred in denying his pretrial motion to dismiss because the juvenile court counselor failed to comply with 7B-1702 in filing the complaint; (2) he was prejudiced by the delay in delivery of the trial transcript; and (3) the trial court erred in denying his motion to dismiss the petitions at the close of all of the evidence because the elements of the crimes were not proven.

In his first argument, the juvenile maintained that the juvenile court counselor failed to properly investigate the complaint against him prior to filing the petition because she only spoke with the complaining officer and not the victim or the juvenile as noted in 7B-1702. As part of its analysis, the Court considered the language of 7B-1702, which in part states, “The intake process shall include the following steps if practicable: (1) Interview with the complainant and the victim if someone other than the complainant; (2) Interviews with the juvenile and the juvenile’s parent, guardian, or custodian; (3) Interviews with persons known to have relevant information about the juvenile or the juvenile’s family.” The Court noted that the statute in question “merely provides methods by which the juvenile court counselor can obtain information,” but that “the methods shall only be used ‘if practicable.’” The Court held that the term “if practicable” exists to alleviate any onerous burden imposed on juvenile court counselors to contact numerous people to obtain information prior to filing a petition, and that such contact should be made only when additional evidence is necessary to evaluate the factors required by the Department. Additionally, the Court held that the juvenile court counselor had considered the officer’s evidence prior to making the decision to file the petition, which consisted of a statement from the victim as well as a photographic lineup conducted with the victim. Thereafter, the Court held that there was no reason for the juvenile court counselor to contact the victim. The Court noted that the juvenile court counselor had considered the seriousness of the offense, that there was a victim of an assault, the juvenile’s delinquency history and had spoken with the officer as well as the juvenile’s great aunt about the charges. Furthermore, the Court noted that in accordance with 7B-1700, it is not the juvenile court counselor’s job to conduct field investigations to substantiate complaints.

Regarding the second argument that he was prejudiced by the court reporter’s deliverance of the transcript one year after he gave notice of appeal, the Court of Appeals disagreed. The Court held that the delay was not prejudicial, and noted that the delay was caused by some confusion between the court reporter being unaware of the required transcription of the March 2010 hearing and the delay in appellate defense counsel inquiring about the missing transcript.

As to the juvenile’s last argument, the Court of Appeals held that the elements of the crimes were proven as the State presented evidence that the victim was robbed of personal belongings while waiting for his mother after school, the victim identified the juvenile in photographic lineups and testified to his participation in the assault, and vividly described the alleged offenses. Accordingly, the decision was affirmed.

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## In the matter of J.T.H., 2010 N.C. App. LEXIS 1257 (unpublished opinion)

Rule(s):

1. In considering a motion to dismiss, the trial court seeks evidence sufficient to reach a jury, as determined by “whether a reasonable inference of the defendant’s guilt of the crime charged may be drawn from the evidence.” P.2 (citations/quotation marks omitted).
2. For a charge of injury to real property, where the juvenile’s nickname is spray-painted on buildings and the juvenile’s peers received text messages from the juvenile’s phone number, suggesting that they look for the painted name, the evidence is sufficient to withstand a motion to dismiss.

The juvenile was adjudicated of possession of marijuana, possession of a firearm by a minor, carrying a concealed weapon, possession of drug paraphernalia, felonious breaking and entering, trespassing, and injury to real property, and four counts of tampering with a motor vehicle.

Juvenile appealed, arguing that there was not substantial evidence of each element of the following: felonious breaking and entering, tampering with a motor vehicle, trespassing, and injury to real property. The Court of Appeals disagreed, finding that there was substantial evidence as the evidence tended to show the following: there was graffiti painted onto school buses, a police car, and various schools buildings; students indicated that the graffiti was the juvenile’s nickname; and students indicated that the juvenile sent text messages regarding the vandalism telling students to look for his name at school. Accordingly, the Court of Appeals affirmed the order of the district court.

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## In the matter of R.N., 2010 N.C. App. LEXIS 1545

Rule(s):

1. In a charge for a crime against nature, “[t]he essential element of the offense is some penetration, however slight, of a natural orifice of the body.” P.5 (internal citations/quotations omitted).
2. “[E]vidence tending to show that [the juvenile] ‘licked’ [the victim’s] ‘private area] does not, without more, support a reasonable inference that penetration occurred. P.8.

The juvenile was adjudicated of two counts of crime against nature, and placed on a Level 2 disposition.

The juvenile appealed, arguing that the trial court erred by failing to dismiss the petitions for insufficient evidence that penetration, an essential element of crime against nature, occurred during the alleged incidents. The Court of Appeals agreed with the juvenile as to the first incident, but found that defects in the transcript prevented meaningful appellate review of the evidence for the second incident.

As to the first allegation where the petition alleged that the juvenile licked the victim’s genital area while fully clothed, the Court found that the evidence indicating that the victim was fully clothed during the incident was insufficient to show that the juvenile penetrated the victim in the particular case.

As to the second allegation where the petition alleged that the juvenile placed his penis in the victim’s mouth, after reviewing the record, the Court found that the available testimony indicated that the juvenile forced the victim’s head down to his “private area” and that the victim saw his “private area,” but not that penetration occurred. The Court found that when the Child Protective Services' social worker was asked about the second allegation and whether the victim indicated that penetration occurred, her response was unclear. The Court noted that it was defense counsel’s duty to prepare and docket a true transcript of the record and case on appeal in a criminal case, and that it was both the defense counsel’s and the district attorney’s duty to correct errors in the transcript.

The Court also noted that in compliance with Rules of Appellate Procedure, the parties should have prepared a narrative of the social worker’s testimony. Accordingly, the Court reversed in part and vacated and remanded in part to reconstruct the social worker’s testimonial evidence regarding the second allegation. The Court held that on remand, the parties could stipulate to the narrative or have the trial court settle the record if the parties could not agree. http://appellate.nccourts.org/opinions/?c=2&pdf=MjAxMC8wOS0xNDA2LTEucG Rm

## In the matter of J.D.R., 2010 N.C. App. LEXIS 1787 (unpublished opinion) • Note: Same incident and ruling as In the Matter of J.T.S., 2010 N.C. App. LEXIS 1602

Rule(s):

1. When the appellate court finds that the State’s evidence was sufficient to withstand a motion to dismiss, the juvenile is not prejudiced by counsel’s failure to preserve the argument challenging that sufficiency; such failure by counsel does not constitute ineffective assistance of counsel.
2. The statutory language of N.C.G.S. § 14-288.4(a)(6) (“disturbs or interferes with the teaching of students at any . . . educational institution or engages in conduct which disturbs the peace, order or discipline at any . . . educational institution”) has two prongs, one requiring specific intent and one requiring general intent.
3. Where the alleged prong of an offense can be satisfied by general intent, the allegations may be sufficiently supported by evidence tending to show general intent.

The juvenile was adjudicated of wantonly and willfully burning a schoolhouse and creating a public disturbance that interfered with the education of others. (Evidence tended to show that that the juvenile provided a lighter to another juvenile to allow him to examine the pipe chase in a restroom, and that a fire started in the pipe chase after the other juvenile placed a burning paper towel into the pipe chase).

The juvenile appealed arguing that the trial court erred by: (1) denying his motion to suppress inculpatory statements made while in custody that were not made freely or after voluntarily waiving rights to self-incrimination and (2) finding that there was sufficient evidence of both charges.

Addressing the motion to suppress first, the Court of Appeals found that there was no error as the juvenile was not in custody and his statement was given freely and voluntarily. The Court of Appeals found that the trial court’s finding was supported by competent evidence. Specifically, the evidence tended to show that: (1) the juvenile was escorted to the administrative office by an assistant principal; (2) one of the assistant principals was interviewing the juvenile when he indicated his involvement in starting the fire; (3) the school resource officer and the off-campus officers were not present during the questioning although the school resource officer was nearby and entered and exited the room thereafter; (4) the principal did not inform the juvenile that he could not leave the room; (5) school administration entered and exited the room indicating that it was unlocked; and (6) there was no physical restraint placed on the juvenile.

The juvenile also argued that his statement was not made freely and voluntarily, as he was not advised that his statements could be used against him or that he had a right to have a parent present during questioning. As a result, the juvenile indicated that he had been tricked into providing a statement. The Court disagreed, finding that the facts that he was not informed that his statement could be used against him or that a parent could be present during questioning did not establish that he was tricked into making a statement or that it was made involuntarily. As to the juvenile’s argument that there was insufficient evidence to find that he had the intent to wantonly and willfully burn the schoolhouse, the Court noted that this issue was not preserved for appeal. However, the Court indicated that if it considered the argument, there was evidence indicating that the juvenile either aided another juvenile in “wantonly and willfully” setting the fire or acted in concert with the juvenile to set the fire when he provided the lighter, and attempted to extinguish the fire himself instead of pulling the alarm to notify the school of the fire.

As to the juvenile’s argument that he received ineffective assistance of counsel due to his attorneys’ failure to seek dismissal of the disorderly conduct charge, the Court of Appeals disagreed. The Court found that even if it assumed that trial counsel erred by failing to seek the dismissal, the juvenile did not suffer any prejudice because there was evidence to support a finding of responsibility to the charge.

The Court also disagreed that there was no showing that he acted intentionally. The Court found that he acted intentionally when he provided the lighter to the other juvenile to examine the pipe chase, and that he should have been aware that using a lighter to generate a flame could result in a fire. The Court based its reasoning on the second prong of N.C.G.S. 14-288.4(a) (6) concerning general intent crimes. The Court also reasoned that any fire in a school building is likely to result in a disruption of the educational process. Accordingly, the Court affirmed the decision.

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## In the matter of S.M.S., 675, S.E.2d 44, 2009 N.C. App. LEXIS 363

Rule(s): Locker room sign was sufficient notice given to juvenile to support adjudication of second-degree trespass. Also see NOTE below.

The juvenile was adjudicated delinquent of second-degree trespass upon entering a girls’ locker room at school, and the court entered a Level 1 disposition. The juvenile appealed, arguing that the court erred in denying his motion to dismiss the petition alleging second-degree trespass because: (1) `1his conduct violated school rules, but did not support a charge of second-degree trespass; (2) he was allowed to enter the girls’ locker room as it was located on school property open to the public; (3) he did not commit any act that would render consent for entry void; and (4) he left the locker room when a school staff member instructed him to do so. The Court of Appeals disagreed, finding that the sign on the door of the locker room, which read “Girls’ Locker Room,” provided sufficient notice that the juvenile was not permitted entry, and that his admission that he violated school rules by entering the locker room supported the trial court’s decision to deny his motion to dismiss.

NOTE: The Court of Appeals also stated, “Although respondent's actions, in the case sub judice, provided sufficient evidence of second-degree trespass, it is unclear to us 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.” http://appellate.nccourts.org/opinions/?c=2&pdf=MjAwOS8wOC05NzAtMS5wZGY

## In the matter of J.D.B., 2009 N.C. App. LEXIS 11 (unpublished opinion)

Rule(s):

1. In a charge for a first-degree sexual offense, evidence is sufficient to support the sexual-act element if testimony suggests “penetration, however slight, by any object into the genital or anal opening of another person’s body.” P.4 (citations/quotation marks omitted).
2. In a charge for sexual battery, the element of acting for the purpose of sexual arousal, sexual gratification, or sexual abuse may be sufficiently supported where “circumstantial evidence of other sexual contact . . . show [sic] a pattern of behavior from which a purpose of arousing or gratifying sexual desire can be inferred.” P.4–5.

The juvenile was adjudicated of first-degree sexual offense against one juvenile and sexual battery against another juvenile.

The juvenile appealed, making several arguments.

The juvenile’s first argument was that the trial court erred in denying his motion to dismiss at the close of the evidence due to insufficient evidence. The court disagreed and found that there was sufficient evidence to deny the motion to dismiss the case because the elements of first-degree sexual offense (i.e., the juvenile engaged in a sexual act; with a child under 13; and was 12 years old and four years older than the victim) were satisfied. The court relied upon the victim’s testimony that the juvenile touched her in her private part although when she met with a doctor, she did not initially indicate that penetration occurred until her mother sought such clarification.

The juvenile also argued that there was insufficient evidence to show purpose of sexual arousal, sexual gratification, or sexual abuse for the offense of sexual battery. The court disagreed, finding that there was sufficient evidence that the juvenile engaged in sexual contact by force or against the will of the other person for the purpose of sexual arousal, gratification, or abuse. The court relied upon testimony from a witness present that day at the pool, who testified that the juvenile reached his hand down the victim’s bathing suit trunks against the victim’s will. The court reasoned that although the purpose could not be inferred from the particular incident, circumstantial evidence of other instances of sexual contact (e.g., incidents at the pool and other games in which the juvenile had engaged) for the purpose of sexual gratification indicated a pattern of behavior for such a purpose.

The juvenile’s next argument was that the trial court erred by allowing testimony into evidence pursuant to Rule 404(b) of the North Carolina Rules of Evidence because defense counsel was not noticed properly of the evidence prior to the hearing. The court disagreed, finding that Rule 404(b) pertains to admissibility of evidence and does not require disclosure of such evidence.

The juvenile also argued that the trial court erred by referencing a pre-existing offense history when a history had not been presented to the court. The court disagreed with this argument. After the adjudication, the court requested a sex offender evaluation, predisposition report, and risk and needs assessments. In the reports, a reference was made to a 2006 assault charge against the juvenile, as well as statements regarding his risk to re-offend, his temperament, and his mental history. The court ruled that the predisposition report and risk and needs assessment could be considered prior to the disposition in accordance with § 7B2501 and § 7B-2413. Overruling all assignments of errors, the court affirmed this decision.

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## In the matter of T.T.P., 2009 N.C. App. LEXIS 783 (unpublished opinion)

Rule(s): In a charge of violating N.C.G.S. Section 14-69.1(c), where the juvenile falsely writes that she brings a grenade to school “every day,” the writing will be interpreted to falsely communicate that there is an explosive device in proximity to school on that particular day. Where the juvenile writes that she is going to blow up the school, it “clearly convey[s] an intention to use the device to blow up the school.” P.5.

The juvenile was adjudicated of communicating a false bomb report at school. The facts indicated that the school resource officer saw the juvenile in the restroom in a stall with her feet facing the wall; that when the juvenile exited the stall, she informed the school resource officer that there was writing on the wall that she needed to see; the writing communicated a false bomb report (i.e., the juvenile writing it had made a false bomb report previously, that she planned to do it again and blow up the school the next day; and that she brought a gun and grenade to school every day); that the juvenile had been in the restroom during her entire fourth period class; that the juvenile wrote a statement admitting that she wrote the bomb report on the wall after waiving her rights; and that the juvenile admitted to her mother that she changed her handwriting and indicated that she was a tenth grader so that she would not be identified. Later, the juvenile testified that she did not write the complete false bomb report on the wall, but that she only wrote a portion indicating that the school would be history the next day, and that she did not intend to waive her rights to have a parent present during questioning.

The juvenile appealed, arguing that the trial court erred in denying her motion to dismiss because the State failed to prove there was a device designed to destroy or damage the school actually located in or in sufficient proximity to the building. The juvenile argued that all of the elements of the crime were not met since the State failed to show that there was a device designed to destroy or damage the school actually located in or in sufficient proximity to the building. The Court of Appeals disagreed, finding that the writing indicated (1) that the juvenile brought a gun and grenade to school every day and (2) an intention to blow up the school. The Court ruled that these facts indicated an intention to use the device to commit the offense communicated, and affirmed the lower court’s decision.

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## In the matter of T.B., 2009 N.C. App. LEXIS 1414 (unpublished opinion)

Rule(s):

1. “Substantial evidence is relevant evidence which a reasonable mind might accept as adequate to support a conclusion.” P.4–5 (citations omitted).
2. A “trial judge, sitting without a jury, has discretion as finder of fact with respect to the weight and credibility that attaches to the evidence.” Comments made by the judge regarding a witness’s credibility do not constitute impermissible opinion. P.8 (citations omitted).

The juvenile was adjudicated of attempted robbery with a dangerous weapon, and a Level 3 disposition was entered committing the juvenile to a youth development center for an indefinite period.

The juvenile appealed, arguing that the trial court erred by denying his motion to dismiss due to insufficient evidence. The juvenile argued that the court did not present sufficient evidence to indicate that he was the perpetrator of the offense or that a dangerous weapon was involved as the victim testified that he was not sure he only saw the perpetrator’s eyes and was unsure if the gun was real. The Court of Appeals disagreed, finding that the evidence indicated that (1) there was sufficient light during the incident, (2) the victim saw the juvenile point the gun at him and threaten him, (3) the victim identified the juvenile to law enforcement within 10 minutes after the incident from a large group of people, and (4) the victim identified the juvenile in court as the perpetrator of the offense.

Next, the juvenile argued that the trial court erred by adjudicating the juvenile delinquent after making an inappropriate and biased comment concerning a witness’s credibility. The Court of Appeals disagreed, finding that after considering the totality of the circumstances, the judge’s comment (with regard to believing the witness’s account of the incident) reflected his thought process and did not reflect impermissible opinion.

Lastly, the juvenile argued that the trial court erred by entering a Level 3 disposition order without making any findings of fact. The Court of Appeals agreed, finding that the disposition order failed to make appropriate finding of fact regarding the grounds for the Level 3 disposition pursuant to N.C.G.S. § 7B-2512 (i.e., to protect the public and meet the needs and bests interests of the juvenile based upon enumerated grounds). The Court of Appeals also pointed out that the disposition order failed to provide information pertaining to the juvenile’s delinquency history. Consequently, the Court of Appeals remanded the case for a new disposition hearing.

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## In the matter of D.K., 684 S.E.2d 511, 2009 N.C. App. LEXIS 1725

Rule(s): In a larceny case, “‘[t]he intent to permanently deprive an owner of [her] property could be inferred where there was no evidence that the defendant ever intended to return the property, but instead showed a complete lack of concern as to whether the owner ever recovered the property. P.5 (citations/quotation marks omitted).

The juvenile was adjudicated delinquent for larceny, and sentenced as a Level 1 offender with disposition continued for three months.

The juvenile appealed, arguing that the trial court erred by (1) denying his motion to dismiss the petition for insufficient evidence and (2) stating ambiguously in the adjudication order which standard of proof it utilized, thereby violating N.C.G.S. § 7B-2409 and § 7B-2411.

As to the juvenile’s first argument, the Court of Appeals disagreed finding that all of the essential elements of larceny (i.e., taking the property of another; carrying it way; without the owner’s consent; and with the intent to deprive the owner of the property permanently) were satisfied. Specifically, the juvenile argued that he did not carry the property in question (a visor) away with the intent to deprive the owner of the property permanently. The Court of Appeals held that (1) the fact that the property in question may have been under the juvenile’s control for a short period of time was immaterial as his actions would “constitute a complete severance from the possession of the owner” and (2) the juvenile’s abandoning of the property signified an intent to deprive the owner of the property permanently.

As to the juvenile’s second argument, the Court of Appeals agreed, finding that the trial court applied two different conflicting burdens or proof at the adjudicatory proceeding, making it impossible to determine which it relied upon to make it determination. Accordingly, the Court of Appeals affirmed the trial court’s decision to deny dismissal for insufficient evidence, but ordered a new trial as the option to remand was unavailable (as the judge had been appointed to the superior court bench).

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## In the matter of D.M.B., 676 S.E.2d 66, 2009 N.C. App. LEXIS 524

Rule(s):

1. N.C.G.S. § 15A-1222 does not apply when the judge’s comments are not made in the presence of the jury.
2. Review for plain error is reserved for jury instructions and admissibility of evidence, but not sufficiency of evidence.
3. “[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.” P.5 (citations omitted).

The juvenile was adjudicated of assault causing serious bodily injury after he admitted to hitting another juvenile, and causing two broken jaws and a facial fracture. The juvenile was ordered to pay $1000 in restitution, to serve 72 hours of community services, to serve 12 hours of supervised probation, and to not associate with the victim or witnesses.

The juvenile appealed, arguing that (1) the trial court was not fair and impartial as it made improper comments during the disposition; (2) the trial court should have dismissed the charge because there was not sufficient evidence of serious bodily injury; and (3) the trial committed reversible error when it failed to make findings of fact to support the restitution order. The Court of Appeals disagreed with the first two assignments of error.

As to the juvenile’s first argument, the Court relied upon N.C.G.S. § 15A-1222, which prohibits a trial judge from expressing any opinion on a question of fact to be decided by the jury. However, in this case, the Court pointed out that there was no jury. The Court also noted that if it reviewed the judge’s comments (explaining that he was required to enter a Level One or Two disposition despite an inclination to enter a harsher disposition) using a totality of the circumstances test, there was no indication that the judge was not impartial.

As to the juvenile’s second argument, the Court noted that the issue of sufficiency of evidence was not preserved for review, and that there was no basis for the case to be reviewed under the plain error doctrine.

Lastly, regarding the juvenile’s last argument, the Court agreed with the juvenile’s assignment of error, holding that requiring a juvenile to pay 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” (quoting In re Berry, 33 N.C. App. 356, 360, 235 S.E.2d 278, 280-281 (1977)). Accordingly, the Court remanded the case to the lower court for further action.

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## In the matter of D.S., 694 S.E.2d 758, 2010 N.C. LEXIS 434

Rule(s):

1. For purposes of juvenile adjudication, the definition of “complaint” is “a written and sworn document whose primary purpose is to articulate specific allegation(s) of delinquency to the JCC.” P.8.
2. Because the time limit set forth in N.C.G.S. § 7B-1703 (15 days, plus a 15day extension) is not jurisdictional, courts do not lack jurisdiction over petitions filed after that deadline.

The juvenile was adjudicated of sexual battery and simple assault.

The juvenile appealed arguing that (1) the trial court lacked subject matter jurisdiction because the sexual battery petition was not filed timely pursuant to N.C.G.S. § 7B-1703 (i.e., within 15 days after the complaint is received, or within 30 days if the chief court counselor grants an extension within the first 15 day requirement); (2) there was a fatal variance between the acts alleged in the petition and the evidenced presented at the hearing; and (3) the trial court erred in making a finding of fact 3(c) absent supporting evidence at the hearing.

Regarding the first argument, the Court of Appeals agreed with the juvenile, finding that the court counselor failed to act timely when filing the second petition 50 days after the complaint was received. Accordingly, the Court of Appeals vacated the order adjudicating the juvenile delinquent of sexual battery.

Regarding the juvenile’s second argument, the juvenile argued error because the simple assault petition alleged that he touched the victim with his hands, whereas the evidence indicated that he touched the victim with a Pixy Stix. The Court disagreed, and overruled the assignment of error finding that the variance between the petition and the evidence presented at the hearing did not prevent the juvenile from preparing a defense for simple assault.

Regarding the juvenile’s last argument that there was no evidence that he touched the victim, the Court disagreed. The Court found that there was “clear, cogent and convincing evidence to support the findings of fact and conclusions of law by the trial court” that the juvenile assaulted the victim.

In July 2009, the State filed a petition for discretionary review seeking review of whether the Court of Appeals erred by holding (1) that provisions of N.C.G.S. § 7B1703 were prerequisites in juvenile delinquency cases, and (2) that the trial court had no jurisdiction where the complaint alleging sexual battery was received by the Department of Juvenile Justice and Delinquency Prevention one day prior to the filing of the juvenile petition even if N.C.G.S. § 7B-1703 is considered a jurisdictional statute. First, the Supreme Court determined that the juvenile court counselor filed the petition timely because he filed the petition alleging sexual battery after the new complaint of sexual battery was received. The Court held that the meaning “complaint” is a written and sworn document asserting specific allegations of delinquency” and that “when the complaint is received” in N.C.G.S. § 7B-1703 is the “date on which the juvenile court counselor’s office receives a document alleging that a juvenile is delinquent.” The Supreme Court reasoned that the court counselor in his ministerial capacity (i.e. of receiving complaints, performing intake, and determining whether to file petitions considering charges alleged) would not been able to file a petition for sexual battery based upon receiving a complaint for simple assault. The Supreme Court reasoned that the Court of Appeal’s conclusion regarding timeliness was a result of treating the “underlying allegations, rather than the document itself, as the complaint.” Reasoning that the court counselor was only authorized to determine whether the complaint before him should be filed as a petition, diverted, or resolved without further action, the Court held that the court counselor was not required to file a petition alleging sexual battery at the time of filing the petition for simple assault. The Court also noted that the purpose of the Juvenile Code not only provides for cases to be resolved expeditiously, but also provides for protection of the public, deterrence of crime, rehabilitative services, as well as an effective and equitable system. Moreover, the Court also noted that nothing in the provisions indicate a legislative intent to elevate expediency over other specified purposes of the Code. Last, the Court held that the legislature did not intend for the timing requirements of N.C.G.S. § 7B-1703 to be jurisdictional as the statute does not mention jurisdiction or that failure to meet timelines divests the district court of subject matter jurisdiction. The Court compared the timing requirements to those governing abuse, neglect, and dependency cases wherein timing requirements are considered “directory rather than mandatory.” Accordingly, the Supreme Court reversed the decision, and remanded the case to the Court of Appeals to address assignments of error related to the sexual battery adjudication.

Upon remand, the Court of Appeals held that the trial court erroneously failed to grant the juvenile’s motion to dismiss as to the sexual battery charge. Relying on In re T.S., 133 N.C. App. 272, 515 S.E.2d 230 (1999), the Court of Appeals found that there was no proof that the juvenile was acting for a sexual purpose and that the juvenile’s actions without the purpose of sexual arousal, sexual gratification, or sexual abuse failed to constitute sexual battery. Consequently, the Court reversed and remanded for entry of dismissal.

Supreme Court of NC:

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## In the matter of J.T.W., 671 S.E.2d 378, 2008 N.C. App. LEXIS 2135 (unpublished opinion)

Rule(s): For the charges of sexual battery and indecent liberties between children, the element of “purpose to arouse or gratify his sexual desires” is supported by sufficient evidence where there was an eight-year age disparity between the children, the juvenile touched the victim on her chest and buttocks while the two were alone in a room, and the juvenile jumped when he saw the victim’s mother, and the juvenile immediately denies wrongdoing.

The juvenile was adjudicated of sexual battery and indecent liberties between children.

The juvenile appealed, arguing that the trial court erred in denying his motion to dismiss both charges because the State did not present evidence that he committed the offenses for purposes of sexual gratification. The Court of Appeals disagreed, ruling that the essential elements of both offenses, including that the action by the juvenile was for the purpose of arousing or gratifying sexual desire, were met. Unlike in adult proceedings, the juvenile’s intent to act for the purpose of arousal or sexual gratification is not inferred from the act itself, but can be shown by the age disparity between the juvenile and the victim, the control exercised by the juvenile, the location and secretive nature of the actions, and the attitude of the juvenile. In this case, there was an eight year age disparity between the juvenile and the victim; the juvenile touched the victim on her chest and buttocks while they were alone in the room; the victim’s mother saw the juvenile’s hand underneath the victim’s shorts when she walked into the room; the juvenile jumped up when he saw the victim’s mother walk into the room, as if involved in suspicious behavior; and the juvenile immediately denied that there was any inappropriate conduct when the mother inquired, attempting to avoid being caught. The Court ruled that these facts were sufficient to prove that the juvenile made sexual contact with the victim for the purpose of arousal or sexual gratification, and affirmed the trial court’s decision.

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## In the matter of Z.A.K., 189 N.C. App. 354, 657 S.E.2d 894 (2008), 2008 N.C. App. LEXIS 539

Rule(s): Where the juvenile was questioned during merely exploratory investigation, was not a suspect during questioning, and was not coerced into participation, the juvenile was not in police custody.

The juvenile was adjudicated of involuntary manslaughter and possession with intent to sell and deliver Ecstasy.

The juvenile appealed, arguing that the state failed to prove that the juvenile’s actions were the proximate cause of the victim’s death. The Court of Appeals, after review of the evidence, determined that the juvenile’s failure to aid the victim (not obtaining help, lying to various individuals regarding the situation) after the juvenile provided the victim with the drug constituted culpable negligence but proximately resulted in the victim’s death.

The juvenile also argued that the trial court erred in denying the juvenile’s motion to suppress. The juvenile had been taken to the police station by his father and was interviewed without handcuffs, but was constantly escorted and never told he was free to leave. The Court found that the juvenile was not in custody because the juvenile was not a suspect at the time, that the investigation was merely exploratory, and that neither the police nor the juvenile’s father coerced the juvenile to participate.

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## In the matter of R.D.L., 191 N.C. App. 526, 664 S.E.2d 71, 2008 N.C. App.

LEXIS 1506

Rule(s):

1. Where the proceeding concerns a series of injuries to personal and real property, the juvenile’s admission that he “did do it” does not constitute a general admission.
2. Where the State does not present individualized proof for each offense charged, the evidence raises mere “suspicion or conjecture,” P.10, and such evidence is insufficient to survive motion to dismiss. Incidents conceded by the juvenile will be upheld.

The juvenile was adjudicated delinquent of four counts of injury to real property and five counts of injury to personal property.

The juvenile appealed, arguing that the trial court erred by denying the juvenile’s motion to dismiss the petitions because of insufficient evidence. The Court of Appeals agreed, finding that the State did not present individualized proof of each of the offenses charged in the petitions. The Court found that the juvenile’s admission as two of the nine petitions did not amount to a general admission of all of the offenses charged.

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## In the matter of S.M., 190 N.C. App. 579, 660 S.E.2d 653 (2008), 2008 N.C. App. LEXIS 992

Rule(s): Where a juvenile is adjudicated of disorderly conduct at school for giggling and running in the hall, requiring the school resource officer to chase the juvenile briefly to stop him, the evidence cannot support the standard of substantial interference with the operation of a school.

The juvenile was adjudicated delinquent of disorderly conduct at school.

The juvenile appealed, arguing that the trial court erred by not granting the juvenile’s motion to dismiss for lack of sufficient evidence. The Court of Appeals reviewed prior case law, and based on the juvenile’s conduct, which consisted of walking in the hall during class time, giggling and running down the hall when asked to stop, being stopped by the school resource office after a brief chase down the hall, and minimal observation by students and teachers as the juvenile was being taken to the office, the Court determined there was insufficient evidence that classes or the school was substantially interrupted.

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## In the matter of J.D.C., 2008 N.C. App. LEXIS 1836 (unpublished opinion)

Rule(s): Evidence may be direct, circumstantial, or both, as long as it substantially supports “a finding that the offense charged has been committed and that the defendant committed it.” P.4, (citations/quotation marks omitted).

A juvenile petition was filed alleging the juvenile feloniously possessed cocaine. At the end of the State’s evidence and at the close of all of the evidence, the juvenile moved to dismiss. The court denied both motions. Subsequently, the juvenile was adjudicated delinquent for possession of cocaine and placed on probation for 12 months.

The juvenile appealed, arguing that the court erred in denying his motion to dismiss because there was insufficient evidence that he was the perpetrator of the offense. The Court of Appeals disagreed, citing State v. Scott, 356 N.C. 591, 595, 573 S.E.2d 866, 868 (2002), which found that when there is a motion to dismiss, the court must conclude whether there is substantial evidence of each essential element of the offense charged, or of a lesser offense, and whether the defendant is the perpetrator of the offense. The Court of Appeals also cited *State v. McNeil*, 359 N.C. 800, 804, 617 S.E.2d 271, 274 (2005), which indicated that the State’s evidence may be direct, circumstantial, or both, providing it substantiates a finding that the offense charged was committed and that the defendant committed it.

The Court of Appeals found that, although the officer testified that he was not certain of the juvenile’s identity as the perpetrator of the crime after previously testifying that the juvenile was the person he observed and arrested for the offense, there was circumstantial evidence indicating the juvenile committed the crime (e.g., the person arrested and the mother of the person arrested, who was present in court, provided the juvenile’s name on the night of the arrest). Therefore, the Court of Appeals affirmed.

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## In the matter of C.B.G., 671 S.E.2d 379, 2008 N.C. App. LEXIS 2113 (unpublished opinion)

Rule(s): The reliability, and so the permissibility, of the a show-up identification, is reviewed under the totality of the circumstances, examining the following:

(1) the opportunity of the witness to view the criminal at the time of the crime, (2) the witness’ [sic] degree of attention, (3) the accuracy of the witness’ [sic] prior description of the criminal, (4) the level of certainty demonstrated at the confrontation, and (5) the time between the crime and confrontation.” P.5 (citations/quotation marks omitted).

The juvenile was adjudicated of robbery with a dangerous weapon, and committed to a youth development center for an indefinite term not to exceed his 18th birthday.

The juvenile appealed. Among other arguments, the juvenile claimed that the trial court erred in denying his motion to suppress the victim’s identification testimony. The Court of Appeals disagreed, and found that the identification, which occurred at a nearby convenience store after the robbery, was not impermissibly suggestive and therefore, did not preclude due process. The Court of Appeals indicated that the totality of the circumstances did not result in “substantial likelihood of irreparable misidentification” because the identification process contained sufficient aspects of reliability (i.e., the victim had the opportunity to view the juvenile face-to-face; the victim’s degree of attention was sufficient as the juvenile checked his pockets twice during the robbery; the victim’s prior description of the juvenile was accurate; the victim portrayed a level of certainty at the confrontation; and the identification occurred less than an hour after the robbery).

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## In the matter of S.J.E., 2008 N.C. App. LEXIS 1860 (unpublished opinion)

Rule(s):

1. Where the court excludes a lab report concerning substance identification but admits a field test and expert testimony, the evidence is sufficient to defeat a motion to dismiss.
2. A court may not delegate the authority to determine whether a juvenile will enter a treatment program.
3. When a clerical error, including checking the incorrect box on a form, is discovered in a judgment or order, it is appropriate to remand for correction.

The juvenile was adjudicated delinquent of possession of crack cocaine, and the court entered a Level 2 disposition.

The juvenile appealed, challenging the sufficiency of the evidence to prove that the substance retrieved from his pocket was crack cocaine. The juvenile argued that after the court excluded from evidence a lab report identifying the substance as cocaine, the court should have allowed his motion to dismiss. The Court of Appeals disagreed, and found that there was evidence indicating that a field test resulted in a positive result for crack cocaine. Additionally, the Court of Appeals cited *State v. Fletcher*, 92 N.C. App. 50, 56, 373 S.E.2d 681, 685 (1988), and found that the expert testimony of the arresting officers identifying the substance as crack cocaine was sufficient to defeat the motion to dismiss.

The juvenile also argued that the court’s order improperly delegated its authority to the juvenile court counselor to decide whether he should be required to enter a treatment program. The Court of Appeals cited N.C.G.S. §7B-2506, which provides the court with the power and discretion to order appropriate dispositional alternatives, and *In re Hartsock*, 158 N.C. App. 287, 580 S.E.2d at 395 (2003), which held that the statute does not state or indicate that the court may delegate its discretion. As a result, the Court of Appeals vacated this portion of the disposition order and remanded for further findings.

Lastly, the Court of Appeals found that based on the transcript, it was clear that the court understood it had discretion to enter either a Level 1 or 2 disposition, but made a clerical error. The Court of Appeals cited *State v. Jarman*, 140 N.C. App. 198, 202, 535 S.E.2d 875, 878 (2000), indicating that “a clerical error results from a minor mistake or inadvertence” such as inaccurate checking of boxes (In re D.D.J., D.M.J., 177 N.C. App. 441, 444 628 S.E.2d 808, 811 (2006). When such an error is discovered on appeal, it is appropriate to remand the case to the court for correction [State v. Linemann, 135 N.C. App. 734, 738, 522 S.E.2d 781, 784 (1999)].

Consequently, the Court Appeals remanded the case for correction of the error. http://appellate.nccourts.org/opinions/?c=2&pdf=MjAwOC8wNy0xMDQ3LTEucG Rm

## In the matter of A.C., 2008 N.C. App. LEXIS 1844 (unpublished opinion)

Rule(s):

1. When the court seeks the court counselor’s input regarding intermittent confinement, it does not have to specify a location for commitment or instruct the counselor on what should be considered.
2. Intermittent confinement may possibly be distinguished from placement in a residential treatment facility (pursuant to N.C.G.S. § 7B-2506(14)). The court may seek greater input from the court counselor regarding intermittent confinement than regarding placement in a residential treatment facility.
3. A trial court may defer to the court counselor’s opinion, so long as the court maintains authority by requiring that the counselor’s recommendation be approved by the court.
4. A court’s order that a juvenile not associate with “persons deemed to be a negative influence by parent” is specific enough to be enforced.
5. In determining whether to require restitution as a condition of probation, the court must consider the juvenile’s best interests and the ability to pay.

The juvenile was adjudicated delinquent of larceny and possession of stolen goods after the evidence at trial indicated that the juvenile was found to be in possession of a stolen cell phone.

The juvenile appealed, arguing that the court erred in denying his motion to dismiss because there was insufficient evidence to prove beyond a reasonable doubt that he had possession of the cell phone. The Court of Appeals disagreed, and found that pursuant to the doctrine of possession of recently stolen property, the evidence established that the cell phone was stolen, in the juvenile’s custody and control to the exclusion of others, and that the juvenile possessed the cell phone recently after the larceny.

Additionally, the juvenile argued that the court improperly delegated its authority in proceeding to disposition without the required risk and needs assessments. The Court of Appeals disagreed, and found that the record indicated that the assessments were completed and considered by the court.

Moreover, the juvenile argued that certain conditions of his probation were vague and burdensome. The first condition required intermittent confinement if deemed necessary by the court counselor and approved by the Court. Although the juvenile argued that the condition was not specific as to provide a situation or methodology for determining when intermittent confinement would be necessary, the Court of Appeals disagreed, and found that the requirements of N.C.G.S. §7B2506 (20) were satisfied. N.C.G.S. §7B-2506 (20) provides that the trial court may "[o]rder that the juvenile be confined in an approved juvenile detention facility for a term of up to 14 24-hour periods . . . . The timing of this confinement shall be determined by the court in its discretion."

Furthermore, the juvenile argued that the condition of probation was an improper delegation of the court’s authority. The Court of Appeals disagreed, and found that the court maintained its authority by requiring that the court approve the court counselor’s recommendation of intermittent confinement.

As to the juvenile’s argument that the order requiring that he perform community service was not specific, the Court of Appeals agreed as N.C.G.S. §7B2506 (23) requires that the nature of the work be specified. Consequently, the Court of Appeals remanded for a specific order regarding the nature of the community service.

Regarding the argument that the requirement, that he not associate with persons deemed to be a negative influence by a parent or court counselor, was not specific enough to be enforced, the Court of Appeals disagreed, and overruled this assignment of error.

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## In the matter of T.K., III, 2007 N.C. App. LEXIS 220 (unpublished opinion)

Rule(s):

1. Because the charge of simple assault does not have to include the element of “apprehension of harmful or offensive contact,” but may instead allege “an overt act showing an intentional offer by force and violence to do injury to another sufficient to put a person of reasonable firmness in apprehension of immediate bodily harm,” P.6, a petition alleging for the charge is sufficient where it alleges an assault by wiping feces on the victim’s face.
2. The evidence is sufficient to establish that a juvenile acted in concert with others where the juvenile was asked to watch the assault, stood near the victim, was present at the scene, had previously picked on the victim, testified that he thought it would be amusing to see someone smear feces on the victim, told the camp counselor that he did so himself, and stated in his apology letter, “I'm sorry for doing those horrible things to you.”

The juvenile was adjudicated delinquent of simple assault (wiping feces on the face of a fellow camper who was asleep). The trial court found that the juvenile acted in concert with two other juveniles in the commission of the act.

The juvenile appealed, first arguing that the petition failed to include the element that the victim was “put in apprehension of harmful or offense contact.” The Court of Appeals found that under North Carolina law, the charge of simple assault does not have to include the element of “apprehension of harmful or offensive contact,” but can instead allege “an overt act showing an intentional offer by force and violence to do injury to another sufficient to put a person of reasonable firmness in apprehension of immediate bodily harm.” Therefore, the petition alleging an assault “by inserting [a] finger into [an] anus and wip[ing] feces on [the victim’s] face” sufficiently alleged the charge of simple assault.

The juvenile also argued that the trial court erred by denying his motions to dismiss because the state failed to prove beyond a reasonable doubt that he acted in concert with the other juveniles. The Court of Appeals disagreed, stating that to show concerted action of the commission of crime the state must prove that 1) the juvenile is present at the scene of the crime and 2) the juvenile 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. The Court found that the following evidence sufficient to adjudicate the juvenile of simple assault: (1) one of the other juveniles asked the juvenile to “come and watch” him commit the assault; (2) the juvenile stood four or five feet from the victim; (3) the juvenile was present at the scene of the assault; (4) the juvenile had picked on the victim during the week at camp; (5) the juvenile testified he thought it would be “amusing” to watch one of the juvenile’s smear feces across the victim’s face; (6) when confronted about the incident, all the juveniles stated “we” smeared feces on the victim’s face; and (7) the juvenile stated in his apology letter, “I'm sorry for doing those horrible things to you.”

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## In the matter of B.N.S., 182 N.C. App. 155, 641 S.E.2d 411 (2007), 2007 N.C. App. LEXIS 471

Rule(s): Because N.C.G.S. § 14-269.2 was intended to deter students from having weapons on campus and “[a] pocketknife has been recognized in this state as a deadly or dangerous instrumentality as a matter of law” P.5 (citations/quotation marks omitted), evidence that the juvenile had a pocketknife on campus is sufficient to show that the juvenile committed the offense.

The juvenile was adjudicated delinquent of possessing a weapon on school property, a pocketknife, with a blade 2.5 inches long.

The juvenile appealed, arguing that the trial court should have granted the juvenile’s motion to dismiss because a closed pocketknife is not a “weapon” as defined under N.C.G.S. 14-269.2(d). The Court of Appeals first held that the intent of the statute was to “deter students and others from bringing any type of weapon onto school grounds because of the increased necessity for safety in our schools.” The Court then noted that the statute does not require a showing of criminal intent, and that under prior case law, the question of operability of the weapon is not relevant because the intent of the statute is the increased need for safety in schools. Therefore, because the juvenile brought the pocketknife to school and no statutory exemption applied, the trial court did not err in denying the juvenile’s motion to dismiss.

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## In the matter of R.T.L., 2007 N.C. App. LEXIS 1025 (unpublished opinion)

Rule(s):

1. Intent may only be inferred from packaging, labeling, and storage, the defendant’s activities, the quality of the substance found, and the presence of cash or drug paraphernalia.
2. Rule concerning N.C.G.S. § 15-196.1 (credit for time served) overturned by In the Matter of D.L.H., 679 S.E.2d 449, 2009 N.C. App. LEXIS 1175, 2010 N.C. App. LEXIS 421.

The juvenile was adjudicated delinquent for possession with intent to sell or deliver cocaine. The evidence at trial indicated that the juvenile was found to be in possession of one plastic bag containing seven “rock-like” substances.

The juvenile appealed, arguing that the trial court erred in denying the juvenile's motion to dismiss due to insufficient evidence. The Court of Appeals agreed, holding that intent may only be inferred from packaging, labeling, and storage, the defendant's activities, the quality of the substance found, and the presence of cash or drug paraphernalia. The Court found that the State failed to provide any other evidence. The judgment was vacated and remanded for entry of judgment on possession of cocaine with resentencing accordingly. The Court also held that the juvenile was entitled to a sentencing credit for time spent in detention prior to adjudication. The Court stated that under In re: Allison, 143 N.C. App. 586 (2001) the Court had previously determined that the provisions of N.C.G.S. § 15196.1 (credit for time served) apply to juvenile offenders.

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## In the matter of B.D.N., 186 N.C. App. 108, 649 S.E.2d 913, 2007 N.C. App. LEXIS 1969

Rule(s):

1. Plain-error analysis applies only to matters related to jury instructions and admissibility of evidence – not where the juvenile may have been charged and convicted under the wrong offense.
2. Where an offense meets the elements of multiple statutes, one of which is defined more broadly than another (e.g., applying to “any building,” rather than only public buildings), the charges do not have to be for the more specific offense.

The juvenile was adjudicated of communicating a false bomb threat. The evidence indicated that at the juvenile’s school, a calculator displaying the words “Bomb at Lunch” was found by another student. The student showed the calculator to the teacher, who reported the incident to school administration. The school was then evacuated. Another student heard the juvenile tell someone that the juvenile “meant it all as a prank, and [the juvenile] didn’t think they’d take it actual [sic] seriously.” Another student testified that the juvenile told a student that the reason the juvenile made the threat was that “it would be fun to get out of school.”

The juvenile appealed, arguing that the state failed to prove the case beyond a reasonable doubt, that the trial court committed plain error by denying the juvenile’s motion to dismiss because the juvenile was improperly petitioned and adjudicated under the statute, and that the trial court lacked subject matter jurisdiction to petition the juvenile.

The Court of Appeals disagreed that the state failed to prove every element of the case. The Court held that based on both the evidence that the juvenile was likely to have used the calculator before the message was discovered, and on the testimony presented against the juvenile, that the state provided substantial evidence of each element of the offense.

As to the juvenile’s second argument, the Court refused to apply the plain error rule and barred the assignment of error.

Lastly, the Court considered the juvenile’s argument that the court lacked subject matter jurisdiction because the juvenile should have been charged under N.C. Gen. Stat 14-69.1(c), not N.C. Gen. Stat 14-69.1(a), because the former statute specifically controls false bomb threats made threatening “any public building.” The Court disagreed, finding that N.C. Gen. Stat 14-69.1(a) controls “any building,” which would include public buildings, and rejected the juvenile’s argument that as between two statutes, the more specific statute should control.

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## In the matter of I.R.T., 184 N.C. App. 579, 647 S.E.2d 129 (2007), 2007 N.C. App. LEXIS 1624

Rule(s):

1. “‘The question of defendant’s capacity is within the trial judge’s discretion and his determination thereof, if supported by the evidence, is conclusive on appeal.’” P.4.
2. The age of a juvenile is a relevant factor in determining whether a reasonable person would feel free to leave upon being stopped by law enforcement.
3. A juvenile’s conduct and other circumstances may suffice to establish reasonable suspicion.
4. In considering a motion to dismiss for insufficient evidence, the trial court is to “determine whether, in the light most favorable to the State, there was substantial evidence supporting each element of the charged offense. ‘Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.’” P.13 (citations omitted).

The juvenile was adjudicated of possession of cocaine with the intent to sell or distribute.

The juvenile appealed, first arguing that the juvenile was not competent to stand trial. The Court of Appeals disagreed, finding that the trial court did not abuse its discretion in finding that the juvenile was competent to stand trial, after considering the testimony of two psychologists.

The juvenile next argued that the trial court erred in denying the juvenile’s motion to suppress evidence of the cocaine. The Court reviewed state and federal law and found that there had not been a holding from a North Carolina state court as to whether the age of a juvenile was a relevant inquiry in determining whether a seizure has occurred within the meaning of the Fourth Amendment. The Court then held that the age of a juvenile is a relevant factor in determining whether a reasonable person would feel free to leave upon being stopped by law enforcement. The Court found that the juvenile was seized, but that the juvenile’s conduct and other circumstances surrounding the seizure were sufficient to establish reasonable suspicion to be seized by the officer. The court also found that the officer had probable cause, based on the same factors finding reasonable suspicion, to search the juvenile. The court therefore upheld the trial court’s ruling denying the juvenile’s motion to suppress.

Finally, the juvenile argued that the trial court erred in denying the juvenile’s motion to dismiss the charge. The Court agreed, finding that upon viewing all of the evidence there was not enough evidence to demonstrate intent. The court then removed the case for disposition based on an adjudication for simple possession of cocaine. In a separate concurrence, one judge questioned the authority of one of the witnesses as to the juvenile’s competency, but ultimately found that the trial court did not abuse its discretion.

In a separate concurrence and dissent, another judge concurred that the juvenile was competent to stand trial and that the trial court error in denying the juvenile’s motion to dismiss. However, the judge dissented from the determination that the search and seizure of the juvenile was justified because of the lack of reasonable suspicion to stop the juvenile and the lack of probable cause to search the juvenile.

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## In the matter of B.C.D., 177 N.C. App. 555, 629 S.E.2d 617, 2006 N.C. App. LEXIS 1073

Rule(s):

1. Where the juvenile communicates that the KKK will visit an AfricanAmerican person, uses racial slurs, and signs the communication, “KKK,” the evidence is sufficient to show that the juvenile threatened assault in violation of North Carolina’s Ethnic Intimidation Statute.
2. Where the juvenile uses racial slurs, demands that the victim allow students to use racial slurs, threatens retaliation by the KKK, and testifies to doing so “in protest of [the victim’s] alleged differing treatment against him as compared with others who were African-American,” P.6, there is substantial evidence that the juvenile acted with racially motivated reason. The juvenile was adjudicated delinquent of ethnic intimidation.

The juvenile appealed, arguing the prosecution failed to prove every element of the offense beyond a reasonable doubt.

The juvenile first argued that there was insufficient evidence that the juvenile threatened to assault or damage the property of the victim. The Court of Appeals disagreed, finding that the statute prohibits not only actual assaults or damage to property, but also prohibits threats to commit assaults or damage property. The Court reviewed case law as well as dictionary definitions to determine that a threat could include an “expressed intent to harm some point in the future.” The juvenile’s email threat, which was made purportedly by the “KKK” and promised that persons would “show up on [the victim’s] door step” unless the victim ceased from suspending students who used a racial epithet, was therefore determined to satisfy this element.

The juvenile then argued that there was insufficient evidence that the juvenile sent the email for a racially motivated purpose. The Court disagreed, finding that the juvenile admitted that the email was sent because of perceived unfair treatment as compared to African-American students, as well as finding that the email referred to the victim with a racial epithet and mentioned the “KKK.”

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## In the matter of M.E.W., 2006 N.C. App. LEXIS 1888 (unpublished opinion)

Rule(s):

1. The evidence in a sexual-battery case is sufficient to establish the element of sexual arousal or gratification in a sexual-battery case.the juvenile brought a condom to school, talked about whom he planned to use the condom on, and attempted to hide the condom wrapper in the bathroom immediately after the assistant principal asked him about it, and that the juvenile did this the day after touching a classmate between her legs and laughing.
2. The evidence in a sexual-battery case is sufficient to establish the element of the contact being against the victim’s will where testimony tends to show that the victim did not want to be touched between her legs, told the juvenile to stop and leave her alone, was embarrassed by the location of the touching, immediately told her teacher what had happened, and also told her mother upon returning home.

The juvenile was adjudicated of sexual battery. The following facts were found by the trial court: the day before the incident the juvenile (nine years old) brought a condom to school, told other students with whom he was going to use the condom, and attempted to hide the condom wrapper when asked by the assistant principal whether or not the juvenile “had anything he was not supposed to have at school.” The trial court also found that on the day of the offense, the juvenile laughed after the juvenile touched the victim on her private parts.

The juvenile appealed, arguing that the State failed to prove the element of committing the battery for the purpose of gratifying sexual desire. The Court of Appeals disagreed, holding that a reasonable inference of intent to gratify sexual desire could be drawn by the facts presented at trial.

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## In the matter of J.H., 177 N.C. App. 776, 630 S.E.2d 457, 2006 N.C. App. LEXIS 1223

Rule(s): Where testimony suggests that a juvenile had access to a vehicle before it was stolen, was found in a house where the vehicle was parked days later, and confessed to his mother that he stole the vehicle, the evidence is sufficient to support the element of possession in a charge of felonious possession of stolen property.

The juvenile was adjudicated of felony possession of stolen property.

The juvenile appealed, arguing that the state failed to prove each and every element of the offense beyond a reasonable doubt. The Court of Appeals disagreed that the state failed to prove that the juvenile possessed the property with the intent to deprive the owner permanently.

The Court held that the following facts proved beyond a reasonable doubt that the juvenile possessed the stolen vehicle: the juvenile had access to the vehicle on the day it was taken, after the juvenile was returned to grandfather's house, a phone call by grandfather alerted the juvenile’s mother (owner of the vehicle) that her vehicle was missing, that the juvenile was found nine days later inside a home in with the vehicle parked in the home's driveway, and that the mother stated that the juvenile “confessed” when asked on direct examination, “Did [the juvenile] say if he took your car?” The Court did agree, however, that the state failed to prove the value of the vehicle, and therefore remanded the case to the trial court for an entry of disposition on misdemeanor possession of stolen property. There was a dissent, which argued that the state failed to prove that the juvenile possessed the vehicle outside of circumstantial evidence. The Supreme Court affirmed the Court of Appeal’s majority ruling.

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## In the matter of D.W., 171 N.C. App. 496, 615 S.E.2d 90, 2005 N.C. App. LEXIS 1358

Rule(s):

1. For a charge of attempted first-degree rape, sufficient evidence of the element of intent to engage in sexual intercourse may be found in the juvenile’s age of 14, his instruction to the victim to come into his room, his removing the victim’s pants, his touching her vagina with his penis, and his hiding in the closet when his mother approached.
2. For a charge of indecent liberties between children, sufficient evidence of the intent to gratify sexual desire may be found in the juvenile’s running into the closet while pulling up his pants and the victim being found in the juvenile’s bed undressed from the waist down.

The juvenile was adjudicated of attempted first-degree rape and indecent liberties between children.

The juvenile appealed, arguing that the trial court should have granted the motion to dismiss at the end of all the evidence presented at trial. The Court of Appeals upheld the trial court decision, finding that the evidence was sufficient to adjudicate on both counts.

As to the attempted first-degree rape charge, the Court found the following evidence sufficient to adjudicate as to the intent to engage in sexual intercourse element: the age of the juvenile (14), the juvenile telling the victim to come into his room, removing her pants and touching her vagina with his penis, and the juvenile hiding in the closet as his mother approached.

As to the indecent liberties between children charge, the Court compared the instant case to the facts in In re T.C.S., 148 N.C. App. 297, 558 S.E.2d 251 (2002), and found the following evidence sufficient to adjudicate as to the intent to gratify sexual desire: the juvenile running into the closet while pulling up his pants and the victim being found in the juvenile’s bed undressed from the waist down.

The juvenile also argued on appeal that the decision should be remanded because the direct testimony of the juvenile had inadvertently failed to be recorded. The Court of Appeals disagreed, stating that a “meaningful appellate review” could still be made of the case because the juvenile’s only other argument on appeal is trial court’s denial of his motion to dismiss, and that the transcript did include the cross-examination of the juvenile, which can provide a partial reconstruction of the juvenile’s account of the facts.

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## In the matter of T.C.S., 148 N.C. App. 297, 558 S.E.2d 251 (2002), 2002 N.C. App. LEXIS 12

Rule(s): In a case of liberties between children, “[the seven-year] age disparity, the control by the juvenile, the location and secretive nature of their actions, and the attitude of the juvenile is evidence of the maturity and intent of the juvenile,” constituting evidence sufficient to withstand a motion to dismiss.

The juvenile was adjudicated of indecent liberties between children.

The juvenile appealed, arguing that the evidence presented did not support the intent element of gratifying sexual desires. The Court of Appeals upheld the adjudication. The Court found evidence of gratifying sexual desires from the following facts: the age disparity between the juvenile and the victim (12 versus 5), the location of the act (a wooded area) and the secretive nature of the juvenile's actions (juvenile told the mother of the victim that his activities with the victim were “none of her business”).

## In the matter of T.S., 133 N.C. App. 272, 515 S.E.2d 230 (1999), 1999 N.C. App.

LEXIS 408

Rule(s):

1. In a case of indecent liberties between children, “[a]lthough intent may be inferred from the act itself under the adult statute, sexual ambitions must not be assigned to a child’s actions without some evidence of the child’s maturity, intent, experience, or other factor indicating his purpose in acting.” P.1.
2. The mere fact that a juvenile performed fellatio on a younger juvenile does not satisfy the element of intent, and the State lacks evidence sufficient to withstand a motion to dismiss.

The juvenile was adjudicated of indecent liberties between children.

The juvenile appealed, arguing that the evidence presented (performing fellatio on a younger neighbor) did not support the intent element of gratifying sexual desires. The Court of Appeals reversed the trial court decision, holding that for adjudication, there must be evidence presented showing the juvenile's maturity, intent, experience, or other factor indicating intent to gratify sexual desires. The evidence indicated that the juvenile had seen other children engaging in a similar activity.

## In the matter of A.W., 2011 N.C. App. LEXIS 215

Rule(s):

1. For the charge of a second-degree sexual offense, the State must provide evidence that the victim was “mentally disabled, mentally incapacitated, or physically helpless.”
2. For the charge of indecent liberties between children, the element of “purpose to arouse or gratify his sexual desires” may be evidenced by the following: the juvenile’s age and maturity, the method used to engage the victim in the act; and evidence of prior sexual activity with another child.
3. Because an incident’s date is not an element of the charge of indecent liberties between children, slight discrepancies in dates do not bar adjudication.
4. Preventing a juvenile’s counsel from making a closing argument constitutes denial of the juvenile’s right to counsel.

The juvenile was adjudicated of second-degree sexual offense, indecent liberties between children, and breaking and entering. A Level 3 disposition was entered.

Juvenile appealed, arguing that the State presented insufficient evidence that he committed second-degree sexual offense and indecent liberties between children. Because the juvenile failed to challenge the sufficiency of the evidence at the close of all of the evidence (which would bar him from challenging the sufficiency of the evidence on appeal), the juvenile argued that there was ineffective assistance of counsel. Alternatively, the juvenile requested review pursuant to Rule 2 of the North Carolina Rules of Appellate Procedure, which allows an appellate court to modify the provisions of the rules of appellate procedure to preclude “manifest injustice.”

Finding that there was insufficient evidence to support the adjudication, the Court reviewed the case pursuant to Rule 2. In reviewing the case, the Court of Appeals held that the evidence was insufficient to prove the elements of seconddegree sexual offense, as there was no evidence that the victim was “mentally disabled, mentally incapacitated, or physically helpless.” Accordingly, the Court vacated the second-degree sexual offense adjudication, and remanded for dismissal.

Regarding the adjudication for indecent liberties between children, the Court held that there was sufficient evidence as all elements of the offense were met, including “with a purpose to arouse or gratify his sexual desires.” Specifically, the Court held that the juvenile’s age and maturity, including the age disparity between the juvenile and victim (13-year old juvenile and 3-year old victim); the method he used to engage the victim in the act (by telling him his private parts tasted like candy); and evidence of prior sexual activity with another child a few months before the incident in question indicated that he acted for the purpose to arouse or gratify sexual desires.

Regarding an alternative argument that the indecent liberties between children should have been dismissed due to a discrepancy between the date upon which the offense was alleged to have occurred, the Court held that the date was not an element of the crime, and therefore not grounds for dismissal (particularly where the discrepancy was slight and did not affect the juvenile’s ability to provide a defense).

The juvenile’s last argument was that he was entitled to a new adjudicatory hearing on the charge of indecent liberties between children because the trial court denied his counsel the opportunity to make a closing argument. The Court agreed, citing cases that held that denial to make a closing argument was a denial of the right to have assistance of counsel. Consequently, the Court vacated the adjudication finding the juvenile delinquent of incident liberties between children and remanded the case for a new adjudication hearing on that charge and the felonious breaking and entering charge.

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## In re: Z.P., 2021-NCCOA-655

Rules: An anti-threat statute requires the government to prove a “true threat;” a true threat, for purposes of criminal liability, depends on both how a reasonable hearer would objectively

construe the statement and how the perpetrator subjectively intended her statement to be construed.

Summary: Juvenile was adjudicated delinquent for communicating a threat of mass violence on educational property after making a statement, in the presence of four classmates, that she was going to blow up the school. She was also adjudicated delinquent for communicating a threat to harm a fellow student after stating that she was going to kill him with a crowbar and bury him in a shallow grave. The juvenile argued that the State failed to present sufficient evidence to support the allegations of the charged offenses. The Court held that proof of a “true threat” is required for an anti-threat statute. The true threat analysis involves both how a reasonable hearer would objectively construe the statement and how the perpetrator subjectively intended the statement to be construed. The three classmates who heard the threat and testified at the adjudication hearing did not think she was serious when she made the threat. Sophie had made outlandish threats before and never carried them out. Most of the classmates believed that Sophie was joking when she made the statement. There is not enough evidence to support an inference that it would be objectively reasonable for the hearers to think Sophie was serious in this threat, so the Court held the State did not meet its burden in proving the objective reasonableness test. However, the evidence provided regarding the threat to the classmate was sufficient. That evidence, when analyzed in the light most favorable to the State, established that the statement was made so that the classmate could hear it, the classmate took the threat seriously, and it would be reasonable for a person in the classmate’s position to take the threat seriously because the classmate was smaller than Sophie and had previously been physically threatened by her.

Outcome: The adjudication was reversed with respect to the offense of communicating a threat of mass violence on educational property. The adjudication of communicating a threat to harm a fellow student was affirmed. The case was remanded to district court to allow the trial court to reconsider the disposition in light of the reversal.

# TRANSFER OF JURISDICTION

Rules concerning the transfer of a juvenile case to district court, including double jeopardy; appeals; and requisite considerations, findings, and procedure.

## State v. Crocker, 2009 N.C. App. LEXIS 768 (unpublished opinion)

Rule(s):

1. In deciding whether to transfer a juvenile case, the court is to consider the eight factors enumerated under N.C.G.S. § 7B-2203(b).
2. The court must specify its reasons for the transfer, but no authority “requires the court to make specific factual findings considering the needs of the juvenile.” P.6.
3. A claim of ineffective assistance of counsel is unfounded where the defendant’s counsel fails to appeal the case to superior court and doing so probably would not have resulted in a different outcome.

The juvenile was petitioned for second-degree murder, speeding to elude arrest, misdemeanor assault by pointing a gun, resisting an officer, misdemeanor larceny, failing to stop/yield the right-of-way, failing to drive on the right, operating a motor vehicle without a license, failure to yield to an emergency vehicle, driving left of center, and concealing a license plate. The court transferred the case to superior court.

Before the jury charge, the juvenile pled guilty to all charges with the exception of second-degree murder, and was sentenced to six to eight months’ imprisonment. The jury found the juvenile guilty of second-degree murder, and he was sentenced to a concurrent 132 to 168 months imprisonment.

The juvenile appealed, arguing that (1) the superior court lacked subject matter jurisdiction because the district court erred in transferring the case; (2) defense counsel’s failure to appeal the transfer order constituted ineffective assistance of counsel, and (3) the trial court erred in granting the State’s motion to suppress in limine to exclude testimony of the juvenile’s psychological expert.

Regarding the first argument, the Court of Appeals disagreed, finding that there was no abuse of discretion. The Court of Appeals ruled that the court considered all relevant factors identified in N.C.G.S. § 7B-2203(b) and specified the reasons for transfer as required by law.

The Court of Appeals also disagreed with the juvenile’s second argument, finding that there was no showing of ineffective assistance of counsel. The Court of Appeals stated that in order to substantiate ineffective assistance of counsel, the juvenile had to show that counsel's representation did not rise to an objective standard of reasonableness, and the error was so serious that there was a reasonable probability that the result would have been different if there was no error. In this case, counsel’s representation was reasonable, and there was nothing that indicated that the trial result would have been different if counsel appealed the transfer order.

Lastly, the Court of Appeals disagreed with the juvenile’s contention that the expert’s testimony to the juvenile’s susceptibility to acting impulsively would have negated the element of malice required for second-degree murder. The Court ruled that the evidence of malice was indicated in the facts of the case, and the juvenile failed to show that the expert’s testimony would have altered the outcome of the case. Finding no error, the Court of Appeals affirmed the decision.

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## In the matter of E.S., 191 N.C. App. 568, 663 S.E.2d 475 (2008), 2008 N.C. App. LEXIS 1501

Rule(s):

1. Under N.C.G.S. § 7B-2603 (2007), when the juvenile/defendant appeals an order transferring jurisdiction to superior court, the proper standard of review is abuse of discretion.
2. The superior court, on appeal, may not review the evidence from the transfer hearing for “additional findings on factors not relied upon by the district court.” P.9.

The juvenile was transferred from district to superior court on the charges of first-degree rape, first-degree kidnapping, felony breaking and entering, and conspiracy to commit first-degree rape.

The juvenile appealed the decision, and the superior court reversed the ruling of the district court, finding that the district court had abused its discretion in its decision to transfer.

The State appealed the superior court’s ruling, arguing that the superior court erred because it did not review the district court’s ruling for abuse of discretion. The Court of Appeals determined that although the superior court identified the correct standard of review, the court did not properly apply the standard because it made additional findings on factors not considered by the district court, in effect reweighing the evidence and substituting its judgment for that of the district court.

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## State v. Jackson, 165 N.C. App. 763, 600 S.E.2d 16 (2004), 2004 N.C. App. LEXIS 1509, appeal dismissed by, review denied by, State v. Jackson, 359 N.C. 72, 604 S.E.2d 923 (2004), 2004 N.C. LEXIS 1148 motion granted by, State v. Jackson, 605 S.E.2d 466 (2004)

Rule(s): Under N.C.G.S. §§ 7B-2200 and 7B-2203(c) (2003), if an alleged offense would be a Class A felony if committed by an adult and the juvenile court transfers the case to superior court, the superior court has jurisdiction over that felony, as well as any offense stemming from the same act or scheme.

The juvenile was petitioned for first-degree murder and attempted robbery with a dangerous weapon. Probable cause was found, and the juvenile was transferred to superior court. The juvenile was then indicted for these offenses, as well as conspiracy to commit robbery with a dangerous weapon, an offense that was not alleged in juvenile court. The juvenile, now defendant, was found convicted of all three charges.

The defendant appealed, arguing that the superior court did not have jurisdiction over the conspiracy charge because it was not petitioned in juvenile court. The Court of Appeals disagreed, holding that under N.C.G.S. §7B-2203(c), the superior court has jurisdiction over the felony transferred, or over any offense based on the same act or series of acts constituting a part of a single plan or scheme.

## State v. Wilson, 151 N.C. App. 219, 565 S.E.2d 223 (2002), 2002 N.C. App. LEXIS 714

Rule(s):

1. Where a juvenile is adjudicated delinquent and the case is still transferred to superior court, the now-criminal defendant may appeal the district court orders to the superior court, but not to the Court of Appeals.
2. If the defendant does not appeal to the superior court, the right to appeal is not transferred.
3. In such circumstances, the Court of Appeals may not review the appeal under Rule 2 or Rule 21.

The juvenile was petitioned for assault with a deadly weapon with intent to kill inflicting serious injury. Probable cause was found against the juvenile and the case was transferred to superior court. The juvenile did not appeal the trial court’s decision to transfer to superior court. The juvenile, now a criminal defendant, was found guilty of the same offense in superior court.

The juvenile appealed the juvenile court's decision to transfer the case. The Court of Appeals held that the juvenile had waived the right to appeal the transfer decision by not appealing the decision to superior court immediately following the transfer order. The court found that by removing the statutory language that "a juvenile who fails to appeal the transfer order to the superior court waives the right to raise the issue of transfer before the Court of Appeals until final disposition of the matter in superior court," the legislature "removed from the statute any indication that the juvenile could simply skip an appeal in superior court, but still challenge the transfer order after losing a trial in superior court."

## In the matter of J.L.W., 136 N.C. App. 596, 525 S.E.2d 500 (2000), 2000 N.C. App. LEXIS 118 Rule(s):

1. Jeopardy attaches when the juvenile court begins hearing evidence.
2. Where a juvenile has been tried in an adjudicatory hearing, the court may not then transfer the case to superior court for the same charges.

The juvenile was petitioned for eight counts of larceny, eight counts of possession of stolen property, twenty-two counts of misdemeanor injury to personal property, and one misdemeanor count of damage to real property. The court found probable cause with respect to the felonies, and transferred the case to superior court after a hearing. The court also adjudicated the juvenile on the misdemeanor charges, which were also transferred to superior court.

The juvenile appealed, arguing that 1) trying the misdemeanor charges in adult court after he had been adjudicated in juvenile court violated his protection against double jeopardy and 2) that the trial court abused its discretion when it failed to take into consideration certain factors surrounding the case. The Court of Appeals agreed, holding that 1) hearing evidence and adjudicating the juvenile delinquent in juvenile court on the misdemeanor charges and then transferring the charges to adult court constituted double jeopardy, and 2) the trial court abused its discretion when it failed to consider the needs of the juvenile, his rehabilitative potential, or the family support he was then receiving.

# USE OF JUVENILE RECORD IN ADULT COURT

Rules concerning the permissibility and legal effect of using juvenile record in criminal cases prosecuted while the defendant is an adult.

## State v. Lacy, 2011 N.C. App. LEXIS 477 (unpublished opinion)

Rule(s):

1. Evidence of past bad acts is generally inadmissible under N.C.G.S. § 8C-1, Rule 404(b), but is not prejudicial where the nature of an alleged crime is particularly brutal, the evidence is particularly strong, and the jury is given limiting instructions.
2. Evidence of plea discussions is generally inadmissible under N.C.G.S. § 8C-1, Rule 410, and § 15A-1025, but is not prejudicial where the nature of an alleged crime is particularly brutal and the evidence particularly strong, and the jury is given limiting instructions.

The defendant was convicted of first-degree deliberate and premeditated murder, felony murder, and attempted first-degree murder.

Defendant appealed, arguing that his trial was prejudiced by the admission of evidence of a prior juvenile sex offense, the admission of evidence that prior to trial, he may have engaged in plea negotiations, and the exclusion of decedent’s mental health records.

As to the defendant’s first argument that court erred by allowing evidence of his sex offense, which was 14 years old, the Court of Appeals agreed, finding that the trial court abused its discretion in allowing the admission. However, the Court held that there was no prejudicial error. Specifically, the Court found that there was no prejudicial error as without the error there was not a reasonable possibility that there would have been a different result given the defendant’s confession that was viewed by the jury, numerous witnesses, fingerprint and DNA evidence, and the nature of the wounds. Moreover, the Court also pointed toward the fact that the jury had been instructed to disregard the expert’s statements regarding the juvenile record.

Regarding the defendant’s next argument that defense counsel erred by unintentionally eliciting evidence from a defense expert that could have been construed to show that he engaged in pretrial plea negotiation, the Court disagreed. The Court based its finding on the fact that the defendant did not object and elicited the information during direct examination, thereby waiving his right to appellate review in this issue. Furthermore, the Court held that if the issue had been properly preserved, there was still no plain error in the case given the defendant’s confession, which was viewed by the jury, multiple witnesses, fingerprint and DNA evidence, and the nature of the wounds. Additionally, the jury received a limited instruction that evidence of a plea bargain was not to be used as evidence of guilt.

As to the defendant’s next argument that the court abused its discretion in denying his motion for a mistrial based on the admission of the juvenile sex offense and the statements regarding the plea negotiation, the Court disagreed. As its rationale, the Court pointed toward the evidence against the defendant and the fact that the errors as identified were not prejudicial.

Last, the defendant argued that the court erred in sustaining the State’s objection to the introduction of the decedent’s mental health records as evidence. The Court disagreed finding that the records were irrelevant as indicated by the trial court as there was no theory of self-defense and the defendant was not aware of the decedent’s alleged mental illness prior to the offenses. Furthermore, there was no prejudicial effect due to the exclusion. Accordingly, the Court affirmed the decision.

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## State v. Rivens, 679 S.E.2d 145, 2009 N.C. App. LEXIS 1086

Rule(s): For sentencing purposes, a Transcript of Admission may be considered as an aggravating factor, as would be a previous adjudication of delinquency.

The defendant was convicted of possession of cocaine with intent to sell or deliver.

Defendant appealed, noting several assignments of error. For one of the assignments of error, defendant argued that the trial court erred in failing to dismiss the aggravating factor of previous adjudication of delinquency. Defendant’s argument was based on the fact that although during the trial, the State offered as evidence the Transcript of Admission by Juvenile (which indicated that the juvenile had admitted to a Class B2 felony) and a detective’s testimony who witnessed the juvenile’s admission in juvenile court, there was no adjudication order in the juvenile’s court file. Defendant contended that the Transcript of Admission by Juvenile did not constitute an adjudication. The Court of Appeals disagreed, ruling that (1) the juvenile’s admission was “equivalent to a guilty plea in a criminal case,” and therefore sufficient to prove the adjudication despite the missing adjudication order and (2) the evidence was sufficient to support a jury verdict that the defendant admitted the offense(s) in juvenile court.

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## State v. Yarrell, 172 N.C. App. 135, 616 S.E.2d 258 (2005), 2005 N.C. App. LEXIS 1428

Rule(s): Other than a prior conviction, “any fact that increases the penalty for a crime beyond the prescribed presumptive range,” P.10 (citations/quotation marks omitted), must be proven to a jury beyond a reasonable doubt.

Defendant was convicted of first-degree murder and several felony assault charges. At sentencing, among other aggravating factors, the trial court found the aggravating factor that defendant had previously been adjudicated delinquent for an offense that would be a Class A, B, C, D or E felony if committed by an adult.

The defendant appealed, arguing that because this aggravator was based on a fact that increased defendant’s sentence, defendant was entitled to have this fact submitted to a jury and proven beyond a reasonable doubt. The Court of Appeals agreed, finding that both the U.S. Supreme Court (under Blakely v. Washington, 542 U.S. 296 (2004)) and the North Carolina Supreme Court (under State v. Allen, 359 N.C. 425 (2005)) had determined that “other than the fact of a prior conviction, any fact that increases the penalty for a crime beyond the prescribed presumptive range must be submitted to a jury and proved beyond a reasonable doubt.”

## State v. Tucker, 154 N.C. App. 653, 573 S.E.2d 197 (2002), 2002 N.C. App. LEXIS 1540

Rule(s): For firs purposes, an offense that occurs while a person is serving a sentence at a youth development center may not be treated as having occurred during a sentence of imprisonment.

The defendant was convicted of one count of second-degree sex offense, one count of crime against nature and one count of attempted crime against nature. The offenses occurred at a youth development center. At sentencing, the defendant was given an additional prior record point because the superior court found that the offense occurred while the defendant was serving a sentence of imprisonment.

The defendant appealed, arguing that his stay at the youth development center was not equal to a “sentence of imprisonment.” The Court of Appeals agreed, finding that “the objectives of confinement under the Juvenile Code significantly differ from those for imprisonment under our criminal statutes,” and that there is a “fundamental legal difference” between a sentence of imprisonment and commitment to a youth development center.

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