District Court Judges' Summer Conference
Wrightsville Beach, NC

June 18, 2013

JUVENILE DELINQUENCY LAW UPDATE

Cases Filed from October 2, 2012, through June 4, 2013

LaToya Powell
School of Government
The University of North Carolina at Chapel Hill
(919) 843-4167
Latoya.powell@sog.unc.edu

Delinquent Juveniles: North Carolina Appellate Court Decisions

Juvenile *Miranda* Rights

- Juvenile who made a statement to an officer at the scene of an automobile accident was not in custody.
- Evidence was insufficient to support two of three adjudications for motor vehicle offenses.

***In re A.N.C.*, ___ N.C. App. ___, ___ S.E.2d ___ (Feb. 5, 2013).**

Facts: An officer saw the juvenile and two others leaving the scene of an accident involving a car that crashed into a utility pole. The officer stopped the boys and after several minutes of conversation the juvenile, age 13, admitted that he had been driving the car, which belonged to his mother. The juvenile was adjudicated delinquent for unauthorized use of a motor vehicle, operating a motor vehicle without being properly licensed, and operating a motor vehicle in a reckless manner. He was placed on probation. On appeal the juvenile argued that his *Miranda* rights had been violated, that his statement to the officer was involuntary, and that the trial court erred by denying his motions to dismiss for lack of sufficient evidence.

Held: Affirmed in part; reversed in part; and remanded.

1. The court rejected the juvenile's arguments that he was in custody for purposes of G.S. 7B-2101 and *Miranda* and that his statement was involuntary. The fact that he was legally required to remain at the scene of an accident and provide identifying information did not mean that he was in custody or that his 5th Amendments rights were violated. There was no indication of coercive conduct by the officer.
2. The trial court erred by failing to dismiss two of the petitions for insufficient evidence, because there was no evidence
   a. that his use of his mother's vehicle was unauthorized, or
   b. that he was driving in a reckless manner.
3. There was sufficient evidence to support the adjudication for driving without a license.
4. Court remanded for any needed additional proceedings and entry of a new disposition order.

- The fact that a juvenile is a suspect does not render all law enforcement questioning of the juvenile custodial interrogation.

***In re D.A.C.*, ___ N.C. App. ___, 741 S.E.2d 378 (Feb. 19, 2013).**

Facts: Law enforcement officers saw the juvenile at the home from which they thought shots had been fired at another home. When asked, the juvenile denied shooting at the house. Officers spoke with the juvenile's parents and then asked the juvenile if he would speak with them. A plain-clothes detective and uniformed officer spoke with the juvenile outside his house for about five minutes. The parents were invited to join them but stayed in the house and told the juvenile to talk to the officers and "tell the truth." The juvenile admitted shooting at the house. The officers did not give the juvenile a *Miranda* warning. The juvenile was charged with damaging both personal and real property. The trial court denied the juvenile's motion to suppress his oral statements, and he was adjudicated delinquent and placed on probation for six months.

Held: Affirmed.

1. The trial court made sufficient findings, which for the most part were not challenged by the juvenile, and the findings supported the conclusion that the juvenile was not in custody when he made the statements.
2. Facts the court considered included that the juvenile was 14; the officers asked whether he would talk with them and did not say he had to; the questioning occurred outdoors at the juvenile's home during the day; the juvenile's parents were nearby and could have gone outside with the juvenile; the officers talked with the juvenile for only about five minutes; the officers stood arms length from the juvenile and made no move to touch him; and there was no physical restraint or indication of coercion.
3. Facts that did not suffice to render the juvenile "in custody" included that: the juvenile was very much a suspect in the shooting; his parents told him to talk to the officers and "tell the truth"; and the officers were armed and one was in uniform.

Search and Seizure

- **Validity of school-wide search for drugs requiring "bra-lift" still undecided.**
- The Supreme Court vacated the Court of Appeals decision that the trial court erred when it denied the juvenile's motion to suppress evidence of drugs, and remanded for additional findings of fact by the trial court.

***In re T.A.S.*, ___N.C. __, 732 S.E.2d 575 (Oct. 5, 2012).**

Court of Appeals: In July, 2011, the court of appeals reversed the delinquency adjudication of a juvenile on whom drugs were found in the course of a school-wide search at an alternative school. [*In re T.A.S.*, ___ N.C. App. ___, 713 S.E.2d 211 (July 19, 2011).] The court held that requiring all female students to do a "bra-lift" as part of a school-wide search for drugs was constitutionally unreasonable where there was no individualized suspicion and no indication of imminent danger. One judge dissented on the bases that (i) attendance at an alternative school results in a diminished privacy interest; (ii) the search involved minimal intrusion; (iii) the governmental interest was important and immediate; and (iv) the search was an effective means of addressing the government's concern.

Supreme Court: In its October 5, 2012, decision, the supreme court vacated the opinion of the court of appeals and remanded to that court for further remand to the trial court. The court ordered the trial court to make additional findings that include:

1. the names, occupations, genders, and involvement of everyone who was physically present at the "bra lift" search of the juvenile;
2. whether the juvenile was advised before the search of the school's "no penalty" policy; and
3. whether the "bra lift" search of the juvenile qualified as a "more intrusive" search under the school's Safe School Plan.

The court also instructed counsel, in the event of an appeal from the trial court's new or amended order, to ensure that a copy of the school's Safe School Plan be included in the record on appeal, noting that the plan was discussed at the suppression hearing and apparently introduced into evidence.

- Reasonable suspicion requires only a minimal level of objective justification; not definitive proof of a statutory violation.
- While merely stating an obscenity at a person may be protected speech, a police officer is not precluded from approaching any individual who yells obscenities in public, as such actions might lead to a breach of the peace.
- Directing an individual to empty her pockets constitutes a search even though the officer did not conduct it physically.

***In re V.C.R.*, ___ N.C. App. ___, ___ S.E.2d ___ (May 7, 2013).**

Facts: A Raleigh police officer was patrolling a residential community at night when he spotted a group of juveniles walking down the sidewalk. One of them, V.C.R., was smoking a cigarette and the officer stopped and asked her how old she was. When V.C.R. responded that she was 15 years old, the officer asked her to put out her cigarette and give him the pack of cigarettes she was holding. After she complied, the officer began to drive away, but stopped again when he heard V.C.R. yell "What the f---, man." The officer exited his patrol car, approached V.C.R., and told the other juveniles to keep walking. He then asked V.C.R. for identification and engaged her in conversation, during which she raised her arms and revealed a "round bulge" in her front pants pocket. The officer instructed her to empty per pockets, and she complied, revealing a small bag of marijuana. The juvenile moved to suppress the evidence as the product of two seizures and a search that each violated the federal and state constitutions. The trial court denied the motion to suppress, and the juvenile was adjudicated delinquent for simple possession of marijuana.

Held: Reversed.

1. The court held that both seizures (*e.g.*, the "cigarette stop" and "marijuana stop") were supported by reasonable suspicion, but the search was unconstitutional.
2. The cigarette stop was reasonable because:
    - Under G.S. 14-313(c), it is unlawful for a minor to purchase or "accept receipt" of cigarettes. Even if the officer had acted on an assumption that possession of cigarettes by a minor was an offense, our Supreme Court held in *State v. Heien*, ___ N.C. App. ___, 737 S.E.2d 351 (Dec. 14, 2012), that an officer's mistake of law does not always result in the lack of reasonable suspicion.
    - Thus, a reasonable person would find it more likely than not that a person in possession of cigarettes had "accepted receipt" of those items.
3. The marijuana stop was reasonable because:
    - While merely stating an obscenity to another individual may be protected speech, the right of free speech is not unlimited.
    - G.S. 14-288.4(a)(2) prohibits disorderly conduct in the form of using "abusive language which is intended and plainly likely to provoke violent retaliation and thereby cause a breach of the peace."
    - Thus, the officer's second encounter with the juvenile, which can be viewed as an extension of the first, was reasonable given the juvenile's behavior.
4. However, by directing the juvenile to empty her pockets, the officer conducted a search vicariously and without probable cause. The search was not incident to arrest, as the juvenile was not actually arrested, and the officer was not attempting to take the juvenile into custody pursuant to G.S. 7B-1900 or G.S. 7B-1901.
5. The court rejected the trial court's finding that the search was consensual, because the juvenile's production of the contraband was in response to the officer's command and not a voluntary action.

***Concurring Opinion*:** The concurring judge would have also concluded that the second encounter ("marijuana stop") was unconstitutional based on the lack of record evidence that the officer had reasonable suspicion to stop the juvenile for disorderly conduct.

Juvenile Court Orders: Required Findings

- An adjudication order must, at a minimum, include the date of offense, the classification of the offense, the date of the adjudication, and a statement that the allegations were proven beyond a reasonable doubt.
- A disposition order must include findings demonstrating that the court considered all of the factors listed in G.S. 7B-2501(c).

***In re K.C.*, ___ N.C. App. ___, ___ S.E.2d ___ (April 16, 2013).**

Facts: The juvenile was alleged to be delinquent for simple assault and sexual battery. At adjudication, a female classmate of the male juvenile testified that the juvenile "grabbed and squeezed her butt" in class when she went to shelve a book. The juvenile testified that he accidentally touched her butt, when picking up a pencil, but did not squeeze it. The court denied the juvenile's motion to dismiss at the close of the state's evidence, and the juvenile did not renew the motion at the end of all the evidence. The court adjudicated the juvenile delinquent for both offenses, placed him on nine months' probation, and ordered him to submit to a sex offender evaluation and follow any treatment recommendations.

Held: Vacated in part; affirmed in part; remanded in part; and dismissed in part.

The court of appeals considered the juvenile's claim of insufficiency of the evidence pursuant to Appellate Rule 2, despite the juvenile's failure to move to dismiss at the close of the evidence.

1. Sexual battery. The court vacated the adjudication for sexual battery, for insufficient evidence. Because the juvenile admitted touching the girl's buttocks, there was sufficient evidence of sexual contact, the court said. However, evidence that the juvenile had made a possibly sexually suggestive statement to her months before was not sufficient to prove sexual purpose, a necessary element, beyond a reasonable doubt. When children are involved, the purpose cannot be inferred from the act itself. There must be "evidence of the child's maturity, intent, experience, or other factor indicating his purpose in acting."
2. Simple assault. The court affirmed the adjudication for simple assault, based on the juvenile's having touched the classmate without her consent.
3. Adjudication order. The order was sufficient when it included the date of the offense, the fact that the assault was a class 2 misdemeanor, the date of the adjudication, and a statement that proof was beyond a reasonable doubt – the minimum required by G.S. 7B-2411.
4. Disposition. The court remanded the disposition order for additional findings of fact, holding that the trial court's findings were not sufficient to show that it considered all of the factors listed in G.S. 7B-2501(c).
5. Ineffective assistance. The court dismissed without prejudice the juvenile's claim that he received ineffective assistance of counsel, indicating that the juvenile could pursue that claim by filing a motion in the cause.

- A disposition order must either show that the court "received and considered" the risk and needs assessments or contain a written finding that these reports were not needed.

***In re E.K.H.*, ___ N.C. App. ___, 739 S.E.2d 613 (April 16, 2013).**
http://appellate.nccourts.org/opinions/?c=2&pdf=MjAxMy8xMi0xMjUzLTEucGRm
Facts: After adjudicating the juvenile delinquent for common law robbery and conducting a dispositional hearing, the trial court ordered a Level 3 disposition. On appeal the juvenile's only argument was that the trial court erred by entering a disposition order without either (1) receiving and considering a risk and needs assessment or (2) making a written finding that it was not needed.
Held: Affirmed.
The court of appeals held that the trial court erred by failing to do either of those things, as required by G.S. 7B-2413, but that the error was harmless. The court reviewed the evidence that was considered by the trial court, and noted that the juvenile did not object at the hearing to the absence of the assessment and did not indicate in his brief any prejudice resulting from the court's error.

Ineffective Assistance of Counsel

- Counsel's failure to present a closing argument in a nonjury juvenile delinquency hearing is not, standing alone, a *per se* violation of the Sixth Amendment right to counsel.

***In re C.W.N., Jr.*, ___ N.C. App. ___, ___ S.E.2d ___ (May 7, 2013).**
Facts: The juvenile, who was 15 years old, and three other boys were engaged in horseplay in the boys' bathroom at their school when the 13-year-old victim entered the bathroom and entered a stall. When the victim exited the bathroom stall, the juvenile approached him and said, "watch this," swung his arm, and struck the victim in the groin area. The victim fell to the ground. Following the presentation of evidence at the adjudication hearing, the juvenile's counsel declined to give a closing argument, although the prosecutor did give one. The trial court adjudicated the juvenile delinquent for misdemeanor assault.
Held: Affirmed.
1. To successfully raise a claim of ineffective assistance of counsel, a juvenile must show that his counsel's conduct fell below an objective standard of reasonableness by establishing both: (1) that counsel's performance was deficient, and (2) that the deficient performance prejudiced the juvenile.
2. The court declined to hold that counsel's failure to speak during closing arguments in a nonjury juvenile delinquency hearing is *per se* ineffective assistance of counsel because to do so would create a presumption that silence is always prejudicial.
3. The court also held that counsel was not ineffective by failing to argue in closing that the incident was an accident resulting from horseplay.
    - Counsel's representation was not deficient because counsel's cross-examination of the State's witnesses clarified evidence that was favorable to the juvenile and revealed inconsistencies between a witness's trial testimony and prior statement to law enforcement; and on direct examination, counsel presented evidence through the juvenile that the incident was an accident.
    - The juvenile also failed to establish a reasonable probability that, had counsel asserted on closing argument that the assault was accidental, the result of the proceeding would have been different, because three witnesses testified that the assault was not an accident.