JUVENILE LAW

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DELINQUENT JUVENILES: NORTH CAROLINA APPELLATE COURT DECISIONS

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This bulletin discusses selected cases decided by the North Carolina Supreme Court and North Carolina Court of Appeals involving delinquent juveniles. It includes most of the published delinquency cases the courts have decided under Chapter 7B of the North Carolina General Statutes, the Juvenile Code that became effective July 1, 1999. It also discusses selected cases decided under the previous Juvenile Code, but does not include cases involving issues that do not arise under Chapter 7B or that almost certainly would be decided differently under current law. The majority of older cases involving commitment to training school, for example, included appellate review of the sufficiency of the trial court's findings about the exhaustion or inappropriateness of less restrictive dispositions – findings that are not required under Chapter 7B.

The full text of cases decided since 1996 by the Court of Appeals and since 1997 by the Supreme Court can be accessed at the web site for the North Carolina Administrative office of the Courts: http://www.aoc.state.nc.us/www/public/html/opinions.htm.

Juvenile *Miranda* rights

Officer's comment to a juvenile and request for clarification of the juvenile's unsolicited statements did not constitute interrogation.

State v. Jackson, ___ N.C. App. ___, 600 S.E.2d 16, *appeal dismissed*, *review denied*, 359 N.C. 72, 604 S.E.2d 923 (2004).

Facts: Two law-enforcement officers were with the fifteen-year-old juvenile at a juvenile court hearing. After the hearing, when the juvenile saw a cap that had been introduced into evidence, he spontaneously stated that he knew where the cap came from. One of the officers responded, "So do I." The juvenile then started talking about a robbery. The officer did not initiate a conversation other than to ask the juvenile sometimes for clarification. The juvenile's case was transferred to superior court and he was convicted.

Holding: On appeal from the juvenile's conviction in superior court, the court of appeals held that the officer's response to the juvenile's comment and request for clarification of the juvenile's statements were not interrogation under *Miranda* and did not violate the juvenile's Sixth Amendment right to counsel.

Standard juvenile waiver form unequivocally informed juvenile of his right to have a lawyer immediately.

State v. Lee, 148 N.C. App. 518, 558 S.E.2d 883, *appeal dismissed*, 355 N.C. 498, 564 S.E.2d 228, *cert. denied*, 537 U.S. 955, 123 S.Ct. 425, 154 L.Ed.2d 305 (2002).

Facts: Juvenile, age fourteen, was taken into custody on suspicion of murder. The officer used the police department's standard juvenile waiver form, read it to the juvenile, and had the juvenile initial each statement on the form before signing it. On appeal from a conviction in superior court for first-degree murder, the juvenile argued that the *Miranda* warning had not been sufficient to inform him that he had a right to counsel immediately, before questioning, and not conditioned on answering questions.

Holding: The court of appeals found no error. The court reviewed the form the officer had used and found that it unequivocally informed the juvenile that he had the right to a lawyer at the time his rights were being read to him.

Court upholds admission of juvenile's statement, but urges literal compliance with the juvenile *Miranda* requirement.

State v. McKeithan, 140 N.C. App. 422, 537 S.E.2d 526 (2000), *appeal dismissed*, *review denied*, 353 N.C. 392, 547 S.E.2d 35 (2001).

Facts: A co-defendant identified defendant, age 17, as one of those involved in a double murder. The officer who arrested defendant at his house read him his Miranda rights and juvenile rights. [*See* State *v. Fincher*, 309 N.C. 1, 305 S.E.2d 685 (1983), holding that sixteen- and seventeen-year-old defendants are juveniles for purposes of the juvenile *Miranda* warning.] At the law enforcement center, the officer advised defendant again of his rights and completed the juvenile rights form. Defendant waived his rights and admitted his involvement. Defendant was convicted and, on appeal, argued that the trial court erred in denying his motion to suppress his confession, on the basis that defendant had not knowingly, willingly, and voluntarily waived his rights. Defendant asserted that since the Juvenile Code says that all juveniles are conclusively presumed to be indigent, the version of *Miranda* that was read to him (saying that a lawyer would be appointed if he "could not afford" one) was inadequate, and that since he did not know all of his rights, he could not waive them knowingly, willingly, and voluntarily.

Holding: The court of appeals found no error as to this issue. The court held that the warning read to the defendant fully satisfied statutory requirements, citing cases where similar warnings had been upheld. The court, however, did "urge law enforcement agencies to comply literally" with statutory juvenile interrogation procedures.

Questioning must stop as soon as juvenile asks for parent to be present.

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

Facts: Defendant was sixteen when the alleged offenses occurred and when he was taken into custody. After being read his rights, he said that he wanted his mother present during questioning. His mother was in the police station but refused to go into the room with her son. The officers then told the juvenile he could finish writing his statement. They tore up his first statement and directed him to re-write it. Defendant was convicted of various drug offenses.

Holding: The court of appeals ordered a new trial. The court found that there was no doubt that the juvenile/defendant was in custody, there was no indication that the juvenile initiated communication with the officers after saying he wanted his mother present, and all interrogation should have ceased as soon as the juvenile indicated he wanted his mother present.

Parent may not waive a juvenile's rights.

In re T.R.B., 157 N.C. App. 609, 582 S.E.2d 279 (2003), *appeal dismissed*, 358 N.C. 370, 595 S.E.2d 146 (2004).

Facts: Juvenile was alleged to have committed first degree sexual offense. The trial court denied the juvenile's motion to exclude the juvenile's confession, finding that the juvenile's father had waived the juvenile's right to have a parent or guardian present during questioning. The juvenile was adjudicated delinquent and appealed.

Holding: The court of appeals held that the trial court erred in denying the juvenile's motion to suppress the confession because a parent has no authority to waive the juvenile's right to have a parent present during in-custody interrogation. The court remanded for a new adjudication hearing and for a determination of whether the juvenile was "in custody" at the time of the confession.

Warning is not required unless the juvenile is in custody.

State v. Gaines, 345 N.C. 647, 483 S.E.2d 396, *cert. denied*, 522 U.S. 900, 118 S.Ct. 248, 139 L.Ed.2d 177 (1997).

Facts: In the course of investigating the murder of a police officer, detectives went to the homes of the juvenile defendants and asked whether they would voluntarily go to the police department to talk about their activities and a dispute earlier the same evening. Both agreed to do so. No force was used, neither defendant was handcuffed, and both were told repeatedly that they were not under arrest and were free to leave at any time. Both defendants made statements implicating themselves and both signed written statements that included assertions that they knew they were not under arrest and that the statements were made voluntarily. The trial court denied defendants' motions to suppress their statements, after making extensive findings of fact and concluding that the defendants were not "in custody" when the statements were made.

Holding: The Supreme Court agreed, stating "The United States Supreme Court has held that in determining whether a suspect was in custody, an appellate court must examine all the circumstances surrounding the interrogation; but the definitive inquiry is whether there was a formal arrest or a restraint on freedom of movement of the degree associated with a formal arrest. *Stansbury v. California*, 511 U.S. 318, 114 S.Ct. 1526, 128 L.Ed.2d 293 (1994) (*per curiam*)."

See also: The state Supreme Court's opinion in *State v. Buchanan*, 353 N.C. 332, 543 S.E.2d 823 (2001) (ultimate inquiry is whether there is a "formal arrest or restraint on freedom of movement of the degree associated with a formal arrest"), and the U.S. Supreme Court's decision in *Yarborough v. Alvarado*, 441 U.S. 652, 124 S.Ct. 2140, 158 L.Ed.2d 938 (2004) (test for whether a suspect is in custody is an objective one; essential inquiries are "(1) the circumstances surrounding the interrogation, and (2) given those circumstances, whether a reasonable person would have felt free to terminate the interrogation and leave.").

In re Hodge, 153 N.C. App. 102, 568 S.E.2d 878, *appeal dismissed*, *review denied*, 356 N.C. 613, 574 S.E.2d 681 (2002).

Facts: Based on allegations by the juvenile's younger brother, a detective interviewed the juvenile at the juvenile's home. The juvenile denied committing any sex act, but acknowledged that he sometimes "beat up" his younger brother. Subsequently the juvenile was alleged to be delinquent for committing simple assault. The detective testified at the hearing about the juvenile's statements, and the juvenile was adjudicated delinquent.

Holding: The trial court did not err in allowing the detective to testify to statements the juvenile made during the home visit even though the juvenile was not advised of his constitutional rights and did not waive his rights. The juvenile was not "in custody" when the detective talked with him and his mother in the family living room to investigate the younger brother's allegations. The detective informed the juvenile that he did not have to talk to her and that she was not going to "arrest" him, and the juvenile was not restrained from leaving the room.

Juvenile's aunt, with whom he lived, was his "guardian" for purposes of the juvenile's *Miranda* rights.

State v. Jones, 147 N.C. App. 527, 556 S.E.2d 644 (2001), *appeal dismissed, review denied*, 355 N.C. 351, 562 S.E.2d 427 (2002).

Facts: Defendant, thirteen at the time of the offense, was taken into custody by police and questioned in the presence of his aunt, with whom he lived. He was convicted in superior court of first-degree murder, two counts of first-degree sex offense, and first-degree kidnapping.

Holding: The court of appeals rejected defendant's argument that his statement to the police should be suppressed because his aunt was not his "parent, guardian, or custodian," and the Juvenile Code provided that he could be interrogated only with one of those present. The juvenile also argued that his aunt had a conflict of interest because her brother was charged in the same case. The court of appeals concluded that even though the aunt had never been appointed by a court as the juvenile's guardian, she was his guardian within the spirit and meaning of the law. She was responsible for the defendant and he depended on her for room, board, education, and clothing. The court also pointed to the fact that both the school and DSS had attributed legal authority over the juvenile to the aunt. The court stated that, although the aunt may have had a conflict of interest since her brother was a co-participant, an officer had testified that the aunt did not intimidate defendant, twice encouraged defendant to tell the truth, and acted like a natural concerned parent.

Juvenile, after initially refusing to talk, initiated communication when he nodded affirmatively after his mother said they needed to answer questions.

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

Facts: As a fifteen-year-old suspect, the juvenile was taken into custody and taken to the police station, where he was joined by his mother. He was advised of his *Miranda* rights and said that he understood them. When asked whether he wanted to answer questions, the juvenile said "no." Then his mother said, "No, we need to get this straightened out today. We'll talk with him anyway." The juvenile lowered his head, then looked at the detective and nodded his head affirmatively. The detective asked the juvenile whether he wished to answer questions without a lawyer, parent, guardian, or custodian present, and the juvenile said "yes." The mother read and signed the juvenile waiver of rights form, and the juvenile signed it without reading it. The juvenile then gave a statement in which he confessed to shooting the victim. He was convicted in superior court of first-degree murder and robbery with a dangerous weapon.

Holdings: The court of appeals found no error.

(1) The trial court did not err in refusing to suppress the juvenile's statement on the basis that questioning should not have resumed after the juvenile said he did not want to answer questions. When a person in custody indicates he does not wish to make a statement, but later responds to further questioning, the crucial issue is who initiated the conversation in which the person made the incriminating statement. Here, the court said, the juvenile initiated further conversation by looking at the detective and nodding affirmatively.

(2) The trial court did not err by allowing the state to question the detectives about their opinion of the juvenile's understanding of the juvenile rights form. The court held that the testimony was about their perceptions of the juvenile at the time of the confession and that it aided the trial court in determining the voluntariness of the juvenile's statement.

Determining voluntariness of juvenile's confession requires looking at totality of circumstances.

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

Facts: Defendant, age fourteen, was charged with first degree murder for shooting his stepfather. The case was transferred to superior court and defendant was convicted and sentenced to life in prison. On appeal to the Supreme Court, defendant argued that the trial court erred in refusing to suppress his statement to an SBI agent because it was not made knowingly and voluntarily.

Holding: Holding that the trial court did not err, the Supreme Court stated that a determination of voluntariness had to be made by looking to the "totality of the circumstances surrounding the statement," and noted that important factors include (1) whether the defendant was in custody, (2) defendant's mental capacity, (3) physical environment of the interrogation, and (4) manner of the interrogation. In regard to defendant's statement the court pointed to the following findings by the trial court:

- Defendant wanted to talk to the SBI agent and told him he understood each right he was waiving.
- The agent applied no pressure or coercion to defendant.
- The physical surroundings (an office where pilots waited at the airport, while the officers and defendant waited to fly back to North Carolina) were not coercive.
- There was no evidence of any display of weapons.
- Before going to the airport, the officers took defendant and his girlfriend to Burger King.
- At the airport, the officers carefully went over the juvenile rights form with defendant.
- Defendant had failed three grades in school, but had made them up during summer school and could read at a ninth grade level.
- There was no showing of abnormal intelligence.
- Defendant had an opportunity to sleep and eat before he was questioned.
- Defendant seemed familiar with the *Miranda* warnings and recited his constitutional rights when the officers began to read them to him.

The court also reviewed the evidence and found it sufficient to support the necessary elements of first degree murder.

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

Facts: Mother of thirteen-year-old juvenile took him to the police department when she learned that police were looking for him in connection with a robbery and assault. An officer read the juvenile and his mother the juvenile's rights and asked whether they understood them. Both answered "yes" to each inquiry. After the juvenile's mother told him to tell the truth, the juvenile gave a detailed account of his involvement in the robbery and assault, but declined to answer questions about a different matter.

The juvenile's case was transferred to superior court. At the hearing on his motion to suppress his statement to the police, a psychologist testified that defendant tested in the mildly retarded range and expressed an opinion that the juvenile's mental deficiencies substantially impaired his ability to understand his rights. On cross-examination, the witness admitted that psychologists using the same tests arrive at different results and that a person being tested may not try his best. The trial court denied defendant's motions to dismiss and to suppress his statement. Defendant pled guilty, reserving the right to appeal the denial of his motion to suppress.

Holding: The court of appeals affirmed, holding that the trial court did not err in denying defendant's motion to suppress his confession. The court

1. assumed for purposes of the appeal that the juvenile was in custody when he confessed;
2. found from the record that the required warnings were read to the juvenile before questioning;
3. held that the warnings were sufficient and that the officer had no duty to explain them to the juvenile in greater detail than the statute requires;
4. held that an express or written waiver was not required; and
5. held that the trial court's conclusion that defendant waived his rights knowingly, willingly, and intelligently was supported by the findings and that the findings were supported by the evidence.

In relation to the last, the court referred to evidence that

- the mother and juvenile signed the transcript of the juvenile's statement;
- the juvenile's answers during interrogation were coherent, responsive, and reasonable;
- the juvenile was allowed to use the bathroom; and
- the juvenile exercised his right not to talk about an unrelated event.

The court also pointed to the fact that there was no evidence that the juvenile was coerced, under the influence of alcohol or drugs, or injured, or that any promises or threats were made to induce the statement.

School Searches

Search by school principal in presence of school resource officer was justified and reasonable.

In re Murray, 136 N.C. App. 648, 525 S.E.2d 496 (2000).

Facts: A student told the school principal that the juvenile had "something in his book bag that he should not have at school." When the principal found the juvenile he denied having a book bag, then admitted having a bag but denied that anything improper was in it. The principal took the juvenile to the office and advised him that she needed to search the book bag. He replied that he did not want it searched and that he wanted his father called. The principal summonsed the dean and the school resource officer (SRO), and they explained the need to search the book bag. When the principal tried to take the bag, the juvenile resisted. The SRO struggled with him and handcuffed him. The principal found a pellet gun in the bag. The SRO removed the handcuffs, and the juvenile's father was called. The trial court denied the juvenile's motion to suppress the physical evidence and adjudicated the juvenile delinquent.

Holding: The court of appeals held that the trial court did not err in refusing to suppress the fruits of the search. The search was conducted by a school official, not a law enforcement officer. The SRO was called in only after the principal decided to search the bag, did not search the bag himself, conducted no other investigation, and acted to enable the principal to obtain the bag and search it. Therefore, the court reviewed the search in relation to *New Jersey v. T.L.O.*, 469 U.S. 325, 105 S.Ct. 733, 83 L.Ed.2d 720 (1985), which requires that a school search (1) be justified at its inception and (2) as actually conducted, be reasonably related in scope to the circumstances that justified the interference in the first place. The court held that the search in this case satisfied both criteria.

Reasonableness standard of *New Jersey v. T.L.O.* applies when law enforcement acts in conjunction with a school official.

In re D.D., 146 N.C. App. 309, 554 S.E.2d 346, *appeal dismissed, review denied*, 354 N.C. 572, 558 S.E.2d 867 (2001).

Facts: A school principal heard from a teacher that some girls were talking about an after-school fight. Near the end of the school day, the principal, the school resource officer (SRO), and two uniformed off-duty police officers approached the juvenile and several other girls in the school parking lot. Only one of the girls, not the juvenile, was a student at the school. The girls lied about who they were and where they went to school and were generally disrespectful. The SRO searched one girl's purse and found a box cutter. The girls were taken to the principal's office, where the principal called the school the juvenile attended. The principal then said that because he had information that the girls had come to the school to fight, he needed to know what they had on their persons. He asked them to empty their pockets, and the juvenile took a knife out of her pocket. The juvenile was alleged to be delinquent for possessing a knife on school property in violation of G.S. 14-269.2(d). The trial court denied the juvenile's motion to suppress the knife as evidence and to dismiss at the close of the state's evidence. The juvenile was adjudicated delinquent and placed on probation.

Holdings: The court of appeals held that the "reasonableness" standard for school searches established in *New Jersey v. T.L.O.*, 469 U.S. 325,105 S.Ct. 733, 83 L. Ed. 2d 720 (1985), should apply in cases such as this where law enforcement acts "in conjunction with" school officials. The court rejected both the juvenile's argument that the lesser standard did not apply because she was not a student at the school and her argument that the parking lot was not school property. Applying *T.L.O.*, the court found that the principal's actions were justified under the circumstances and that the scope of the search was reasonable.

Reasonableness standard of *New Jersey v. T.L.O.* applies to detention of a student by a school resource officer who is acting in conjunction with a school official.

In re J.F.M., ___ N.C. App. ___, 607 S.E.2d 304, *appeal dismissed*, *review denied*, ___ N.C. ___, ___ S.E.2d ___ (2005).

Facts: A deputy sheriff, who was also a school resource officer (SRO), investigated an affray involving T.B. and another student. While not seeing the affray, the SRO observed a group of students gathered outside on the school campus. He saw T.B. leaving the grounds and gave her three commands to stop, which she ignored. Continuing his investigation, the SRO spoke with a school administrator who told him that T.B. had been in the affray and was leaving the school campus. The SRO approached T.B. at a bus stop on the campus and told her that she needed to come back to the school to talk to the school administrator about the affray. She refused to go with the SRO, who responded by grabbing her arm and telling her she needed to come with him. J.F.M. then pushed the SRO and told T.B. to run. T.B. later returned and struck the SRO with an umbrella. T.B. and J.F.M. were adjudicated delinquent for resisting, delaying, and obstructing a public officer and assault on a public officer.

Holding: The court of appeals, relying on *Wofford v. Evans*, 390 F.3d 318 (4th Cir. 2004) [extending reasonableness standard of *New Jersey v. T.L.O.*, 469 U.S. 325 (1985), to detentions of students], and *In re D.D.*, 146 N.C. App. 309, 554 S.E.2d 346 (2001) (extending *T.L.O.* to searches by resource officers working in conjunction with school officials), held that the reasonableness standard of *T.L.O.* applied to a resource officer's detention of a student when acting in conjunction with a school official. The court examined the facts in this case and found that the resource officer was acting in conjunction with the school administration and his detention of the student was reasonable under *T.L.O.*

Interstate Compact on Juveniles

In re Teague, 91 N.C. App. 242, 371 S.E.2d 510, *appeal dismissed*, *cert. denied*, 323 N.C. 624, 374 S.E.2d 588 (1988).

Facts: A fugitive warrant from S.C. alleged the respondent's escape from confinement in S.C. Respondent was taken into custody in N.C. The court dismissed the warrant because respondent was a juvenile and released the juvenile into his father's custody in N.C. The trial court ordered S.C. to forward appropriate paperwork under the Interstate Compact on Juveniles by a specified date or the matter would be dismissed. S.C. forwarded a "Requisition for Escapee or Absconder" and an "Adjudication Order" finding the juvenile guilty of burglary, malicious damage to real property, and contempt of court under S.C. law. The requisition stated that the juvenile was an escapee from custody of the S.C. Department of Youth Services. At a hearing, the N.C. trial court ordered the juvenile turned over to S.C. authorities, stayed the order pending appeal, and ordered the juvenile into his father's custody. The juvenile appealed.

Holdings:

1. The trial court erred in ordering the juvenile returned to S.C. without making findings of fact and conclusions of law. The statute requires some findings of fact to protect a juvenile in this state from being returned improperly to the demanding state, but the findings are not the same as those required in adult extradition proceedings. The statute requires a finding "that the requisition from the requesting state is in order and that the name and age of the delinquent juvenile on such requisition is the same as the juvenile before the court."
2. The compact does not allow or require inquiry by the responding state into the juvenile's best interest. The demanding state is in the better position to make a best interest determination.

3. The statute is constitutional. It does not deny the juvenile equal protection or due process by disallowing inquiry by the responding court into best interest.

Sufficiency of Petition

Allegations in a delinquency petition must be as specific as those required for an indictment.

In re Griffin, 162 N.C. App. 487, 592 S.E.2d 12 (2004).

Facts: The petition alleged that the juvenile was delinquent for committing a first-degree sex offense against his younger cousin "by force and against the victim's will," under G.S.14-27.4. At the close of the state's evidence, the juvenile's attorney made a motion to dismiss on the basis that the state had presented no evidence of force and, instead, had relied on the difference in ages between the juvenile and the victim, an alternative form of first-degree sex offense under G.S.14-27.4, which was not alleged in the petition. The trial court denied the motion to dismiss, after questioning defense counsel about his awareness of the age difference between the two boys. The juvenile appealed, raising only the issue of the admissibility of the juvenile's statement. The court of appeals addressed only the issue raised in the amicus brief filed by the Appellate Defender.

Holding: The court of appeals vacated the trial court's order, holding that there was a fatal variance between the petition and the evidence on which the juvenile was adjudicated delinquent. The court said that the specificity required in a juvenile petition is the same as that required for a sufficient indictment. It must clearly apprise the juvenile of the conduct that is the subject of the allegation, which the petition in this case did not do. When the form of the offense based on age difference is being alleged, the petition must allege the ages of the victim and the juvenile respondent.

Only the date, not the time of day, of a juvenile's birth is relevant to determining the juvenile's age.

In re Robinson, 120 N.C. App. 874, 464 S.E.2d 86 (1995).

Facts: The juvenile was alleged to be delinquent for committing a felony at 3:00 a.m. on the day of his thirteenth birthday. The petition was filed later the same day. The juvenile had been born at 10:45 p.m. on August 22, 1981, and argued that because he did not actually become thirteen until 10:45 p.m. on August 22, 1994, his case could not be transferred to superior court for trial. The trial court agreed.

Holding: The court of appeals reversed, holding that fractions of days are not to be considered in determining age. The court adopted a "birthday" rule under which the juvenile became thirteen at the first moment of the day of the anniversary of his birth, regardless of the actual time of day the birth had occurred.

Petitions alleging statutory rape were fatally defective when they failed to allege ages of the juvenile and alleged victim.

In re Jones, 135 N.C. App. 400, 520 S.E.2d 787 (1999).

Facts: Juvenile was adjudicated delinquent on the basis of five petitions alleging sex offenses. At the hearing, the court allowed the state to amend one of the petitions, which alleged forcible rape, to instead allege statutory rape and to allege the ages of the juvenile and the victim. The other four petitions cited a repealed statute, but apparently intended to charge and were heard as if they charged statutory rape. None of those petitions included allegations as to the juvenile's or the victim's age.

Holding: The four petitions that were not amended were fatally defective and should have been dismissed, because they failed to allege the ages of the juvenile and the victim, which were key elements of the offenses, and failed to give the juvenile adequate notice of the charges against him.

Exact date of the alleged assault was not an essential allegation.

In re Hodge, 153 N.C. App. 102, 568 S.E.2d 878, *appeal dismissed*, *review denied*, 356 N.C. 613, 574 S.E.2d 681 (2002).

Facts: The juvenile was adjudicated delinquent based on a petition alleging that he committed simple assault "between 1 April 2000 and 15 July 2000."

Holding: The court of appeals rejected the juvenile's argument that the petition was fatally defective because it did not allege a specific date for the offense. The court held that the date was not essential to the allegation of assault, and that the juvenile had not established that he was misled or prejudiced by the absence of more precise allegations.

Other cases addressing issues relating to petitions include the following:

<u>Approval for filing</u>. In re Register, 84 N.C. App. 336, 352 S.E.2d 889 (1987). The record must show affirmatively that either the court counselor or the district attorney has approved the filing of the petition. When the district attorney approves the filing, the record must show affirmatively that the court counselor had disapproved the filing.

<u>Prosecutor as complainant</u>. In re Stowe, 118 N.C. App. 662, 456 S.E.2d 336 (1995). An assistant district attorney may sign a petition as the "complainant," as long as (1) the court counselor follows required procedures before the petition is signed and (2) the prosecutor "does not encroach upon the important role of the [court] counselor."

<u>Amendment of petition</u>. In re Davis, 114 N.C. App. 253, 441 S.E.2d 696 (1994). A petition alleging delinquency may be amended only if the amended petition does not charge the juvenile with a different offense. Because that rule is jurisdictional, an improper amendment cannot be saved by consent, waiver, or estoppel.

Transfer to Superior Court

Transfer is automatic and no transfer hearing is required when court finds probable cause for first degree murder.

State v. Brooks, 148 N.C. App. 191, 557 S.E.2d 195 (2001), *appeal dismissed, review denied*, 355 N.C. 287, 560 S.E.2d 808 (2002).

Facts: Juvenile was alleged to be delinquent for committing murder two weeks before his sixteenth birthday. The petition alleged that the juvenile, on a specific date and at a specific time, "unlawfully, willfully, and feloniously with malice and aforethought did kill [the victim]. In violation of GS 14-17 Murder."

At a probable cause hearing on 3/7/00 the juvenile court found probable cause to believe the juvenile committed first-degree murder and, without holding a transfer hearing, ordered that the case be transferred to superior court. The juvenile appealed the transfer order (to superior court). On 3/20/00 the grand jury indicted the juvenile on first-degree murder. The superior court heard and denied the appeal of the transfer order on 1/10/01. The juvenile pled guilty to second-degree murder and appealed the transfer order and sentencing.

Holding: The court of appeals rejected defendant's argument that the trial court was required to hold a transfer hearing because the petition failed to allege first-degree murder. The court found that the petition was substantially similar to one the court upheld when the same issue was raised in *In re K.R.B.*, 134 N.C. App. 328, 517 S.E.2d 200, *appeal dismissed*, *review denied*, 351 N.C. 187, 541 S.E.2d 713 (1999).

In re K.R.B., 134 N.C. App. 328, 517 S.E.2d 200, *appeal dismissed*, *review denied*, 351 N.C. 187, 541 S.E.2d 713 (1999).

Note: *This case was decided under the previous Juvenile Code at a time when transfer orders were immediately appealable to the court of appeals.*

Facts: The petition alleged that the juvenile was delinquent in that in the named county, on or about the specified date, the juvenile "unlawfully, willfully and feloniously did of malice aforethought kill and murder [victim] G.S. 14-17." The trial court conducted a probable cause hearing, found probable cause for first degree murder, and transferred the case to superior court. The juvenile appealed.

Holding: Affirmed. The court of appeals held that the trial court did not err by automatically transferring the case to superior court without conducting a transfer hearing, because the petition was sufficient to allege first degree murder, and upon a finding of probable cause, transfer to superior court was mandatory.

Except in case of first degree murder, decision to transfer is in court's discretion.

In re Wright, 137 N.C. App. 104, 527 S.E.2d 70 (2000).

Note: This case was decided under the previous Juvenile Code at a time when transfer orders were immediately appealable to the court of appeals.

Facts: The juvenile, age thirteen, was alleged to be delinquent for committing a sex offense with a younger child. The court found probable cause after hearing testimony from the victim, two other juveniles who had witnessed the incident and whose testimony corroborated the victim's, the victim's mother, and a detective. At a separate transfer hearing the juvenile presented testimony from members of his church, a neighbor, his school guidance counselor, a detention-center employee, and a court-appointed expert witness in forensic psychology. The psychologist testified that there was evidence of psychiatric disturbance; that the juvenile and others had been planning to take over his school by force or bombing it; that the psychologist viewed that plan as more fantasy and delusion than reality; that in his opinion the juvenile would not pose a threat to the community if given proper treatment; and that he recommended that the juvenile be placed in a residential treatment environment rather than incarcerated. The trial court transferred the case to superior court, giving the following reasons:

- Seriousness of the offense, and the fact that the juvenile used intimidation and force.
- Under [then applicable] juvenile laws, limitation of juvenile court's jurisdiction to four years, compared with longer period during which superior court could order treatment and have jurisdiction.
- The juvenile's history of prior violent aggressive tendencies.
- The need to protect the public from this type of criminal acts and the sex offenders who commit them.
- The state's presentation of three eye-witnesses to the offense (the victim and two others).

Holdings:

1. Evidence was sufficient to support the trial court's reasons for ordering transfer. The transfer decision was in the discretion of the trial court, and the court was not required to make findings of fact.
2. The trial court did not abuse its discretion by failing to consider the juvenile's age or maturity and his condition and needs for treatment. The court held that then-applicable law did not require the court to consider those things. The court stated, however, that the record made clear that the court did consider them.
3. The trial court did not err in considering the juvenile's chronological age rather than his "real" or "developmental" age. The court of appeals held that the statute was not ambiguous and that the General Assembly must be presumed to intend the ordinary meaning of the words it uses.
4. The issue of whether any sentence the juvenile might receive in superior court would constitute cruel and unusual punishment was not "ripe" for review, since the juvenile had not been tried or convicted, much less sentenced.

Transfer order must state sufficient reasons for transfer.

In re J.L.W., 136 N.C. App. 596, 525 S.E.2d 500 (2000).

Note: This case was decided under the previous Juvenile Code at a time when transfer orders were immediately appealable to the court of appeals.

Facts: Petitions alleged that the juvenile was delinquent for multiple misdemeanors and felonies relating to damage to school property. The trial court found probable cause as to the felonies. Evidence indicated that the juvenile was charged with non-violent offenses against property, committed the offenses with an older juvenile, did not have a criminal record, and was learning disabled. The juvenile's parents were at the hearing. His teacher and an investigating officer stated that the juvenile had the potential for rehabilitation. The court transferred the felony cases to superior court. The court's order stated the following reasons for transfer:

- The juvenile is 15 years of age.
- Co-defendant in the matter is 17 years of age.
- It is desirable that both cases be done in one court.
- Juvenile admitted guilt to officer.
- Extent of damage to public school property was extensive ($23,564.97 buses, $785.30 fence).

Holding: The court of appeals held that the trial court abused its discretion in transferring the case to superior court. The transfer order did not reflect that the court considered the juvenile's needs, his rehabilitative potential, and the family support he received. Therefore, the court said, the transfer order was deficient in that it failed to adequately state the reasons for transfer.

Trial court may not adjudicate an offense and then transfer it to superior court.

In re J.L.W., 136 N.C. App. 596, 525 S.E.2d 500 (2000).

Note: This case was decided under the previous Juvenile Code at a time when transfer orders were immediately appealable to the court of appeals.

Facts: Petitions alleged that the juvenile was delinquent for multiple misdemeanors and felonies relating to damage to school property. The trial court found probable cause as to the felonies and transferred those cases to superior court. The court then held an adjudicatory hearing on the misdemeanors, found the juvenile delinquent for those offenses, and transferred them to superior court.

Holding: The state conceded and the court of appeals held that transfer of the misdemeanors to superior court, after the taking of evidence and adjudication in juvenile court, constituted double jeopardy. The court vacated the transfer order as to these charges and remanded to juvenile court for disposition.

When a juvenile's case is transferred to superior court, that court has jurisdiction over a related offense even if it was not the subject of a juvenile petition.

State v. Jackson, ___ N.C. App. ___, 600 S.E.2d 16, *appeal dismissed*, *review denied*, 359 N.C. 72, 604 S.E.2d 923 (2004).

Facts: A fifteen-year-old juvenile was involved with others in committing an armed robbery and murder. Two juvenile petitions, one alleging first-degree murder and the other alleging attempted armed robbery, were filed against him in juvenile court. In the juvenile proceeding the court found probable cause and ordered that these offenses be transferred to superior court for trial as an adult. The juvenile then was indicted for first-degree murder, attempted armed robbery, and conspiracy to commit armed robbery. He was convicted in superior court of all three offenses.

Holding: The court of appeals rejected defendant's argument that the superior court lacked jurisdiction over the felony of conspiracy to commit armed robbery because this offense was not alleged in a juvenile petition and transferred from juvenile court to superior court. G.S. 7B-2203(c) provides that when a case is transferred to superior court, the superior court has jurisdiction over that felony and "any offense based on the same act or transaction or on a series of acts or transactions connected together or constituting parts of a single scheme or plan of that felony . . . ." Because the offense of conspiracy to commit armed robbery was based on the same act or transaction as the other two felonies, which had been properly transferred to superior court, the superior court had jurisdiction over that offense as well.

Transfer order may not be appealed to the court of appeals if the juvenile did not appeal the order to superior court.

State v. Wilson, 151 N.C. App. 219, 565 S.E.2d 223, *cert. denied*, 356 N.C. 313, 571 S.E.2d 215 (2002).

Facts: After a transfer hearing the juvenile's case was transferred to superior court. Juvenile did not appeal the transfer order and was convicted of assault with a deadly weapon with intent to kill inflicting serious injury. On appeal to the court of appeals, the defendant argued that certain evidence had been admitted improperly at the transfer hearing and that entry of the transfer order was error.

Holding: The court of appeals rejected this argument and held that to preserve the issue of transfer for review by the appellate courts a juvenile must avail himself of the right to appeal the order to superior court before being tried in superior court.

Also See

State v. Green, 348 N.C. 588, 502 S.E.2d 819 (1998), *cert denied*, 525 U.S. 1111, 119 S.Ct. 883, 142 L.Ed.2d 783 (1999), in which the state Supreme Court rejected the argument that the transfer statute and procedure in effect before July 1, 1999, violated the juvenile's due process and equal protection rights and was void for vagueness.

Evidence and Adjudication

Delinquency proceedings are civil and are governed by the Rules of Civil Procedure.

In re Hodge, 153 N.C. App. 102, 568 S.E.2d 878, *appeal dismissed*, *review denied*, 356 N.C. 613, 574 S.E.2d 681 (2002).

Facts: Based on allegations by the juvenile's younger brother, a detective interviewed the juvenile at the juvenile's home. The juvenile denied committing any sex act, but acknowledged that he sometimes "beat up" his younger brother. A summons and petition alleging indecent liberties were served on the juvenile and his parents. Another petition, alleging that the juvenile committed a simple assault, was filed but was not served on the juvenile or his parents. Both petitions were heard at the same hearing. The court dismissed the indecent liberties petition and adjudicated the juvenile delinquent for simple assault.

Holding: The trial court had personal jurisdiction over the juvenile even though neither he nor his parents were served with the summons and the petition alleging simple assault. The juvenile's and parents' appearance at and participation in the hearing, without objection, amounted to a general appearance.

Determination of juvenile's competence is in the trial court's discretion.

In re Robinson, 151 N.C. App. 733, 567 S.E.2d 227 (2002).

Facts: The trial court found that the juvenile was competent to stand trial after (1) a physician at Dix found him competent; (2) a physician retained by the defense found him incompetent; and (3) another physician from Dix, appointed by the court, found him competent. The juvenile admitted the alleged offenses, including assault with a deadly weapon with intent to kill inflicting serious injury, and preserved for appeal the issue of competency.

Holding: The court of appeals held that the trial court did not err in concluding that the juvenile was competent, rejecting the juvenile's argument that the third evaluation was inherently unreliable and biased. The court of appeals noted that the third physician set out a number of bases for his opinion, and held that the evidence was sufficient to support the trial court's finding and that there was no indication that the court abused its discretion.

After in camera review, trial court must disclose to defendant (or juvenile) any materially exculpatory evidence found in confidential DSS records.

Although neither of the following cases involves a juvenile proceeding, the issue of access to confidential records is just as likely to arise in a delinquency case.

State v. Johnson, ___ N.C. App. ___, 599 S.E.2d 599 (2004).

Facts: The defendant was convicted of first-degree statutory sexual offense. Before trial, the trial judge conducted an in camera review of a county social services department's file concerning the alleged minor victim and provided a portion of the file to the defendant.

Holding: The court of appeals examined the file and held that the trial judge erred in not providing other information in the file to the defendant, because the file contained materially exculpatory evidence – namely, an alternative explanation for the abuse of the alleged victim.

State v. Allen, ___ N.C. App. ___, 601 S.E.2d 299 (2004).

Facts: Defendant was convicted of felonious child abuse inflicting serious bodily injury. The trial judge had conducted an in camera review of a county social services department's file concerning the alleged minor victim and ruled that it did not contain any exculpatory evidence to which the defendant was entitled. The file was sealed and placed in the record for appellate review.

Holding: The court of appeals examined the social services file and held that the trial court had not erred. The test, the court said, is whether any contents of the file are favorable to the defendant and material to guilt or punishment.

Court may not accept juvenile's admission without making the full inquiry required by statute.

In re T.E.F., ___ N.C. App. ___, 604 S.E.2d 348 (2004) (appeal pending in Supreme Court).

Facts: Juvenile, age fourteen, was alleged to be delinquent for robbery with a dangerous weapon and assault with a deadly weapon, for using a knife to threaten and rob several victims. At adjudication, the juvenile's counsel indicated that the juvenile would admit the charges. The trial court asked the juvenile questions, which the juvenile answered. The court did not ask the juvenile whether he was satisfied with his representation, and the juvenile did not sign a transcript of admission. The prosecutor recited a factual basis for the admission, and the court adjudicated the juvenile delinquent and committed him to DJJDP.

Holding: The court of appeals reversed, holding that the trial court was required to present *all* of the inquiries and statements required by G.S. 7B-2407 before accepting a juvenile's admission. The opinion rejects a dissenting judge's argument that a "totality of the circumstances" test should be applied. The majority discusses the differences between juvenile and criminal proceedings and stresses that in juvenile proceedings the state has a heightened duty to protect the rights of the juvenile.

The record must show affirmatively that a juvenile's admission was knowing and voluntary.

In re W.H., ___ N.C. App. ___, 603 S.E.2d 356 (2004).

Facts: At the same hearing, the juvenile admitted both a probation violation and a misdemeanor charge of assault inflicting serious injury. The juvenile signed a transcript of admission, with respect to the misdemeanor, which stated that the most restrictive disposition he could receive was a Level 2. During the hearing the court informed the juvenile that the most restrictive disposition the court could order was a Level 3, commitment to DJJDP for placement in a youth development center. The court ordered a Level 3 disposition and the juvenile appealed.

Holding: Reversed and remanded. The court of appeals held that the trial court did not sufficiently inform the juvenile of the most restrictive disposition he could receive and therefore, it was not possible to conclude that the juvenile's admission was knowing and voluntary.

Determination of competency of a child witness to testify is in the court's discretion, but requires adequate inquiry.

In re Clapp, 137 N.C. App. 14, 526 S.E.2d 689 (2000).

Facts: An eleven-year-old male juvenile was adjudicated delinquent for a second-degree sexual offense with a three-year-old child. Evidence included that the juvenile, the victim, and the victim's seven-year-old brother were playing in the victim's bedroom, and the victim came out of the room pulling at her panties and stated that the juvenile had made her take off her clothes and licked her private parts. The same day, her mother took the victim to the hospital, and the mother and child informed the doctor that the juvenile had licked the victim's private parts. The victim, four years old when the adjudication occurred, was found competent to testify and described what happened.

Holding: After reviewing case law and the trial court's actions, the court of appeals held that the trial court did not abuse its discretion in finding the child competent to testify based on its observation of her testimony.

In re Pugh, 138 N.C. App. 60, 530 S.E.2d 328 (2000).

Facts: The juvenile was adjudicated delinquent for a first degree sexual offense, indecent liberties, and assault inflicting serious injury on a child under age sixteen (a four-year-old girl). The court allowed the child to sit on her foster mother's lap when the state called the child to testify. The court found the child incompetent to testify after asking these questions:

Q: "…, how old are you sweetheart?"
A: "Four."
Q: "Four. Do you go to school? And where do you go to school?"
A: "North Graham."
Q: "And North Graham. Is that what you said? Are you in kindergarten? Do you know what kindergarten is?"
A: "Yes."
Q: "And who is that you're with? Who's this lady?"
A: "Margaret."
Q: "Are y'all related?"
A: "Yes."
Q: "Do you know? How are you related to her?"
A: __________

The court then allowed several witnesses to testify to the child's out-of-court statements under the residual exception to the hearsay rule, G.S. 8C-1, Rule 803(24).

Holding: The trial court erred by disqualifying the child without making an appropriate inquiry into her competency to testify. The *voir dire* was insufficient to allow a determination of whether the child was incapable of expressing herself concerning the matter or incapable of understanding the duty to tell the truth. The court of appeals remanded for a proper inquiry as to the child's competency to testify and for further findings, and stated: "If, after conducting an appropriate *voir dire* of [the child], the juvenile court determines that [the child] is incompetent to testify, the adjudicatory and dispositional order . . . is affirmed. If, however, after proper inquiry, the juvenile court determines that [the child] is competent to testify, the juvenile shall be entitled to a new adjudicatory hearing . . . ."

Dissent: One judge dissented from this part of the opinion and would have required a new adjudicatory hearing on the basis that it would be improper to conduct an inquiry as to the witness's competency after the trial.

State v. Ford, 136 N.C. App. 634, 525 S.E.2d 218 (2000).

Facts: The young victim testified at the trial at which defendant was convicted of first degree sexual offense and taking indecent liberties with a child. Although the child apparently did not know what it meant to place her hand on the Bible and swear to tell the truth, she did state during *voir dire* that she would be spanked if she told a lie. The trial court observed the child's testimony and made findings that her answers to questions by the prosecution and defense were reasonable; that when asked specific questions, she appeared to know the answers; and that she was a competent witness.

Holding: The trial court did not abuse its discretion in finding the child competent to testify.

Juvenile who testifies at his own delinquency hearing may be impeached by evidence of his prior adjudications.

In re S.S.T., 165 N.C. App. 533, 599 S.E.2d 59 (2004).

Facts: Juvenile was alleged to be delinquent for disorderly conduct, resisting, obstructing and delaying an officer, and assault on a government officer or employee. The juvenile chose to testify at the adjudicatory hearing and, on cross-examination, was asked whether he had been adjudicated delinquent previously on three occasions – for assault, assault on school personnel, and communicating threats. The juvenile, through his counsel, did not object, and the juvenile admitted the prior adjudications. On appeal the juvenile argued that the trial court erred in allowing the juvenile to be impeached by evidence of his prior delinquency adjudications.

Holding: The court of appeals affirmed, holding that admission of the evidence was not error. Criminal rules of evidence apply in delinquency proceedings. G.S. 8C-1, Rule 609(d), states that evidence of delinquency adjudications generally is not admissible for impeachment purposes, then states an exception that applies only to witnesses other than the defendant. A more specific provision in the Juvenile Code, however, G.S. 7B-3201(b), provides that a juvenile who chooses to testify in his own delinquency case "may be ordered to testify with respect to whether the juvenile was adjudicated delinquent."

The rules about using evidence of delinquency adjudications for impeachment purposes are these:

- <u>In criminal cases</u>, evidence of delinquency adjudications
  1. may not be used to impeach a defendant who chooses to testify, and
  2. may be used to impeach a witness other than the defendant, but only if
     a. an adult's conviction of the offense for which the witness was adjudicated delinquent would be admissible to attack the credibility of an adult, and
     b. the court determines that admission of the evidence is necessary for a fair determination of guilt or innocence.
- <u>In delinquency cases</u>, evidence of delinquency adjudications may be used to impeach any witness, including a juvenile respondent who chooses to testify in his own case.

A juvenile witness's school disciplinary record may not be used to impeach the witness without first establishing relevance of the school record to impeachment.

In re Oliver, 159 N.C. App. 451, 584 S.E.2d 86 (2003).

Facts: At an adjudication hearing, a witness who was a student testified to having observed the juvenile's conduct, which the victim had described in her testimony. The court did not allow the juvenile's attorney to attack the witness's credibility on cross-examination by questioning the witness or her school principal about the witness's school disciplinary record. The court did allow the juvenile's attorney to review the student's school record briefly and sealed the record to make it available for inclusion in the record on appeal.

Holding: The court of appeals held that the trial court did not err, because the juvenile's attorney failed to establish the school record's relevance to impeaching the witness. The mere fact that the student had a disciplinary record was not sufficient to make it relevant to the witness's credibility. The teacher had not testified to the witness's character, so could not be cross-examined regarding it. In addition, the court noted that there are concerns relating to confidentiality of school records and stated that the juvenile had not overcome those concerns.

State failed to prove statutory rape when it offered no evidence of the juvenile's age.

In re Jones, 135 N.C. App. 400, 520 S.E.2d 787 (1999).

Facts: At the adjudication hearing, the court allowed the state to amend a petition that alleged forcible rape, to instead allege statutory rape (sexual act with a child under age thirteen, by someone at least twelve and at least four years older than the victim) and to allege the ages of the juvenile and the victim. The state, however, did not present any evidence to prove that the juvenile was at least twelve years old at the time of the alleged offense, and the trial court made no specific finding as to the juvenile's age at the time of the offense.

Holding: Assuming that the petition was properly amended (the juvenile raised that issue but the court did not reach it), the state's evidence was not sufficient to establish beyond a reasonable doubt that the juvenile committed the alleged offense, and the petition should have been dismissed as the close of the state's evidence. After reviewing North Carolina appellate cases, the court of appeals held that the law of evidence does not allow a trier of fact to determine the age of a defendant (or juvenile) beyond a reasonable doubt merely by observing him or her, without the introduction of other evidence, whether circumstantial or direct. [One judge concurred in the result, on the basis that the trial court erred in allowing the state to amend the petition.]

Evidence was insufficient to support adjudication for burning personal property.

In re Rhyne, 154 N.C. App. 477, 571 S.E.2d 879 (2002), *review denied*, 356 N.C. 672, 577 S.E.2d 637 (2003).

Facts: Juvenile was adjudicated delinquent for burning personal property based primarily on testimony (1) about a phone call by someone identifying himself by the juvenile's name and (2) by people who saw or thought they saw the juvenile and others near the scene of the fire five or ten minutes before the fire.

Holding: Reversed. The trial court should have granted the juvenile's motion to dismiss. The court of appeals held that (1) the caller's self-identification, by itself, was not sufficient to support admissibility of testimony about the phone conversation, and (2) the remaining evidence about the juvenile's being near the scene of the fire was insufficient to establish the elements of the offense.

Juvenile who does not move to dismiss at the close of the state's evidence may not challenge sufficiency of the evidence on appeal.

In re Hartsock, 158 N.C. App. 287, 580 S.E.2d 395 (2003); In re Lineberry, 154 N.C. App. 246, 572 S.E.2d 229 (2002), *cert denied*, 356 N.C. 672, 577 S.E.2d 624 (2003); In re Clapp, 137 N.C. App. 14, 19, 526 S.E.2d 689, 693 (2000).

Facts: In each case the juvenile was adjudicated delinquent and on appeal argued that the evidence had not been sufficient to support the adjudication.

Holding: The court of appeals held that because the juveniles failed to move for dismissal at the close of the evidence against them, they were precluded from challenging the sufficiency of the evidence on appeal.

Juvenile must renew the motion to dismiss at the close of all the evidence in order to preserve the issue of sufficiency of the evidence.

In re Hodge, 153 N.C. App. 102, 568 S.E.2d 878, *appeal dismissed*, *review denied*, 356 N.C. 613, 574 S.E.2d 681 (2002).

Facts: At the adjudication hearing the trial court denied the juvenile's motion to dismiss at the end of the state's evidence. The juvenile then presented evidence in his defense. The court adjudicated the juvenile delinquent for simple assault. On appeal the juvenile argued, among other things, that the evidence had been insufficient.

Holding: The court of appeals held that the juvenile had not preserved that issue for appeal because he did not renew the motion to dismiss at the close of all the evidence.

Juvenile failed to establish that his counsel's performance was deficient and prejudicial to the juvenile.

In re Clapp, 137 N.C. App. 14, 526 S.E.2d 689 (2000).

Facts: An eleven-year-old male juvenile was adjudicated delinquent for committing second-degree sexual offense with a three-year-old female victim. Evidence included that the juvenile, the victim, and the victim's seven-year-old brother had been playing in the victim's bedroom, and that the victim came out of the bedroom pulling at "her crouch" or pulling at her panties and stated that the juvenile had made her take off her clothes and licked her private parts. Later that same day, her mother took the victim to the hospital emergency room, where the mother and the victim informed the examining doctor that the juvenile had licked the victim's private parts. The victim, who was four years old when the adjudicatory hearing was held, testified about what happened.

Holding: The court of appeals rejected the juvenile's argument that he received ineffective assistance of counsel, finding that the juvenile failed to establish (1) that counsel's performance was deficient, and (2) that the deficient performance prejudiced the juvenile's defense.

- The attorney's failure to move for dismissal at the close of the state's evidence on the basis of lack of evidence of force did not prejudice the juvenile's defense, since there was in fact sufficient evidence of force.
- If the attorney erred in failing to qualify the victim and her brother as being competent to testify, the error was harmless, given the likelihood that their statements would have been admitted as substantive evidence under exceptions to the hearsay rule. The attorney had interviewed both witnesses and could have determined that the court would find them competent to testify.

Self-defense is not available when juvenile assaults principal who is using reasonable force to carry out his responsibilities.

In re Pope, 151 N.C. App. 117, 564 S.E.2d 610 (2002).

Facts: The juvenile, age nine, was about to walk out of the school during school hours and did not heed the principal's instruction to stop and come to the office. The principal physically lifted the juvenile and carried him to the office, and the juvenile, while being carried, hit and scratched the principal. The trial court rejected the juvenile's self-defense argument and adjudicated him delinquent for assault on a government employee.

Holding: Affirmed. The trial court did not err by refusing to find from the evidence that the juvenile acted in self-defense. The court stated that the principal was using only reasonable force to carry out his responsibility to protect the juvenile; and the juvenile was not "without fault" in creating the circumstances.

Credibility and weight of the evidence are for the trial court to determine.

In re Wilson, 153 N.C. App. 196, 568 S.E.2d 862 (2002).

Facts: During a middle school physical education class a classmate pulled the juvenile off the bleachers. An altercation ensued, and the juvenile picked up a trumpet case and attempted to pursue the other student. He stopped at his teacher's instruction. A petition was filed alleging simple affray in violation of G.S. 14-33(a). The trial court rejected the juvenile's claim of self-defense and adjudicated the juvenile delinquent.

Holding: The trial court did not err in refusing to dismiss the petition. The credibility and weight of the evidence were for the trial court to determine.

Note: In two footnotes the court of appeals pointed out proper terminology in juvenile cases:

- The juvenile either "admits" or "denies" the allegations in the petition. (The juvenile "denies responsibility" is not proper.)
- The court should find either that the allegations in the petition "have been proved" or that they "have not been proved." (Finding the juvenile "responsible" or "not responsible" is not proper.)

Disorderly conduct at school is established only upon a showing of substantial interference with or disruption of school.

In re Eller, 331 N.C. 714, 417 S.E.2d 479 (1992).

Facts: During class the teacher observed a student lunging toward another student. When the teacher approached the juvenile and asked what she was holding, the student immediately handed over a carpenter's nail. That juvenile and another student, in a math class with two other students, sat at the rear of the classroom, slung or threw their hands backwards and struck the metal covering of a radiator, more than two or three times, creating a rattling, metallic noise. Other students stopped what they were doing and turned toward the source of the noise, and the teacher stopped lecturing for fifteen or twenty seconds each time the noise occurred and stared at the juveniles. The trial court adjudicated the students delinquent for disorderly conduct in school, and the court of appeals affirmed.

Holding: The Supreme Court reversed on the bases that

1. there was no evidence that the students created a "substantial interference" with the conduct of school;
2. a long history of the students' previous conduct violations was not alleged in the petition and could not be used to support the adjudications of delinquency; and
3. the statute, located in an article that addresses "Riots and Civil Disorders," is aimed at more substantial interference than was proved in this case.

In re Brown, 150 N.C. App. 127, 562 S.E.2d 583 (2002).

Facts: The juvenile was adjudicated delinquent for violating the statute that prohibits disorderly conduct involving schools, G.S. 14-288.4(a)(6). Evidence showed that the thirteen-year-old juvenile talked during a test after being warned several times, slammed a door, and begged a teacher in the hallway not to send him to the office. He started crying and tried to stay in front of the teacher to keep her from going to the office. He held the teacher's arm and released her after being asked three or four times and being told he would be in really big trouble if he did not. The teacher's class was unattended throughout the incident.

Holding: The court of appeals reversed, holding that the trial court erred in denying the juvenile's motion to dismiss. Reviewing the case law interpreting "disruptive conduct" and relying on the Supreme Court's language in *State v. Wiggins*, 272 N.C. 147, 158 S.E.2d 37 (1967), the court held that violation of the statute requires "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." The court of appeals distinguished this case and *Pineault* (below) on the basis that in *Brown* (1) teaching was not disrupted because the incident occurred at the end of an examination, and (2) the student's conduct was not as "egregious or severe" as that of the student in *Pineault*.

In re Pineault, 152 N.C. App. 196, 566 S.E.2d 854, *review denied*, 356 N.C. 302, 570 S.E.2d 728 (2002).

Facts: During class the teacher heard the juvenile say to another student, "[f]--k you." On the way to the office with the teacher, the student said to her, "[f]--k you b---h." The teacher stopped teaching to escort the student to the principal's office, and her class was unattended for more than a few minutes. The following day the student argued with another student, and the teacher heard him use profanity to that student. The teacher took the juvenile to the office. He was detained in the first aid room because he was acting disorderly, and staff members tried to calm him down. The student refused to enter the office when asked to do so by the principal. The principal restrained the juvenile by holding him and pinning his arms down to carry him into the office. The juvenile kicked a door, pushing the doorstop through the wall. The trial court adjudicated the juvenile delinquent for violating G.S. 14-288.4(a)(6), disorderly conduct in school.

Holding: The court of appeals affirmed, concluding that the student's conduct substantially interfered with school operations.

In re M.G., 156 N.C. App. 414, 576 S.E.2d 398 (2003).

Facts: Evidence showed that the juvenile, a middle school student, yelled "shut the f___ up" to a group of students in a hallway. Classes were in session in other classrooms on the hallway, and students should not have been in the hallway at the time. A teacher heard the juvenile's statement and took the juvenile to the school's detention center and relayed what had happened. The teacher was away from his assigned duties for at least several minutes. The juvenile was adjudicated delinquent for disorderly conduct in school and argued on appeal that the evidence was not sufficient to support the adjudication.

Holding: The court of appeals, relying on *In re Pineault*, 152 N.C. App. 196, 566 S.E.2d 854 (2002), held that this evidence was sufficient to support the juvenile's adjudication of delinquency for disorderly conduct at school, under G.S. 14-288.4(a)(6).

Without physical evidence of abuse, expert may give opinion that child's symptoms are consistent with sexual abuse, but not that sexual abuse occurred.

In re T.R.B., 157 N.C. App. 609, 582 S.E.2d 279 (2003), *appeal dismissed*, 358 N.C. 370, 595 S.E.2d 146 (2004).

Facts: Juvenile was alleged to have committed first degree sexual offense. At adjudication, without objection by the juvenile, a medical expert testified that, although there were no physical signs of abuse, the physical examination of the victim was consistent with a finding of sexual abuse. The juvenile was adjudicated delinquent and on appeal argued that allowing this testimony by the expert witness was plain error.

Holding: The court of appeals held that admission of the testimony of the expert witness was neither error nor plain error. Without physical evidence, an expert witness may not testify to his opinion that sexual abuse did occur. Assuming a proper foundation, however, an expert may testify "as to the profiles of sexually abused children and whether a particular complainant has symptoms or characteristics consistent therewith."

Evidence was sufficient to establish indecent liberties between children.

In re T.C.S., 148 N.C. App. 297, 558 S.E.2d 251 (2002).

Facts: Juvenile was adjudicated delinquent under G.S. 14-202.2 for sexual conduct with a five-year-old girl when he was almost twelve. On appeal the juvenile argued that the petition should have been dismissed because the state failed to prove that the juvenile (assuming he was the offender) acted "for the purpose of arousing or gratifying sexual desire." The juvenile relied on *In re T.S.*, 133 N.C. App. 272, 515 S.E.2d 230, *disc. rev. denied*, 351 N.C. 105, 540 S.E.2d 751 (1999), in which the court of appeals held that, unlike the similar offense committed by an adult, when indecent liberties between children is alleged, the purpose cannot be inferred from the act itself. Rather, the state must show "some evidence of the child's maturity, intent, experience, or other factor indicating his purpose in acting."

Holding: Reviewing the evidence in the light most favorable to the state, the court of appeals held that the state had presented sufficient evidence of maturity and intent to establish the necessary element of the offense. The court pointed specifically to evidence of the age disparity, control by the juvenile, the location and secretive nature of the actions, and the juvenile's attitude in "smarting off" when questioned by a witness who saw him coming out of the woods with the girl.

North Carolina does not recognize a *de minimus* defense.

In re Hodge, 153 N.C. App. 102, 568 S.E.2d 878, *appeal dismissed*, *review denied*, 356 N.C. 613, 574 S.E.2d 681 (2002).

Facts: Based on allegations by the juvenile's younger brother and the juvenile's own statements to a detective, the juvenile was adjudicated delinquent for simple assault. On appeal, he argued that even if his conduct legally constituted an assault, it was on such a small scale that it was just normal boyhood behavior that did not rise to the level of criminal conduct.

Holding: The court of appeals rejected the juvenile's argument, holding that North Carolina does not recognize a defense of *de minimus*, and declining to apply it in this case.

Disposition

Trial court does not have jurisdiction to order a disposition without a proper adjudication.

In re Eades, 143 N.C. App. 712, 547 S.E.2d 146 (2001).

Facts: The juvenile was alleged to be delinquent for taking indecent liberties with two younger cousins. No written adjudication order was ever entered. The juvenile appealed from a disposition order that was filed with the clerk.

Holding: The court of appeals vacated and remanded for proper adjudication and disposition, holding that the trial court committed reversible error by failing to state that the allegations in the petition had been proven beyond a reasonable doubt. The court found that the record was "completely devoid of any order, written or oral, declaring that the allegations in the juvenile petitions were proven beyond a reasonable doubt." Therefore, the trial court did not have jurisdiction to enter a disposition order.

Trial court did not err in proceeding to disposition when juvenile was responsible for absence of certain information; juvenile failed to establish that attorney's performance was deficient and prejudicial to the juvenile.

In re Clapp, 137 N.C. App. 14, 526 S.E.2d 689 (2000).

Facts: The juvenile was adjudicated delinquent for committing second-degree sexual offense with a three-year-old female victim. At disposition, after reviewing the juvenile's file and information presented by the parties, the prosecutor, the court counselor, and the juvenile's attorney, the court determined that placing the juvenile on probation for a year and requiring him to complete a sex offender evaluation and any recommended treatment would be in the juvenile's best interest and meet the objectives of the state. The court placed the juvenile on probation for a period of twelve months under various conditions.

Holdings: The court of appeals rejected the juvenile's arguments (1) that the trial court erred by entering a dispositional order without sufficient social, medical, psychiatric, psychological, and educational information about the juvenile, and (2) that the juvenile did not receive effective assistance of counsel at disposition because the attorney failed to request a continuance on the ground that the court had not received sufficient information. The state argued that the court did not have some information because the juvenile and his parents refused, before and after adjudication, to participate in any assessments. In addition, the juvenile's attorney previously had requested and received two continuances to secure the juvenile's presence from an out-of-state school. The court of appeals held that the juvenile failed to establish that his dispositional attorney's performance fell below an objective standard of reasonableness and that the defense was prejudiced by his attorney's alleged deficient performance.

Parents have a right to be heard, but trial court has no duty to question parents at a disposition hearing.

In re Powers, 144 N.C. App. 140, 546 S.E.2d 186 (2001).

Facts: The juvenile admitted the allegations and was adjudicated delinquent. At the disposition hearing the juvenile's attorney made brief remarks, then said that he "would tender [the juvenile's parents] to the Court for any questions you may have of [them]." The judge responded that he did not have anything else. The parents did not request an opportunity to present evidence or to address the court. The court committed the juvenile to the DJJDP. The parents appealed, asserting that they were denied their statutory right to present evidence and be heard regarding disposition.

Holding: The record did not show that the parents made any attempt to offer evidence or advise the court, and the court of appeals held that the trial court had no duty to question the parents.

Note: The Juvenile Code gives parents standing to appeal in delinquency cases. The only issue on appeal in this case involved the parents' rights. In a footnote the court stated that it did not need to address whether a parent would have standing to challenge on appeal an alleged denial of a right of the juvenile or to challenge an alleged error that did not affect the parents' rights.

A disposition that changes custody of the juvenile must be supported by findings of fact.

In re Ferrell, 162 N.C. App. 175, 589 S.E.2d 894 (2004).

Facts: After adjudicating a juvenile delinquent for assault causing serious injury, the trial court commented on the juvenile's numerous school absences, wondered aloud why the custodial mother had not been prosecuted, and asked the father (whom the juvenile had not seen in six months) if he was able to assume responsibility for the boy. After being told by the court counselor that the counselor had not met the father before and was not in a position to make a recommendation about changing custody, the court placed the juvenile in the father's custody for a period of twelve months. The mother and the juvenile appealed.

Holding: The court of appeals reversed and remanded, holding that the trial court had not made findings of fact sufficient to support the order changing custody. The court pointed to the factors, set out in G.S. 7B-2501(c), that the trial court must consider in deciding on the most appropriate disposition in a delinquency case:

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

Conditions of probation must respect juvenile's rights and be supported by appropriate findings.

In re Schrimpsher, 143 N.C. App. 461, 546 S.E.2d 407 (2001).

Facts: The juvenile admitted the offense of misdemeanor breaking and entering, which occurred with one or more other juveniles, and was adjudicated delinquent. The court placed him on probation for one year with conditions that included:

1. pay up to $3,000 in restitution – by getting a summer job and paying at least $100/week and, if he became a full-time student when school resumed, at least $40/week;
2. submit at any time to urinalysis, blood, or breathalyzer testing if requested by his court counselor or any law enforcement officer; and
3. not reside in a home or be present in a vehicle unless the residents/owners have consented to a search of their home or vehicle for controlled substances.

The juvenile appealed, arguing that these conditions of probation were not authorized by the statute or supported by the record in this case.

Holding: The court of appeals vacated in part and remanded.

1. The court held that restitution was an appropriate condition and that the trial court made adequate findings about the juvenile's ability to pay, since it found that the juvenile was sixteen at the time of disposition, and G.S. 95-25.5 authorizes employment of youth who are sixteen or older. The court said that the burden was on the juvenile to prove that he did not have and could not reasonably acquire the means to make restitution.

   The restitution condition in this case was invalid, however, because the trial court made insufficient findings regarding the amount of damages, the amount attributable to this juvenile, whether there was joint and several liability with the other participants, and whether the condition was in the juvenile's best interest.
2. The court of appeals held that the condition requiring the juvenile to submit to warrantless searches was invalid. The court pointed out that this condition could not be placed on an adult probationer and stated that juveniles should be entitled to even greater protection.
3. The court held that the third condition was invalid because compliance depended on the actions of people over whom the juvenile had no control.

Order for restitution must be supported by necessary findings of fact and may not be based a parent's ability to pay.

In re McKoy, 138 N.C. App. 143, 530 S.E.2d 334 (2000).

Facts: Two juveniles, ages seven and eight, were adjudicated delinquent for willfully and wantonly injuring personal property by throwing rocks at a moving car. The court placed the juveniles on probation for one year, with conditions that each pay the victim $539.50 in restitution and that probation be renewed at the end of one year if the juveniles had not done so. At the disposition hearing, the court apparently considered the parents' ability or willingness to pay restitution and expressed concern that the juveniles' parents had not taken responsibility for paying the damages.

Holdings: The court of appeals vacated the portions of the trial court's orders that required restitution as a condition of probation, holding that the trial court erred in three respects in ordering the juveniles to pay restitution:

1. The orders did not include necessary findings as to each juvenile's needs and best interest, and the record revealed no findings that ordering restitution was in their best interest.
2. The juveniles did not have the means and could not reasonably acquire the means to pay the amount ordered, and the statute does not allow the court to order restitution if the juvenile satisfies the court that the juvenile does not have and could not reasonably acquire the means to pay it.
3. The statute does not allow the court to consider the parents' ability to pay restitution when ordering the juveniles to make restitution as a condition of probation. [The court noted that G.S. 1-538.1 and similar statutes that create civil liability of parents for harm done by their children have as their rationale the need to "stimulate attention and supervision" by parents as a means of reducing children's anti-social behavior.]

An order requiring a juvenile to pay restitution must be supported by appropriate findings of fact.

In re Heil, 145 N.C. App. 24, 550 S.E.2d 815 (2001).

Facts: The eleven-year-old juvenile was adjudicated delinquent for committing crime against nature with a four-year-old child. At disposition, the court committed the juvenile to training school, but suspended the commitment and placed the juvenile on probation for one year. Conditions of probation included that the juvenile (1) receive psychotherapy, (2) have no contact with the victim and no unsupervised contact with any child younger than himself, and (3) pay restitution of $1,305 to the N.C. Victims Compensation Fund, with monthly payments of $50 due on or before the third day of each month until the total was paid. The juvenile appealed.

Holding: The court of appeals remanded for entry of a modified disposition order, holding that the trial court erred in

1. failing to consider or make findings regarding the juvenile's best interest;
2. considering the parents' ability to pay and, in effect, ordering them to help pay restitution;
3. failing to consider the juvenile's ability to pay restitution;
4. ordering a period of payment that exceeded one year; and
5. ordering restitution of an amount that was not supported by the evidence or the findings.

Probation condition that juvenile not watch television was related to her offense and needs, and was within the court's authority; restitution condition was not supported by evidence of damages.

In re McDonald, 133 N.C. App. 433, 515 S.E.2d 719 (1999).

Facts: Juvenile and two others were adjudicated delinquent for spray painting a boat house. At disposition, the juvenile said that she spray painted the words "Charles Manson Rules" because she had recently watched a documentary about Manson on television. The judge placed the juvenile on probation for one year and included a condition that she not watch television for one year, based on the judge's belief that she was "too susceptible to impression to be watching television." The judge also ordered the juvenile to pay restitution of $200. The juvenile appealed.

Holdings: Affirmed in part; reversed in part.

1. The no-television condition did not exceed the judge's statutory authority. The court has authority to specify conditions of probation related to the needs of the juvenile. Since this condition related to both the juvenile's unlawful conduct and her needs, the judge had authority to impose it.
2. The no-television condition did not violate the juvenile's First Amendment rights. The trial court took into account the words the juvenile spray painted only to determine what factors influenced her delinquent conduct and how to respond to it. The order did not limit her ability to learn about Manson or any other figure through means other than television.
3. The restitution order was not supported by sufficient evidence and findings. The state failed to present any evidence about the monetary amount of damages the boat house owner suffered, and there was no factual support for the restitution order.

Order requiring juvenile to wear a sign announcing that she was a "juvenile criminal" exceeded court's authority.

In re M.E.B., 153 N.C. App. 278, 569 S.E.2d 683 (2002).

Facts: The 14-year-old juvenile admitted the petition's allegations and was adjudicated delinquent for felony breaking and entering and felony possession of burglary tools. Among other dispositional provisions, the court ordered as a special condition of probation that the juvenile, any time she was away from home, wear a 12-inch square sign reading "I AM A JUVENILE CRIMINAL." The juvenile appealed, arguing that the condition violated the Juvenile Code's confidentiality provisions and the non-punitive purposes of the Code. The state argued that the court had authority to release juvenile information; that the condition was not punitive because it was not a criminal sanction and the juvenile was free to stay home; and that the sign facilitated community awareness and facilitation of supervision of the juvenile.

Holding: The court of appeals reversed and remanded, rejecting the state's arguments. The court found that this order did not come within the scope of an earlier holding that "[i]n deciding the conditions of probation the trial judge is free to fashion alternatives which are in harmony with the individual child's needs." *In re McDonald*, 133 N.C. App. 433, 434, 515 S.E.2d 719, 721 (1999). The court's reasoning was based in part on the order's inappropriately broad release of the juvenile's identity as a juvenile offender. The court also found that the order in effect provided for intensive supervision and house arrest, Level 2 dispositions that were not available because the juvenile was eligible only for Level 1 dispositions.

When juvenile testifies and denies committing the offense, the court may not enter a disposition that requires the juvenile to admit the offense.

In re T.R.B., 157 N.C. App. 609, 582 S.E.2d 279 (2003), *appeal dismissed*, 358 N.C. 370, 595 S.E.2d 146 (2004).

Facts: The juvenile was adjudicated delinquent for first degree sexual offense, after testifying at the adjudication hearing and denying the offense. At disposition, as one condition of probation, the trial court ordered the juvenile to attend and participate in a sex offender specific evaluation and treatment program that required the juvenile to admit responsibility for the offense underlying the disposition.

Holding: Although the juvenile had not objected to the probation condition, the court of appeals held that it was a violation of the juvenile's privilege against self-incrimination to require the juvenile to attend a sex offender program that required the juvenile to admit responsibility for the offense. The court said that the juvenile's rights were violated because he testified at adjudication that he did not commit the offense and noted that the juvenile's rights would not be implicated if the juvenile had been granted use immunity.

The trial court may not delegate its dispositional authority to another person's discretion.

In re Hartsock, 158 N.C. App. 287, 580 S.E.2d 395 (2003).

Facts: Juvenile was adjudicated delinquent for possessing marijuana. In addition to other terms of the dispositional order, the trial court ordered that she: (1) "cooperate with placement in a residential treatment facility if deemed necessary by the MAJORS counselor or the juvenile counselor" and (2) "be confined on an intermittent basis in an approved detention facility."

Holding: The court of appeals agreed with respondent that the order that she be placed in residential treatment if deemed necessary by a counselor was an unlawful delegation of authority by the trial court. The court stated that G.S. 7B-2506 provides that "the court, and the court alone, must determine which dispositional alternatives to utilize with each delinquent juvenile," and does not "contemplate the court vesting its discretion in another person or entity." The court of appeals noted that the trial court could have made the placement in a residential treatment facility contingent upon the occurrence of some identified event or occurrence, as long as the placement was not dependent on the exercise of discretion by someone other than the court.

The court of appeals held that the portion of the order directing that the juvenile be confined to a detention facility on an intermittent basis was "incomplete and has no effect," because G.S. 7B-2506(20) expressly requires that the court determine the timing of confinement.

Judge did not impermissibly delegate authority by allowing others to determine amount of restitution and specifics of residential treatment

In re M.A.B., ___ N.C. App. ___, ___ S.E.2d ___ (2005).

Facts: Juvenile was adjudicated delinquent for misdemeanor assault inflicting serious injury. In the disposition order, the court ordered the juvenile, among other things, to (1) pay restitution for the victim's medical bills "in an amount to be determined," and (2) "cooperate and participate in a residential treatment program as directed by court counselor or mental health agency."

Holding: The court of appeals affirmed, rejecting the juvenile's argument that the court improperly delegated its dispositional authority with respect to the restitution and treatment portions of the order. The court distinguished this case from *In re Hartsock*, 158 N.C. App. 287, 580 S.E.2d 395 (2003) on the basis that the court in this case ordered restitution and participation in a residential treatment program and did not delegate to anyone else discretion to determine whether those dispositional alternatives should be used. The court did not consider the lack of specifics about the amount of restitution and the treatment program to be an impermissible delegation.

Committing juvenile for longer than an adult could be incarcerated does not violate juvenile's constitutional rights.

In re Allison, 143 N.C. App. 586, 547 S.E.2d 169 (2001).

Facts: The chronology of the case was as follows:

1998 Juvenile was adjudicated delinquent for assault with a deadly weapon; placed on probation; and adjudicated delinquent again for unauthorized use of a motor vehicle.

1999 Under the "old" Juvenile Code, juvenile was adjudicated delinquent for first-degree trespass and damage to real property; the court extended probation to 10/6/99; the court found the juvenile in violation of probation; the juvenile was committed to training school for an indefinite period not to exceed 450 days; and the juvenile was conditionally released from training school.

11/99 Petitions and motions for review were filed alleging unauthorized use of a vehicle and obstructing and delaying a police officer; the juvenile was adjudicated delinquent and ordered to detention pending further disposition.

12/99 & 1/00 The court held several detention review hearings and ordered that juvenile be released if a treatment facility became available.

2/00 The court held a detention hearing and dispositional hearing, and found that keeping her in detention pending placement in a treatment facility would be detrimental to her.

4/00 Court entered two separate disposition and commitment orders:

(1) re-committing the juvenile to training school to complete the indefinite term, which was not to exceed 450 days, from which she was conditionally released;

(2) under "new" law, as disposition for adjudications for post-July 1999 offenses, for minimum term of six months.

Holdings: Affirmed.

1. The statutory requirement that the juvenile's commitment be for a minimum of six months, a period longer than an adult could be incarcerated for the same offense, did not violate the juvenile's due process or equal protection rights. The court concluded readily that there is a "rational basis" (even a "'compellingly rational' justification") for the legislature's disparate treatment of adults and children.
2. The juvenile's prior commitment to training school, under the "old" law, constituted a "Level 3 disposition in a prior juvenile action" for purposes of making the juvenile eligible for commitment under G.S. 7B-2508(d). The court stated that it is "apparent that a commitment of a juvenile to training school under the old juvenile code is equivalent to a Level 3 disposition under the new code."
3. The trial court did not err in failing to give the juvenile credit for "time served" in detention prior to her disposition hearing. The court held that the juvenile's time in detention was properly credited to her training school commitment. She had spent 86 days in training school before being conditionally released. Following her adjudication for a new offense on 11/24/99 she was in detention for 85 days until her dispositional hearing on 2/16/00. The record indicated that she was given credit for these 171 days toward her commitment for violating her conditional release. (That commitment was for a maximum of 450 days.) Relying on G.S. 15A-196.1, the court held that she was not also entitled to credit toward the new commitment.

When the Juvenile Code authorizes either a Level 2 or a Level 3 disposition, the choice is in the trial court's discretion.

In re Robinson, 151 N.C. App. 733, 567 S.E.2d 227 (2002).

Facts: The juvenile admitted the alleged offenses, including assault with a deadly weapon with intent to kill inflicting serious injury. The nature of the offense and the juvenile's delinquency history gave the court the choice of a Level 2 or Level 3 disposition, and the court committed the juvenile to DJJDP for a term not to exceed his nineteenth birthday.

Holding: The court of appeals affirmed, holding that the trial court did not err in committing the juvenile to DJJDP. The Juvenile Code does not provide guidelines for the court to follow in choosing between two available dispositional levels, so the choice rests in the trial court's discretion. The record showed that the trial court's decision was reasoned and that the court did not abuse its discretion.

In re N.B., ___ N.C. App. ___, 605 S.E.2d 488 (2004).

Facts: Juvenile was adjudicated delinquent for assault with a deadly weapon inflicting serious injury. She had no prior adjudications, but since she was adjudicated for a violent offense, the court at disposition had a choice between Level 2 and Level 3 dispositions. The court reviewed the predisposition report, which indicated that the juvenile had a low risk of re-offending and a low need level. The court, however, was not satisfied with responses to why the juvenile had not returned to school after a five-day suspension, and committed the juvenile to DJJDP.

Holding: The court of appeals affirmed, holding that the court was required to select the most appropriate, not the least restrictive, disposition and had discretion to determine what disposition was appropriate. The juvenile, the court said, had not established that the court abused its discretion.

Other cases addressing the scope of the court's dispositional authority in delinquency cases include the following:

In re Doe, 329 N.C. 743, 407 S.E.2d 798 (1991). The state Supreme Court held that the trial court had jurisdiction to order continued commitment of a juvenile and further sexual offender therapy despite state agency's proposal to conditionally release the juvenile, noting that "[t]he court's jurisdiction terminates only by its own order or by the juvenile's reaching the age of eighteen." The court also held that the trial court's denial of conditional release and its order requiring sex offender treatment did not violate the separation of powers clause.

In re Swindell, 326 N.C. 473, 390 S.E.2d 134 (1990). The state Supreme Court held that the trial court exceeded its authority when, after committing the juvenile to training school, the court ordered the state to develop an adolescent sex offender treatment program for the juvenile and others like him.

In re Wharton, 305 N.C. 565, 290 S.E.2d 688 (1982). The state Supreme Court held that the trial court did not have authority to require a local agency to create a foster home where the juvenile and others like him could reside and receive treatment and services.

In re Brownlee, 301 N.C. 532, 272 S.E.2d 861 (1981). The state Supreme Court held that the trial court did not have authority to order the county to pay for the juvenile's treatment at an out-of-state facility.

In re Jackson, 84 N.C. App. 167, 352 S.E.2d 449 (1987). The court of appeals held that the trial court lacked authority to order a local school board to readmit a student who had been suspended lawfully.

Post-Disposition

Court of appeals does not have jurisdiction when juvenile gives notice of appeal from an adjudication order but not from the disposition order.

In re A.L., ___ N.C. App. ___, 601 S.E.2d 538 (2004).

Facts: On October 29, 2002, the juvenile was adjudicated delinquent. On December 8, 2002, the trial court entered a disposition order. On the same day, the juvenile's attorney filed a notice of appeal with reference only to the adjudication order entered on October 29, 2002. The state filed a motion asking the court of appeals to dismiss the juvenile's appeal for lack of jurisdiction.

Holding: The court of appeals granted the state's motion, holding that the notice of appeal filed by the juvenile's attorney was not sufficient to give the court of appeals jurisdiction to review the adjudication order. The court of appeals referred to G.S. 7B-2602, which includes disposition orders, but not adjudication orders, among the "final orders" that may be appealed in delinquency proceedings. The court also referred to

In re Pegram, 137 N.C. App. 382, 527 S.E.2d 737 (2000), in which the court held that the statute "does not authorize an appeal following the *adjudicatory* portion of the case." Since the juvenile did not give notice of appeal from the disposition order, the court held that it lacked jurisdiction.

Note: In *Pegram*, notice of appeal was given before entry of a final disposition order.

Transcript is sufficient if it allows for meaningful appellate review.

In re Hartsock, 158 N.C. App. 287, 580 S.E.2d 395 (2003).

Facts: Juvenile argued on appeal that flaws in the recording of the trial court proceedings rendered the transcript inadequate to protect the juvenile's rights.

Holding: The court of appeals rejected the argument, holding that the test was whether the transcript "was sufficient to provide for meaningful appellate review." The court found the transcript in this case, although imperfect, sufficient for that purpose.

Juvenile is not placed in double jeopardy when the same conduct is the basis for both a delinquency adjudication and a finding of violation of probation.

In re O'Neal, 160 N.C. App. 409, 585 S.E.2d 478, *review denied*, 357 N.C. 657, 590 S.E.2d 270 (2003).

Facts:

1/30/01 Juvenile was adjudicated delinquent for two misdemeanor assault charges.

2/2/01 At disposition, juvenile was placed on probation for one year.

9/20/01 Court counselor filed a motion alleging numerous violations of probation.

10/23/01 At a hearing, the juvenile admitted all but one of the allegations, and the court found that he had willfully violated the terms of probation.

2/19/02 A new petition was filed alleging that the juvenile committed an assault on a person under the age of twelve.

2/28/02 At disposition for the 10/23/01 finding of probation violation, court placed the juvenile on probation for one year pursuant to Level 2.

3/26/02 At a hearing on the new petition,

(1) the juvenile moved for dismissal of the petition on the ground of double jeopardy, because the alleged assault was one of the same incidents that he had admitted at the probation violation hearing.

(2) the court denied the motion, adjudicated the juvenile delinquent, and ordered that he continue on Level 2 probation.

Holding: The court of appeals rejected the juvenile's argument that the 3/26/02 adjudication of delinquency violated double jeopardy because the offense involved the same conduct that was alleged and admitted as part of the basis for a finding that the juvenile had violated probation. Double jeopardy protections, the court said, apply only to the adjudication stage of a delinquency proceeding. At a probation violation hearing proof is only by a preponderance of the evidence, and the court's finding does not constitute an adjudication. The disposition following the finding of violation of probation related to the offense for which the juvenile was on probation, not the offense that constituted a violation of the juvenile's probation.

Trial court did not err in extending juvenile's probation after initial term of probation ended.

In re T.J., 146 N.C. App. 605, 553 S.E.2d 418 (2001).

Facts: Juvenile was adjudicated delinquent for possession of stolen property and was placed on probation for a period of one year. Shortly before the end of the probation period, the court counselor filed a motion for review alleging that the juvenile had not completed the required hours of community service. At the hearing on the motion, which took place almost two weeks after the initial period of probation ended, the juvenile admitted violating the terms of probation and the court extended the probation period for six months on specified conditions.

Holding: The court of appeals rejected the juvenile's argument that the trial court did not have authority to order the extension of the juvenile's probation after the original term of probation expired. Interpreting G.S. 7B-2510, the court considered the purposes of the Juvenile Code and wording differences in comparable adult statutes, and concluded that the court properly reviewed the juvenile's progress and extended the probation.

Note: Because the motion for review in this case was filed before the end of the initial term of probation, the court did not address whether filing the motion for review before the end of the initial term of probation is an absolute requirement.

Trial court may not consider a juvenile's refusal to admit the offense in deciding whether to release juvenile pending appeal.

In re Lineberry, 154 N.C. App. 246, 572 S.E.2d 229 (2002), *cert denied*, 356 N.C. 672, 577 S.E.2d 624 (2003).

Facts: Juvenile was adjudicated delinquent for second-degree sexual offense and indecent liberties with children. After a review hearing establishing that the juvenile was not complying with an order to receive non-residential sex offender treatment, the court committed the juvenile to the Department of Juvenile Justice and Delinquency Prevention for sex offender treatment. The juvenile gave notice of appeal, and the court conducted a hearing on the question of the juvenile's release pending the appeal. The court made a number of findings, including that the juvenile "consistently expressed entrenched denial which diminishes his amenability to treatment," and ordered that the juvenile remain committed pending the appeal.

Holding: The court of appeals held that the trial court erred in making a finding about the juvenile's refusal to admit the offense and in considering that as a factor in determining whether the juvenile should be released. The court held that the trial court's action violated the juvenile's Fifth Amendment privilege against compelled self-incrimination.

Trial court did not have jurisdiction to amend its order, transfer the case, or conduct a disposition hearing after the juvenile gave proper notice of appeal from the adjudication order.

In re Rikard, 161 N.C. App. 150, 587 S.E.2d 467 (2003).

Facts: The alleged delinquent offense occurred in a district in which the juvenile did not reside.

8/6/01: At the adjudication hearing, the court orally found beyond a reasonable doubt that the facts alleged in the petition were true, then ordered the case transferred to the county of the juvenile's residence for disposition.

8/10/01: A written adjudication order was filed, but did not state that the prosecution had proved its case beyond a reasonable doubt and did not include findings that the allegations in the petition were true.

10/10/01: The juvenile gave notice of appeal.

11/16/01: The court in the county to which the case was sent for disposition sent the case back to the first county because the adjudication order did not contain findings of a delinquent act.

11/11/01: The court in the original county entered an amended adjudication order and transferred the case back to the county of the juvenile's residence.

1/25/02: The disposition order was entered.

Holding: The court of appeals held that the trial courts lacked jurisdiction to enter any of the orders they entered after the juvenile gave notice of appeal. The court therefore vacated the orders that had transferred the case back to the first county, amended the adjudication order, transferred the case back to the second county, and made a disposition. The court reversed the adjudication order and remanded it for correction of the written order to include the required findings, which the court had stated orally.

Note: The juvenile's notice of appeal from the adjudication order was proper under G.S. 7B-2602 because no disposition hearing was held within sixty days after entry of the 8/10/01 adjudication order.

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