

**Juvenile Case Decided by the  
North Carolina Court of Appeals**  
June 5, 2012  
*Delinquency*

**Constructive force element of second degree sexual offense**

- Except when the abuse is by a parent (or someone in a comparable relationship to a child), the “force” element of second degree sex offense requires proof of either actual or threatened physical harm.
- Coercion by threatening to disclose other children’s embarrassing secrets and their sexual conduct was not sufficient to establish constructive force.

**In re T.W., \_\_ N.C. App. \_\_, \_\_ S.E.2d \_\_ (June 5, 2012).**

<http://appellate.nccourts.org/opinions/?c=2&pdf=MjAxMi8xMS04NzgtMS5wZGY=>

**Facts:** The juvenile instigated and engaged in various sexual activities with other boys around his age. While the boys may have participated willingly initially, when they tried to say “no,” the juvenile threatened to disclose their secrets (*e.g.*, bedwetting) and the sexual conduct. He did not inflict or threaten physical harm. The juvenile was adjudicated delinquent for the offense of indecent liberties between minors, three counts of second degree sexual offense, and three counts of crimes against nature. On appeal the juvenile challenged only the second degree sexual offense adjudications, arguing that the state failed to prove either actual or constructive force, a necessary element of the offense.

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

The court of appeals reversed the adjudications for second degree sexual offense, holding that the trial court should have granted the juvenile’s motion to dismiss those charges, and remanded for entry of a new disposition order.

1. The threat of exposing the victims’ secrets and their sexual conduct, without proof of actual or threatened physical harm, was not sufficient to establish constructive force for purposes of second degree sexual offense.
2. When a parent uses his position of power to force his child to engage in sexual acts, proof of neither actual nor threatened physical harm is required, because the threat is inherent in the relationship. That kind of relationship did not exist in this case.

*Appellate court opinions can be found at <http://www.aoc.state.nc.us/www/public/html/opinions.htm>.*

*Earlier case summaries can be found at <http://www.sog.unc.edu/node/513>.*



**Janet Mason**

School of Government  
The University of North Carolina at Chapel Hill  
Campus Box 3330, Knapp-Sanders Building  
Chapel Hill, NC 27599-3330  
T: 919.966.4246 F: 919.962.2706  
[mason@sog.unc.edu](mailto:mason@sog.unc.edu)