

**Juvenile Cases Decided by the
North Carolina Court of Appeals**

May 7, 2013

Delinquency; Termination of Parental Rights

Delinquency: Motion to Suppress; Search and Seizure

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

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

<http://appellate.nccourts.org/opinions/?c=2&pdf=MjAxMy8xMi0xMTI3LTEucGRm>

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

Held: Reversed.

1. The court held that both seizures (*e.g.*, the “cigarette stop” and “marijuana stop”) were supported by reasonable suspicion.
2. The cigarette stop was reasonable because:
 - a. Under G.S. 14-313(c), it is unlawful for a minor to purchase or “accept receipt” of cigarettes. Even if the officer had acted on an assumption that possession of cigarettes by a minor was an offense, our Supreme Court held in *State v. Heien*, ___ N.C. App. ___, 737 S.E.2d 351 (Dec. 14, 2012), that an officer’s mistake of law does not always result in the lack of reasonable suspicion.
 - b. Thus, a reasonable person would find it more likely than not that a person in possession of cigarettes had “accepted receipt” of those items.
3. The marijuana stop was reasonable because:
 - a. While merely stating an obscenity to another individual may be protected speech, the right of free speech is not unlimited.
 - b. G.S. 14-288.4(a)(2) prohibits disorderly conduct in the form of using “abusive language which is intended and plainly likely to provoke violent retaliation and thereby cause a breach of the peace.”
 - c. Thus, the officer’s second encounter with the juvenile, which can be viewed as an extension of the first, was reasonable given the juvenile’s behavior.

4. However, by directing the juvenile to empty her pockets, the officer conducted a search vicariously and without probable cause. The search was not incident to arrest, as the juvenile was not actually arrested, and the officer was not attempting to take the juvenile into custody pursuant to G.S. 7B-1900 or G.S. 7B-1901.
5. The court rejected the trial court's finding that the search was consensual, because the juvenile's production of the contraband was in response to the officer's command and not a voluntary action.

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

Delinquency: Ineffective Assistance of Counsel

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

In re C.W.N., Jr., ___ N.C. App. ___, ___ S.E.2d ___ (May 7, 2013).

<http://appellate.nccourts.org/opinions/?c=2&pdf=MjAxMy8xMi00ODUtMS5wZGY>

Facts: The juvenile, who was 15 years old, and three other boys were engaged in horseplay in the boys' bathroom at their school when the 13-year-old victim entered the bathroom and entered a stall. When the victim exited the bathroom stall, the juvenile approached him and said, "watch this," swung his arm, and struck the victim in the groin area. The victim fell to the ground. Following the presentation of evidence at the adjudication hearing, the juvenile's counsel declined to give a closing argument, although the prosecutor did give one. The trial court adjudicated the juvenile delinquent for misdemeanor assault.

Held: Affirmed.

1. To successfully raise a claim of ineffective assistance of counsel, a juvenile must show that his counsel's conduct fell below an objective standard of reasonableness by establishing both: (1) that counsel's performance was deficient, and (2) that the deficient performance prejudiced the juvenile.
2. The court declined to hold that counsel's failure to speak during closing arguments in a nonjury juvenile delinquency hearing is *per se* ineffective assistance of counsel because to do so would create a presumption that silence is always prejudicial.
3. The court also held that counsel was not ineffective by failing to argue in closing that the incident was an accident resulting from horseplay.
 - a. Counsel's representation was not deficient because counsel's cross-examination of the State's witnesses clarified evidence that was favorable to the juvenile and revealed inconsistencies between a witness's trial testimony and prior statement to law enforcement; and on direct examination, counsel presented evidence through the juvenile that the incident was an accident.
 - b. The juvenile also failed to establish a reasonable probability that, had counsel asserted on closing argument that the assault was accidental, the result of the proceeding would have been different, because three witnesses testified that the assault was not an accident.

Termination of Parental Rights: Stipulations

- Parties may not stipulate to conclusions of law, such as that a ground for termination exists.

In re A.K.D., ___ N.C. App. ___, ___ S.E.2d ___ (May 7, 2013).

<http://appellate.nccourts.org/opinions/?c=2&pdf=MjAxMy8xMi0xMzU1LTEucGRm>

Facts: In an action by the mother to terminate the rights of the father, the parties stipulated, for purposes of adjudication only, that the father had not seen the children for six months and that the abandonment ground for terminating his rights existed. Respondent's attorney indicated that at disposition he intended to show why the respondent had not seen the children for six months. Based on the parties' stipulation, the trial court concluded that the ground of willfully abandoning the children for six months before the filing of the petition existed. The court found that termination was in the children's best interest and terminated respondent's rights. Respondent appealed.

Held: Reversed and remanded.

1. The conclusion that the abandonment ground existed was not supported by the findings of fact, because there was no finding or stipulation that the respondent's abandonment of the children was willful.
2. Respondent's intent to explain the abandonment at disposition indicated an intent to contest the willfulness of the abandonment.
3. Parties may stipulate to facts, but not to questions of law. Thus, parties may not stipulate that a ground for termination exists (or that a child is abused or neglected). Instead, if that is the intent, stipulations should establish facts from which the court can conclude that a ground for termination exists (or that a child is abused or neglected).

Appellate court opinions: <http://www.aoc.state.nc.us/www/public/html/opinions.htm>.

Earlier case summaries: <http://www.sog.unc.edu/node/513>.

Other juvenile law resources: <http://www.sog.unc.edu/node/1689>.



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