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Court Counselor Must Approve Petition for Filing

[In the Matter of D.J.Y., N.C. App \(May 7, 2024\)](#)

Held: Vacated and Dismissed

Facts: The juvenile petition did not contain information in the section titled “decision of court counselor regarding the filing of the petition.” The boxes contained in that section, providing a checkbox to indicate approval for filing and space for the court counselor’s signature, were blank. The juvenile was adjudicated delinquent and disposition was ordered on the same day, without the court counselor in attendance.

Opinion: The Juvenile Code requires an intake process with the juvenile court counselor and that the juvenile court counselor approve the petition for filing. The petition must include the words “approved for filing” and the juvenile court counselor must sign it. The juvenile court counselor’s approval for filing is a jurisdictional prerequisite (*In re T.K.*, 253 N.C. App. 443, 448 (2017)). The petition in this matter was fatally deficient because there was no box checked indicating that the petition was approved for filing and there was no signature of a juvenile court counselor in this section of the petition. The petition therefore failed to vest subject matter jurisdiction in the court. A signature in the verification section of the petition and the fact that the juvenile court counselor provided a report at disposition do not cure the defect in the petition.

Communicating a Threat to Commit Mass Violence on Educational Property; Continuance of Disposition for Time in Secure Custody

[In the Matter of D.R.F., Jr., N.C. App \(May 7, 2024\)](#)

Held: Affirmed in Part; Vacated in Part

Facts: The juvenile was adjudicated delinquent for communicating a threat to commit mass violence on educational property because he told a group of students “that he was going to shoot up the school.” Slip op. at 2. The prosecutor requested that disposition be continued for seven days and to hold the juvenile in secure custody during that time. The prosecutor explained that the request to hold the juvenile in secure custody was based on the juvenile’s history of repeated pattern of communicating threats. The juvenile’s attorney was ready to proceed with disposition, did not object to the continuance of the disposition hearing, and objected to holding the juvenile in secure custody pending disposition. The court continued disposition as requested by the prosecutor and ordered that the juvenile be held in secure custody pending disposition.

Opinion:

True threat analysis

Limitations on speech are constitutional when that speech constitutes a true threat. Whether speech is a true threat depends on how the reasonable hearer would objectively understand the statement and how the person who makes the statement subjectively intended the statement to be understood. A true threat is “an objectively threatening statement communicated by a party which possesses the subjective intent to threaten a listener or identifiable group.” (quoting *State v. Taylor*, 379 N.C. 589, 605 (2021)). Slip op. at 8. In determining whether a true threat occurred, the “court must consider (1) the context in

which the statement was made, (2) the nature of the language the defendant deployed, and (3) the reaction of the listeners upon hearing the statement, although no single factor is dispositive.” (quoting *State v. Taylor*, 379 N.C. at 600-01). Slip op. at 8-9. The U.S. Supreme Court decision in *Counterman v. Colorado*, 600 U.S. 66 (2023), held that a true threat requires that the person making the statement has some subjective understanding of the threatening nature of their statements and that a mental state of recklessness is sufficient.

One student who testified that she heard D.R.F. make the threat was scared enough that she reported it to the school resource officer. A second student testified that he heard the threat and it made him feel sick to his stomach, that D.R.F. sounded serious, and that he did not hear anyone laugh in response to the statement. A third student testified she heard a student respond to the statement by saying that they would bring the guns. When this student then learned of D.R.F.’s statement, she was also scared. This evidence supports that the statement was objectively threatening.

Evidence that D.R.F. had some subjective understanding of the threatening nature of his statement included that: he made the statement while in a group of students during school hours; the statement could be overheard by the students who testified; the statement was made in a serious tone; and D.R.F. had previously threatened one of the students who testified by making a video of himself blowing the other student’s brains out. There was sufficient evidence of a true threat.

Sufficiency of the Evidence

The offense of communicating a threat to commit mass violence on educational property does not require that the threat is directed only at the person or people threatened. Communication of the threat to a person or group is required, but that person or group do not have to be the target of the threat. The State’s proof that the statement was made to a group in a manner that could be overheard by other students was sufficient evidence of the offense.

Continuance of disposition for time in secure custody

The juvenile’s Notice of Appeal was filed from the adjudication order. That adjudication order contained the ruling continuing disposition and placing D.R.F. in secure custody pending disposition. The issue of placing the juvenile in secure custody pending appeal was therefore preserved for appeal.

While the seven days in secure custody were already served, the issue is reviewable on appeal as an issue that is capable of repetition, yet evading review.

Good cause as defined in G.S. 7B-2406 is required to continue a hearing. This includes time needed to receive additional evidence, reports, or assessments requested by the court; to receive other information needed in the best interests of the juvenile; and to allow for expeditious discovery. Extraordinary circumstances are required to justify a continuance under any other circumstances. Because none of these criteria were met in this case, there was not good cause to continue the dispositional hearing. The sole purpose for the use of secure custody pending disposition was to punish D.R.F. The court abused its discretion in continuing disposition and placing D.R.F. in secure custody. There was no legitimate purpose in aid of disposition. The portion of the adjudication order that continued disposition and placed D.R.F. in secure custody is vacated.