

JUVENILE

(1) Juvenile Court Counselor Timely Filed Delinquency Petition Under G.S. 7B-1703—Ruling of Court of Appeals Is Reversed

(2) Failure to Timely File Delinquency Petition Under G.S. 7B-1703 Does Not Deprive Juvenile Court of Jurisdiction Over Petition— Ruling of Court of Appeals Is Reversed

In re D.S., ___ N.C. ___, ___ S.E.2d ___ (17 June 2010), reversing, ___ N.C. App. ___, 682 S.E.2d 709 (16 June 2009).

A juvenile court counselor received a simple assault complaint on September 25, 2007, about a September 21, 2007, incident that occurred at a school, involving the juvenile's touching a female student several times with an object. On October 10, 2007, the counselor file a simple assault petition based on the complaint. On November 15, 2007, the counselor received a second complaint concerning the same incident, and the next day the counselor file a second petition alleging sexual battery. The trial court adjudicated the juvenile delinquent of both offenses. (1) The court ruled, reversing the court of appeals, that the counselor timely filed the sexual battery petition under G.S. 7B-1703 (maximum of thirty days to file petition after receiving complaint). It was filed within one day of the sexual battery complaint, which was a new complaint. The court rejected the argument that because both petitions apparently arose from the same incident, and because the counselor learned of these facts when he received the first complaint, the date he "received" the sexual battery complaint was September 25, 2007, not November 15, 2007. (2) The court ruled, reversing the court of appeals, that a counselor's failure to timely file a delinquency petition under G.S. 7B-1703 does not deprive a juvenile court of jurisdiction over the petition. [Author's note: The court's ruling effectively overruled a contrary ruling in *In re J.B.*, 186 N.C. App. 301 (2007), and other cases based on *In re J.B.*]

G.S. 15-196.1 (Credit for Time Served in Criminal Cases) Does Not Apply to Juvenile Proceedings—Ruling of Court of Appeals Is Reversed

In re D.L.H., ___ N.C. ___, ___ S.E.2d ___ (17 June 2010), reversing, ___ N.C. App. ___, 679S.E. 2d 449 (21 July 2009).

The court ruled, reversing the court of appeals, that the juvenile was not entitled to have her term of confinement reduced by the time spent in secure custody pending her dispositional hearings. G.S. 15-196.1 (credit for time served in criminal cases) does not apply to juvenile proceedings.

Eighth Amendment Prohibits Sentence of Life Imprisonment Without Parole For Conviction of Non-Homicide Offense Committed When Defendant Had Not Yet Reached His or Her Eighteenth Birthday

Graham v. Florida, 130 S. Ct. ___, ___ L. Ed. 2d ___ (17 May 2010).

The defendant was sentenced in a Florida state court to life imprisonment without parole for a conviction of a nonhomicide offense. The defendant was less than eighteen years old when he committed the offense. The Court ruled that the Eighth Amendment (which bars cruel and unusual punishments) prohibits a sentence of life imprisonment without parole for a conviction of a non-homicide offense committed when a defendant had not

yet reached his or her eighteenth birthday. [Author's note: Statutes affected in part by this ruling include: (1) G.S. 15A-1340.16B(a) (life imprisonment without parole for conviction of Class B1 felony when committed against victim who was thirteen years old or younger at time of offense and defendant had one or more prior B1 felony convictions; however, statutory provision is inapplicable if there are mitigating factors under G.S. 15A-1340.16(e)); (2) G.S. 15A-1340.17(c) (life imprisonment without parole for defendant sentenced for Class B1 felony in aggravated range with Prior Record Levels V or VI); (3) G.S. 14-7.12 (sentencing of violent habitual felon to life imprisonment without parole); and (4) G.S. 14-288.22(a) (life imprisonment without parole for injuring another by using nuclear, biological, or chemical weapon of mass destruction). The appendix to the Court's opinion only cites G.S. 15A-1340.16B(a). Slip opinion at 34. It is highly unlikely that a defendant who was under eighteen years old when the offense was committed would qualify to be sentenced to life imprisonment without parole under the statutes discussed in (1), (2), and (3), above.]

(3) Officer Was Properly Allowed to Give Lay Opinion Testimony About Drug Transactions

In re D.L.D., ___ N.C. App. ___, ___ S.E.2d ___ (20 April 2010).

The juvenile was adjudicated delinquent of possession of marijuana with the intent to sell or deliver. An officer was assigned to a high school as a resource officer and had made many arrests for controlled substances at one of the school's bathrooms. The officer and an assistant principal (hereafter, principal) noticed on monitoring cameras that two male juveniles were entering the bathroom and one was standing outside. The principal told the officer that the situation "looked kind of fishy," and suggested they check it. As they approached the bathroom, they saw one male student outside the men's bathroom and another male student outside the women's bathroom, and both stared at the officer and principal. They then saw the juvenile and two other male students leave the bathroom. When the juvenile saw them, he ran back into the bathroom, followed by the officer and principal. When the officer said that he saw the juvenile put something in his pants, the principal replied, "we need to check it." The officer frisked the juvenile and found a container used to hold BB gun pellets. Inside the container were three individually-wrapped bags of marijuana worth \$20.00 each. The officer handcuffed the juvenile and took him to a school office. The principal told the officer that they needed to check the juvenile to make sure that he did not have anything else. The officer searched the juvenile and discovered \$59.00 in his pocket. The juvenile immediately stated, "the money was not from selling drugs," but was his mother's rent money. (1) The court ruled the Fourth Amendment reasonableness standard for school searches applied to the searches by the officer, citing *New Jersey v. T.L.O.*, 469 U.S. 325 (1985), *In re D.D.*, 146 N.C. App. 309 (2001), and other cases, and the searches at the bathroom and school office were constitutional. (2) The court ruled that although the juvenile was in custody and had not been given *Miranda* and statutory warnings, his statement in the school office was admissible because it was unsolicited and spontaneous and not as a result of interrogation. The court cited *State v. Hall*, 131 N.C. App. 427 (1998), and other cases. (3) The officer testified at the juvenile's trial that based on the officer's six years as a drug investigator, it was traditional for a person selling drugs to have in his possession both money and drugs. Also, if the person hasn't started selling yet, he will have more inventory than money. If he is selling well, he will have more money than inventory. The court ruled, citing *State v. Hargrave*, ___ N.C. App. ___, 680 S.E.2d 254 (2009), and other cases, that the trial court did not err in allowing the officer to give this lay opinion testimony.

Juvenile Questioned in School by Law Enforcement Officer Was Not in Custody to Require Officer to Give *Miranda* Warnings and Statutory Warnings Under G.S. 7B-2101(a)—Ruling of Court of Appeals Is Affirmed

In re J.D.B., 363 N.C. 664, 686 S.E.2d 135 (11 December 2009), affirming, ___ N.C. App. ___, 674 S.E.2d 795 (7 April 2009).

Two homes were broken into and a digital camera was among the items stolen. The juvenile was later seen in possession of the digital camera at school. A law enforcement officer went to the juvenile's school to speak with him. The juvenile was thirteen years old, in seventh grade, and enrolled in special education classes. He was escorted from his class into a conference room to be interviewed. Present were the officer, an assistant principal, a school resource officer, and an intern. The door was closed but unlocked. The officer asked the juvenile if he would agree to answer questions about the break-ins, and the juvenile consented. He initially denied any criminal activity. The assistant principal encouraged him to "do the right thing" and tell the truth. The officer questioned him further and confronted him with the fact that the camera had been found. Upon the juvenile's inquiry whether he would still be in trouble if he gave the items back, the officer responded that it would be helpful, but the matter was still going to court and he may need to seek a secure custody order. The juvenile then confessed to the break-ins. The officer informed the juvenile that he did not have to speak with him and he was free to leave. He asked him if he understood that he was not under arrest and did not have to talk with the officer. The juvenile indicated by nodding "yes." He continued to provide more details concerning where certain stolen items could be located and wrote a statement about his involvement with the crimes. The bell rang signaling the end of the day and he was allowed to leave to catch his bus home. The interview lasted from 30 to 45 minutes. The court ruled that the juvenile was not in custody to require the officer to give *Miranda* warnings and statutory warnings under G.S. 7B-2101(a). The court noted that "custody" involves application of an objective standard whether a reasonable person in the defendant's (juvenile's) position would believe himself in custody or deprived of his freedom of action in some significant way—that is, a formal arrest or a restraint on freedom of movement of the degree associated with a formal arrest. For a student in the school setting to be considered in custody, law enforcement must subject the student to restraint on freedom of movement that goes well beyond the limitations that are characteristic of the general school environment. The court rejected the juvenile's argument that the determination of custody should consider the juvenile's age, noting *Yarborough v. Alvarado*, 541 U.S. 652 (2004), or his status as a special education student.

Officer Improperly Advised Juvenile of Custodial Interrogation Rights When Form Advised Juvenile That He Had Right to Have Parent, Guardian, Custodian, or "Any Other Person" Present During Questioning

In re M.L.T.H., ___ N.C. App. ___, ___ S.E.2d ___ (3 November 2009).

The court ruled that an officer improperly advised a juvenile of custodial interrogation rights when the form the officer used advised the juvenile that he had right to have a parent, guardian, custodian, or "any other person" present during questioning. G.S. 7B-2101 does not allow the advisement to include "any other person." The officer's advisement gave the juvenile an improper choice.

G.S. 15-196.1 Applies in Juvenile Court to Provide Credit Against Disposition for Time

Juvenile Spent in Juvenile Detention Center Pending Dispositional Hearing

In D.L.H., ___ N.C. App. ___, 679 S.E.2d 449 (21 July 2009). (Author's note: The North Carolina Supreme Court on November 5, 2009, granted the state's petition to review this ruling.)

The court ruled, relying on *In re Allison*, 143 N.C. App. 586 (2001), that G.S. 15-196.1 applies in juvenile court to provide credit against the disposition for the time a juvenile spent in a juvenile detention center pending the dispositional hearing.

(1) Court Counselor Did Not Under G.S. 7B-1703 Timely File Petition Alleging Delinquent Act, and Thus Juvenile Court Lacked Jurisdiction to Adjudicate Delinquent Act

(2) Variance Between Allegation in Juvenile Petition and Evidence at Adjudicatory Hearing Was Not Fatal

In re D.S., ___ N.C. App. ___, 682 S.E.2d 709 (16 June 2009). [Author's note: The North Carolina Supreme Court has granted the state's petition to review the ruling summarized in(1) below.]

The juvenile was adjudicated delinquent of simple assault and sexual battery. Both acts occurred during a single incident at a school on September 21, 2007. The court counselor received a complaint on September 25, 2007, and filed a petition on October 10, 2007, alleging simple assault. The court ruled that this petition was timely filed under G.S. 7B-1703. The court counselor received a complaint on November 15, 2007, and filed a petition on November 16, 2007, alleging sexual battery based on the incident that occurred on September 21, 2007. Although the second petition was filed within 15 days of receiving the second complaint, the court ruled that the second petition was filed beyond the 30 days allowed under G.S. 7B-1703 (15 days plus an extension of 15 days if allowed by the chief court counselor) because the court counselor received all the information about both delinquent acts in the complaint filed on September 25, 2007. Thus, the juvenile court lacked jurisdiction to adjudicate sexual battery; see *In re J.B.*, 186 N.C. App. 301 (2007). (2) The petition alleged that the juvenile committed simple assault with his hands but the evidence at the adjudicatory hearing showed that he touched the victim with an object (Pixy Stix) that was in his hands. The court ruled that his variance was not fatal. It did not affect the juvenile's ability to present his defense.

Male Juvenile's Entry into School's Female Locker Room With Door Marked "Girl's Locker Room" Was Sufficient Evidence to Support Adjudication of Second-Degree Trespass

In re S.M.S., ___ N.C. App. ___, 675 S.E.2d 44 (7 April 2009).

The court ruled that a male juvenile's entry into a school's female locker room with the door marked "Girl's Locker Room" was sufficient evidence to support the juvenile's adjudication of second-degree trespass. The court noted that the door's sign was reasonably likely to give the juvenile notice that he was not

authorized to go into the girls' locker room [see G.S. 14-159.13(a)(2)].

(1) Juvenile Court Judge Erred in Entering Separate Dispositions for Juvenile Adjudicated Delinquent of Two Offenses in Same Court Session

(2) Juvenile Stipulated to Delinquency History Points and History Level

In re D.R.H., ___ N.C. App. ___, 668 S.E.2d 919 (2 December 2008).

The juvenile was adjudicated delinquent of armed robbery and conspiracy to commit armed robbery. (1) The court ruled that juvenile court judge erred under G.S. 7B-2508(h) (requires single disposition for consolidated offenses during juvenile court session) in entering separate dispositions for the juvenile who had been adjudicated delinquent of these two offenses in the same court session. (2) The court ruled that the juvenile stipulated to six delinquency history points and a high delinquency level. Relying on case law involving adult sentencing, *State v. Boyce*, 175 N.C. App. 663 (2006), and *State v. Eubanks*, 151 N.C. App. 499 (2002), the court ruled that the juvenile stipulated to the court counselor's prior history report when the juvenile's attorney received and reviewed the report and failed to object to it. The attorney had responded, "yes" to the judge's question whether the attorney had had an opportunity to review the report. In addition, the juvenile did not assert in his appellate brief that any of the prior adjudications in the report did not exist.

Juvenile Court Judge's Failure to Hold Dispositional Hearing Within Six Months Under G.S. 7B-2501(d) Did Not Deprive Court of Jurisdiction to Enter Disposition

In re S.S., ___ N.C. App. ___, 666 S.E.2d 870 (7 October 2008).

The juvenile admitted to several offenses in return for a reduction of charges, a specified disposition level, and an agreement that the juvenile would testify truthfully in the hearing of another juvenile. The dispositional hearing was delayed for more than six months so the juvenile could testify at the other juvenile's hearing. The court ruled that the judge's failure to hold the

dispositional hearing within six months under G.S. 7B-2501(d) (allows the court, after adjudication, to continue the case for no more than six months in order to allow the family an opportunity to meet the needs of the juvenile through more adequate home supervision or a through some other plan approved by the court) did not deprive the court of jurisdiction to enter the disposition. G.S. 7B-2501(d) is intended to provide an opportunity for families to seek non-judicial solutions for troubled juveniles and is not a limit on the jurisdiction of trial courts in juvenile matters.

Superior Court Judge Erred in Reversing District Court Judge's Order to Transfer Juvenile Cases For Trial as Adult in Superior Court

In re E.S., ___ N.C. App. ___, 663 S.E.2d 475 (5 August 2008).

The court ruled that a superior court judge erred in reversing a district court judge's order to transfer juvenile cases for trial as an adult in superior court. The court noted, relying on *State v. Green*, 348 N.C. App. 588 (1998), and *In re Bunn*, 34 N.C. App. 614 (1977), that the standard for a superior court judge's review of the district court judge on this issue is abuse of discretion. The court stated that the superior court judge identified the correct standard of review, but failed to properly apply that standard. The judge incorrectly conducted a *de novo* review of the evidence and concluded that the transfer was inappropriate.

Juvenile Court Did Not Have Jurisdiction Over Juvenile Delinquency Petitions When Court Counselor Filed Petitions 16 Days After Receiving Complaints, and There Was No Evidence That Chief Court Counselor Had Authorized Additional 15 Days to File Petitions Under G.S. 7B-1703(b)

In re K.W., ___ N.C. App. ___, 664 S.E.2d 66 (5 August 2008).

The court ruled, relying on *In re J.B.*, ___ N.C. App. ___, 650 S.E.2d 457 (2007), the juvenile court did not have jurisdiction over juvenile delinquency petitions when the court counselor filed the petitions 16 days after receiving the investigating officer's complaints (one day after the statutory deadline), and there was no evidence that chief court counselor had authorized an additional 15 days

to file petitions under G.S. 7B-1703(b).

Insufficient Evidence to Support Delinquency Adjudication of Disorderly Conduct in School, G.S. 14-288.4(a)(6)

In re S.M., ___ N.C. App. ___, 660 S.E.2d 653 (20 May 2008).

The court ruled that there was insufficient evidence to support the juvenile's delinquency adjudication of disorderly conduct in a school, G.S. 14-288.4(a)(6). The state's evidence showed that: (1) the juvenile and a friend were walking in the hall when they should have been in class; (2) when asked to stop, they instead grinned, giggled, and ran down the hall; (3) the juvenile was stopped by the school resource officer after a brief chase down the hall; and (4) a few students and teachers looked into the hall while the resource officer escorted the juvenile to the school office. The court concluded there was no evidence that the school or classroom instruction was substantially disrupted, the juvenile was aggressive or violent, or the juvenile used disturbing or vulgar language.

Sufficient Evidence of Culpable Negligence to Support Juvenile's Delinquency Adjudication of Involuntary Manslaughter When Juvenile, After Giving Illegal Drug to Victim Who Then Became Seriously Ill, Failed to Aid Her

In re Z.A.K., 189 N.C. App. 354, 657 S.E.2d 894 (18 March 2008).

The juvenile was adjudicated delinquent of involuntary manslaughter. The court ruled that there was sufficient evidence of culpable negligence to support the juvenile's delinquency adjudication when the juvenile, after giving an illegal drug (Ecstasy) to the victim who then became seriously ill, failed to aid her. (See the court's detailed discussion of the facts in its opinion.)

Juvenile Court Was Without Jurisdiction to Consider Juvenile Petition Charging

Misdemeanor Larceny Because Court Counselor Failed to File Petition in Clerk's Office Within 30 Days of Receiving Complaint

In re J.B., ___ N.C. App. ___, 650 S.E.2d 457 (2 October 2007).

The court ruled that the juvenile court judge was without jurisdiction to consider a petition charging a juvenile with misdemeanor larceny. An officer submitted a complaint with a juvenile court counselor on May 9, 2006. The counselor approved the filing as a juvenile petition, which was filed in the clerk's office on July 24, 2006. The court noted that G.S. 7B-1703(b) requires that a juvenile petition must be filed within, at a maximum, 30 days after receipt of the complaint (within 15 days after the complaint is received, with an extension for up to 15 days at the chief court counselor's discretion). The timely filing of the petition is jurisdictional, and the jurisdictional issue may be raised by the juvenile for the first time on appeal.

(1) Sufficient Evidence to Support Juvenile's Adjudication of False Bomb Report Under G.S. 14-69.1(a)

(2) No Error When State Obtained Adjudication of False Bomb Report Under G.S. 14-69.1(a) (Involving Any Building) When Evidence Also Would Have Supported Adjudication of False Bomb Report Involving Public Building Under G.S. 14-69.1(c) (Involving Public Building)

In re B.D.N., ___ N.C. App. ___, 649 S.E.2d 913 (18 September 2007).

Evidence showed that the juvenile typed "Bomb at Lunch" on a school calculator in a middle school math class. (1) The court ruled that there was sufficient evidence to support the juvenile's adjudication of making a false bomb report under G.S. 14-69.1(a) (false bomb report involving a building). Although no one saw the juvenile type the words on the calculator, testimony by students and teachers and admissions by the juvenile were sufficient to support the adjudication. (2) The court rejected the juvenile's argument that judgment should have been arrested for the adjudication under G.S. 14-69.1(a) because the state should have charged a violation under G.S. 14-69.1(c) (false bomb report involving public building). The court ruled that the state could have charged the

juvenile under either statutory provision, and the state proved all the elements of the offense under G.S. 14-69.1(a).

(1) Fourteen-Year-Old Juvenile Who Had Consensual Fellatio With Twelve-Year-Old Was Properly Adjudicated Delinquent of Crime Against Nature

(2) Crime Against Nature Offense Was Not Unconstitutionally Applied to Juvenile

In re R.L.C., 361 N.C. 287, 643 S.E.2d 920 (4 May 2007), affirming, 179 N.C. App. 311, 635 S.E.2d 1 (5 September 2006).

A fourteen-year-old juvenile was adjudicated delinquent of crime against nature for having consensual fellatio with a twelve-year-old. (1) The court ruled the fact that other offenses involving this sex act require certain age differentials as elements did not show a legislative intent that the juvenile could not be adjudicated delinquent of crime against nature with a person who was only two years younger than the juvenile. (2) The court ruled, distinguishing *Lawrence v. Texas*, that the crime against nature offense was not unconstitutionally applied to the juvenile. The court noted that, unlike *Lawrence v. Texas*, this case involved minors. The court also recognized that preventing sexual conduct between minors furthers a legitimate governmental interest and application of the crime against nature offense is a reasonable means of promoting that interest.

Juvenile Trial Court Lacked Subject Matter Jurisdiction to Enter Adjudication and Disposition Orders Because Juvenile Petition Was Untimely Filed

In re M.C., 183 N.C. App. 152, 645 S.E.2d 386 (1 May 2007).

The court noted that under G.S. 7B-1703(b), a juvenile petition must be filed within 15 days after the complaint is received by the juvenile court counselor, and an extension of an additional 15 days may be granted at the chief court counselor's discretion. Thus, the juvenile petition must be filed within a maximum of 30 days after the complaint is received by the juvenile court counselor. In this case, the court stated that the only indication when the juvenile court counselor received the complaint was the date (November 1, 2005) that the

petition was verified by a detective. The juvenile petition was filed with the trial court on December 2, 2005, which was more than 30 days from November 1, 2005. The court ruled that the trial court was without jurisdiction to hear the matter. Although the juvenile did not raise the issue before the trial court, it may be raised for the first time on appeal. The court vacated the trial court's adjudication and disposition orders and ordered that the case be dismissed.

Judge's Failure to Personally Address Juvenile on Two of Six Matters Set Out in G.S. 7B-2407(a) in Accepting His Admission to Act of Delinquency Required That Adjudication of Delinquency Be Set Aside

In re A.W., 182 N.C. App. 159, 641 S.E.2d 354 (6 March 2007).

The court ruled, relying on *In re T.E.F.*, 359 N.C. 570, 614 S.E.2d 296 (2005), that the trial judge erred in accepting the juvenile's admission to an act of delinquency by failing to fully comply with G.S. 7B-2407(a). The court failed to orally address the juvenile concerning two of the six matters set out in the statute. The court stated that even though the juvenile apparently completed a transcript of admission form that covered these two matters, the failure to address the juvenile orally required that the adjudication of delinquency be set aside.

G.S. 7B-2407 (When Admission by Juvenile May Be Accepted) Does Not Apply When Judge Accepts Admissions by Juvenile Or by Juvenile Through Attorney That Juvenile Violated Conditions of Court Supervision (Probation)

In re D.J.M., 181 N.C. App. 126, 638 S.E.2d 610 (2 January 2007).

The court ruled that G.S. 7B-2407 (when admission by juvenile may be accepted) does not apply when judge accepts admissions by juvenile or by juvenile through attorney that juvenile violated conditions of court supervision (probation). G.S. 7B-2407 does not apply to G.S. 7B-2510(e). The court ruled that the trial judge did not err by failing to make the specific inquiries set out in G.S. 7B-2407 in

accepting the juvenile's admissions to the probation violations.

(3) Court Rules on Validity of Various Conditions of Juvenile Probation

In re S.R.S., 180 N.C. App. 151, 636 S.E.2d 277 (7 November 2006).

The juvenile was adjudicated delinquent of communicating threats. As the juvenile was being restrained in an elementary school from going into a hallway, he shouted at a teacher in the hallway that he was going to bring a gun to school the next day and kill the teacher's daughter. The teacher's daughter was a student in the school whom the juvenile had previously assaulted. (3) The court ruled on the validity of the following conditions of special probation: (i) the juvenile must abide by rules set out by the court counselor and the juvenile's parents, including, but not limited to, curfew rules and rules concerning those with whom he may or may not associate (ruled valid); (ii) the juvenile must cooperate with any out-of-home placement if deemed necessary, or if arranged by the court counselor, including, but not limited to, a wilderness program (ruled invalid, an impermissible delegation to the court counselor of the judge's authority; the court noted that the record did not show any statement by the court counselor indicating that an out-of-home placement was recommended or necessary); and (iii) two conditions, the juvenile must cooperate with any counseling recommended by the court counselor and comply with any assessment recommended by the court counselor (ruled invalid, an impermissible delegation to the court counselor of the judge's authority without a more specific statement by the judge concerning what type of counseling or assessment).

Juveniles_petition_defects_jurisdictional_raised_at_any_time

In re SRS, 180 NCA 151 (2006)

A juvenile petition serves essentially the same function as an indictment in a felony prosecution and is held to the same standards. Fatal defects in an indictment or a juvenile petition are jurisdictional and may be raised at any time.

Juveniles_petition_communicating_threats_sufficiency

In re SRS, 180 NCA 151 (2006)

A juvenile petition was not fatally defective where it charged the juvenile with communicating threats with initial language that the juvenile had threatened a person and her property, and subsequently and more specifically described only a threat to the person. The juvenile had notice of the precise statutory provision he was being charged under, as well as the precise conduct alleged to be a violation, he had notice sufficient for mounting a defense and can show no unfair prejudice, and the petition was specific enough to allow the court to enter a finding of delinquency and to alleviate any double jeopardy concerns.

Threats_communicating_sufficiency of evidence

In re SRS, 180 NCA 151 (2006)

There was sufficient evidence that a juvenile communicated a threat where the juvenile was looking at the victim when he threatened to kill her daughter, he had to be restrained from coming into the school hallway where she was standing, and she testified that the victim had been involved in prior incidents with her daughter that caused her to take the threats seriously.

Juveniles_probation_conditions_delegation of authority

In re SRS, 180 NCA 151 (2006)

The holding in *In re Hartsock*, 158 N.C. 287, was persuasive and applicable to a juvenile's order of probation under N.C.G.S. § 7B-2506(8), and to the underlying conditions of probation under N.C.G.S. § 7B-2510. The condition that the juvenile abide by any rules set by the court counselor and his parents does not vary substantially from that allowed by the statute and is valid. However, the trial court impermissibly delegated its authority by imposing the conditions that the juvenile cooperate with any out of home placement deemed necessary or arranged by the court counselor, and that he cooperate with any assessments and counseling recommended by the counselor.

Juveniles_release pending appeal denied_compelling reason not stated_remanded

In re J.L.B.M., 176 NCA 613 (2006)

An order denying the release of a juvenile pending appeal which did not state compelling reasons was remanded for appropriate findings. N.C.G.S. § 7B-2605.

Juveniles_questioning_requested presence of aunt denied_not a parent, custodian, or guardian

State v. Oglesby, 174 NCA 658 (2005)

A juvenile defendant had no right to the presence of an aunt during questioning pursuant to N.C.G.S. § 7B-2101, and his motion to suppress was correctly denied, because the aunt was not a custodian or guardian where defendant had never lived with the aunt, she neither had custody of him nor signed school papers on his behalf, and there was nothing to indicate that any governmental entity conferred legal authority on the aunt.

Juveniles_committed youthful offender_consecutive sentences_total exceeding twenty years

State v. Ware, 173 NCA 434 (2005)

N.C.G.S. § 148-49.14 (now repealed) does not prohibit the imposition of separate consecutive sentences for a committed youthful offender which do not exceed twenty years respectively. The trial court here correctly denied a motion for appropriate relief that challenged consecutive sentences for multiple offenses as exceeding twenty years in total.

Constitutional Law--right to confront witnesses--termination of parental rights-- civil

proceeding

In re D.R., 172 NCA 300 (2005)

Termination of parental rights is a civil proceeding in which the Sixth Amendment is not applicable. Here, respondents' right to confront witnesses was not violated by introduction of statements of the child to social workers, a foster parent and psychologists. Crawford v Washington is inapplicable to hearing to terminate parental rights.

Search and Seizure--warrantless search of student at school--school resource officer-- motion to suppress drugs

In re S.W., 171 NCA 335 (2005)

The trial court did not err in a delinquency hearing arising out of possession with intent to sell or deliver a schedule VI substance by denying defendant juvenile's motion to suppress evidence of drugs obtained during a search by a deputy, because: (1) the deputy was exclusively a school resource officer who was present in the school hallways during school hours and was furthering the school's educational related goals when he stopped the juvenile; (2) the deputy was not conducting the investigation at the behest of an outside officer who was investigating a non-school related crime; (3) the deputy's employment mandated that he help maintain a drug-free environment at the school, and the deputy smelled a strong odor of marijuana when defendant walked past him in the hall which gave the deputy a reasonable grounds to suspect that a search would turn up evidence the juvenile violated or was violating the law and/or school rules; (4) the search was reasonably related to the objective and was not excessively intrusive in light of the age and gender of the juvenile and the nature of the suspicion; and (5) the juvenile consented to the search even though the search could have been performed without his consent. Consistent w/ New Jersey v TLO standard.

Trials--incomplete transcript--presumption of regularity

In re S.W., 171 NCA 335 (2005)

Defendant juvenile is not entitled to a new delinquency hearing based on an incomplete transcript of his adjudication where portions of the transcript contain the word “inaudible” omitting sections of missing testimony, because the juvenile failed to demonstrate, and a review of the record failed to disclose, any specific affirmative showing that error was committed in the inaudible portions of the transcript to overcome the presumption of regularity at trial.

Juveniles--admission--informed choice--failure to ask about satisfaction with representation

In re T.E.F., 167 NCA 1 (2004)

The trial court erred in a robbery with a dangerous weapon and assault with a deadly weapon case by accepting juvenile defendant’s admission without conducting the full inquiry required under N.C.G.S. § 7B-2407(a), because: (1) the trial court omitted asking the question whether the juvenile was satisfied with his representation as required by N.C.G.S. § 7B-2407(a)(5), and this failure precluded the trial court from determining that the admission was the product of informed choice; (2) there is a greater burden on the State to protect children’s rights in juvenile proceedings as compared to the rights of adults in criminal prosecutions; (3) the juvenile in the instant case did not sign a transcript of admission serving as evidence that the juvenile was made aware of his rights under N.C.G.S. § 7B- 2407, and thus, the totality of circumstances test under *State v. Hendricks*, 138 N.C. App. 668 (2000), was not warranted; and (4) it is the duty of the trial court to make the required inquiries rather than the duty of the child to make the appropriate assertions.

Juveniles--misdemeanor assault with a deadly weapon--felonious assault with a deadly weapon inflicting serious injury--issuance of subsequent felony petition

In re N.B., 167 NCA 305 (2004)

The trial court did not violate a juvenile's due process rights by allowing the State to prosecute her for felonious assault with a deadly weapon inflicting serious injury even though she had been previously charged with misdemeanor assault with a deadly weapon and the misdemeanor petition had not been dismissed at the time of the felonious assault hearing, because: (1) regardless of whether the juvenile formally denied the allegations contained in the initial misdemeanor petition, the issuance of the subsequent felony petition did not violate the juvenile's constitutional rights; (2) the second petition alleging felony assault was served on the juvenile two months before the adjudicatory hearing; (3) the juvenile was in no way prejudiced since there was no hearing on the merits of the first petition; and (4) the record is void of any evidence that would suggest the filing of the second petition was for retaliatory purposes.

Court Applies Reasonableness Standard of *New Jersey v. T.L.O.* to School Resource Officer's Detention of Student

In re J.F.M., 168 NCA 143 (2005)

T.B. and J.F.M. were adjudicated delinquent for resisting, delaying, and obstructing a public officer and assault on a public officer. A deputy sheriff, who was also a school resource officer, investigated an affray involving T.B. and another student. The affray occurred about 2:00 p.m., and while not seeing the affray, the officer 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, he spoke with a school administrator who told him that T.B. had been in the affray and was leaving the school campus. At approximately 3:00 p.m., the officer approached T.B. at a bus stop on the school 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 officer, who responded by grabbing her arm and telling her she needed to come with him. J.F.M. then pushed the officer and told T.B. to run. T.B. later returned and struck the officer with an umbrella. The court ruled, 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), 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.

Evidence; Juveniles–prior juvenile delinquency adjudications–admissible in subsequent adjudications

In re S.S.T., 165 NCA 533 (2004)

Evidence of prior juvenile delinquency adjudications was properly admitted to impeach the juvenile's credibility in a subsequent adjudication proceeding. The clear intent of the legislature in adopting N.C.G.S. § 8C–1, Rule 609(d) and N.C.G.S. § 7B–3201(b) was to provide that a prior juvenile adjudication is admissible in a juvenile proceeding where the juvenile takes the stand in his own defense, even though that evidence is not admissible in a criminal case.

Juveniles - delinquency - first - degree sexual offense - fatal variance between petition and evidence

In re Griffin, 162 N.C. App. 487 (2004)

The Court of Appeals exercised its discretionary authority under N.C. R.App.P. 2 and determined that a juvenile order adjudicating respondent a delinquent for commission of first-degree sexual offense and the subsequent dispositional order should be vacated because a fatal variance existed between the juvenile petition and the evidence upon which respondent was adjudicated delinquent, including that: (1) the petition alleged only sexual offense by force against the victim's will; (2) there was no evidence presented at the adjudicatory hearing which tended to show respondent committed forcible sexual offense; and (3) the hearing transcript indicates the trial court adjudicated respondent a juvenile first-degree sex offender based on the respective ages of respondent and the victim, despite the petition's failure to allege either the victim's age or the difference in age between respondent and the victim.

Juveniles - delinquency - affray - public place - terror

In re May, 357 N.C. 423 (2003)

The trial court erred by adjudicating a juvenile delinquent based on its determination that the juvenile had committed the offense of common law affray arising out of an altercation between two juvenile residents at a group home, because: (1) the evidence failed to establish that an altercation in which the juvenile participated occurred in a location that satisfies the requisite "public place" element; (2) there were no individuals passing by the property who were within view or earshot of the altercation; and (3) the four witnesses, two who were there by virtue of their employment and the other two by virtue of having been assigned to live there, did not qualify as persons who might transform the facility from a private place into a public place since such altercations do not cause "terror to the people" when their presence is akin to that of family members who bear witness to a fight between siblings on the grounds of the family residence.

Constitutional Law--right of confrontation--right to cross-examine child witness about school disciplinary record

In re Oliver, 159 NCA 451 (2003)

The trial court did not violate a juvenile's right to confrontation in a juvenile delinquency hearing by allegedly denying defendant's right to cross-examine a minor child witness about her school disciplinary record in an attempt to ascertain her credibility and whether she had any possible biases or motives because: (1) after seeing the witness's disciplinary record prior to the witness's testimony, defendant did not ask the witness about or direct the trial court's attention to anything contained therein that was of an impeaching nature; (2) the court correctly determined that confidentiality concerns are at issue when considering the release of a child's official student records; and (3) the fact that the witness had a disciplinary record cannot, in and of itself, establish the relevance of its content to determine possible credibility concerns.

Constitutional Law--right of confrontation--right to cross-examine principal about child's school disciplinary record

In re Oliver, 159 NCA 451 (2003)

The trial court did not violate a juvenile's right to confrontation in a juvenile delinquency hearing by failing to allow the juvenile to cross-examine a principal about a minor child witness's behavior or the contents of her disciplinary record, because: (1) N.C.G.S. § 8C-1, Rule 608(b) prevents defendant from cross-examining the principal about specific instances of the child's conduct for the purpose of attacking the child's character for truthfulness if the principal has not already testified regarding that character, and nothing in the record suggests the principal testified as to the child's character prior to being cross-examined regarding it; and (2) defendant failed to overcome the confidentiality concerns raised by defendant's questions with respect to the child's official student records.

Constitutional Law--right of confrontation--admission of school disciplinary record into evidence

In re Oliver, 159 NCA 451 (2003)

The trial court did not violate a juvenile's right to confrontation in a juvenile delinquency hearing by refusing to admit a minor child witness's disciplinary record into evidence, because: (1) defendant did not make an offer of proof whereby the disciplinary record was made a part of the court record to support defendant's theory of relevance; and (2) the Court of Appeals reviewed the disciplinary record and concluded that it was devoid of any relevant information that would weigh on the child's credibility in this case.

Juveniles - probation violation hearing - assault - motion to dismiss - double jeopardy

In re O'neal, 160 N.C. App. 409 (2003)

The trial court did not violate a juvenile's double jeopardy rights by denying his

motion to dismiss the assault charge even though the juvenile had previously admitted to the same offense at the juvenile's probation violation hearing, because: (1) double jeopardy protections do not apply to probation revocation hearings when a probation violation hearing is not a criminal prosecution; (2) the imposition of a new term of probation or possibly confinement in juvenile cases is punishment for the original offense for which the juvenile was adjudicated delinquent and not for any of the offenses that form the basis of the trial court's determination that a probation violation has occurred; and (3) the juvenile was not punished twice for the same offense.

Jurisdiction - improper service - general appearance

In re Hodge, 153 N.C. App. 102 (2002)

The trial court had jurisdiction over respondent juvenile with respect to a simple assault petition even though neither respondent nor a parent was served with the summons and notice of hearing issued on 8 February 2001 and the State did not make any further attempts to serve respondent or his parents with the assault petition, because: (1) respondent and his parents were present in the courtroom during the hearing and did not object to the defect in service; and (2) respondent waived any defect in service since his denial of the allegations in the petition and his participation in the hearing on the petition without objection constitute a general appearance.

Confessions and Incriminating Statements - juvenile's statements to detective during home visit - not in custody

In re Hodge, 153 N.C. App. 102 (2002)

The trial court did not err in a simple assault case by allowing a detective to testify to statements respondent juvenile made to the detective during a home visit where respondent was neither advised of his constitutional rights nor knowingly and willingly waived those rights, because: (1) N.C.G.S. § 7B-2101 provides that a juvenile must be in custody before it becomes necessary to inform him of his rights, and respondent was not in custody when he made the statements since no

proceeding had been initiated against respondent and the purpose of the detective's visit was solely to investigate the allegation; and (2) there was no requirement that defendant be informed of or waive such rights prior to the interview.

Juveniles - commitment - not an abuse of discretion

In re Robinson, 151 N.C. App 733 (2002)

The trial court did not abuse its discretion by committing a juvenile to the Department of Juvenile Justice and Delinquency Prevention where the court had before it assessments of needs and risks and the court found that it was in the juvenile's best interest to be committed given the severity of the case, the lack of progress, and the alternatives available in the community.

Juveniles--custody--right to have parent present during questioning

State v. Branham, 153 NCA 91 (2002)

The trial court erred in a possession of marijuana with intent to sell or deliver, possession of LSD with intent to sell and deliver, and trafficking in LSD case by admitting defendant juvenile's out-of-court statement to officers that were obtained in violation of defendant's right to have a parent present under N.C.G.S. § 7B-2101(d), because: (1) even if it is assumed that defendant's mother did not want to be present during defendant's interrogation, she did not have the ability to, in effect, waive defendant's right to have her present during interrogation; and (2) there is no evidence that it was defendant who initiated further communications with the officers after the officers told defendant his mother would not see him.

Constitutional Law--self-incrimination--juvenile's refusal to admit guilt--custody pending appeal

In re Lineberry, 154 NCA 246 (2002)

A juvenile's constitutional right against self-incrimination was violated where the court found that the juvenile's consistent refusal to admit to the offenses diminished his amenability to treatment and ordered that he remain in custody pending appeal.

Schools and Education—disorderly conduct—juvenile adjudication—insufficient evidence

In re Brown, 150 NCA 127 (2002)

A middle school student's conduct did not constitute "disorderly conduct" within the meaning of N.C.G.S. § 14-288.4(a)(6) so as to support an adjudication of delinquency because it did not substantially interfere with the operation of the school where the student talked during a test, slammed a door, and begged in the hallway not to be sent to the office, and a class was without a teacher while this occurred.

Constitutional Law—ex post facto prohibition—use of juvenile plea in capital sentencing

State v. Wiley, 355 NC 592 (2002)

The submission of a prior juvenile adjudication in a capital sentencing proceeding did not violate the ex post facto prohibition, even though defendant's delinquency plea came before the amendment to N.C.G.S. § 15A-2000(e)(3) allowing juvenile adjudications to be submitted as aggravating circumstances. Defendant is being punished for the present offense of first-degree murder rather than receiving additional punishment for his 1992 delinquent conduct. U.S. Const. art. I, § 10; N.C. Const. art. I, § 16.

Evidence—letter written by juvenile—from law enforcement files—admissible

State v. Wiley, 355 NC 592 (2002)

The trial court did not err in a capital sentencing proceeding by admitting a letter written by defendant when he was fourteen that formed the basis of his juvenile adjudication for solicitation to commit murder where the letter was introduced from Sheriff's Department files through the testimony of the investigating officer. Although there was statutory protection for juvenile court records, there is no prohibition against the use of law enforcement records and the State properly introduced the evidence to illustrate the circumstances surrounding the prior adjudication.

Sentencing—capital—use of juvenile adjudications—effective date

State v. Leeper, 356 NC 55 (2002)

A 1992 juvenile adjudication could be used as an aggravating circumstance for first-degree murder even though defendant contended that the amendments concerning confidentiality of juvenile records and allowing the use of juvenile adjudications pertained only to offenses committed on or after 1 May 1994. The effective date of the amendments pertain to sentencing for crimes committed on or after that date, not to the date of the prior adjudications. N.C.G.S. § 15A-2000(e)(3).

Juveniles - assault on government official - delinquency

In re Pope, 151 N.C. App. 117 (2002)

The trial court did not err by not finding that a juvenile acted in self - defense where a middle school principal carried the juvenile to the office to keep him from leaving the building, with the student grabbing a doorframe and scratching the principal in the process. The juvenile engaged in and continued a difficulty with the principal when he refused to heed warnings not to leave the building; the principal was required to undertake reasonable force to protect the juvenile's safety and to prevent him from leaving school premises.

Appeal and Error; Juveniles--transfer hearing--failure to preserve right to appeal transfer order

State v. Wilson, 151 NCA 219 (2002)

Although defendant juvenile appeals from the validity of evidence received at a transfer hearing and the ensuing transfer order to superior court in an assault with a deadly weapon with intent to kill inflicting serious injury case, defendant failed to preserve the right to appeal the transfer order, because: (1) in order to properly preserve the issue of transfer for review by the Court of Appeals, defendant was required under N.C.G.S. § 7B-2603 to appeal the transfer order and issues arising from it to the superior court, which he failed to do; (2) suspension of the appellate rules under N.C. R. App. P. 2 is not permitted for jurisdictional concerns; and (3) appropriate circumstances are not present in this case to permit the Court of Appeals to issue a writ of certiorari under N.C. R. App. P. 21.

Juveniles - disorderly conduct - motion to dismiss - sufficiency of evidence

In re Pineault, 152 N.C. App. 196 (2002)

The trial court did not err by denying respondent juvenile's motion to dismiss two charges of disorderly conduct based on his use of foul language in the classroom on 6 February 2001 and his behavior in the classroom and first aid room on 7 February 2001, because there was sufficient evidence that respondent's behavior interfered with the operation of the school including the nature and severity of respondent's language coupled with the fact that several school officials stopped teaching and performing various administrative duties to attend to respondent.

Juveniles - assault on government official - delinquency

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from leaving the building, with the student grabbing a doorframe and scratching the principal in the process. The juvenile engaged in and continued a difficulty with the principal when he refused to heed warnings not to leave the building; the principal was required to undertake reasonable force to protect the juvenile's safety and to prevent him from leaving school premises.

Juveniles--first-degree murder--transfer to superior court

State v. Brooks, 148 NCA 191 (2001)

The trial court did not err by concluding the juvenile court's determination that the juvenile petition alleging first-degree murder and the decision to transfer the case to superior court after finding probable cause without a transfer hearing were proper, because: (1) the petition adequately charged the offense in a clear and concise manner and informed the juvenile of the charge against him so he could adequately prepare a defense; (2) if the juvenile needed further clarification on the charge, he could have filed a motion for a bill of particulars under N.C.G.S. § 15A-925; and (3) N.C.G.S. § 7B-2200 requires the district court to transfer the case to superior court upon a finding of probable cause in a Class A felony.

Sexual Offenses--indecent liberties between children--motion to dismiss--sufficiency of evidence--purpose of arousing or gratifying sexual desire

In re T.C.S., 148 NCA 297 (2002)

The juvenile court did not err by failing to dismiss the charge of taking indecent liberties between children under N.C.G.S. § 14-202.2 based on the sufficiency of the evidence showing that defendant juvenile acted for the purpose of arousing or gratifying sexual desire, because: (1) the juvenile was almost twelve years of age when he was seen holding hands with the five-year-old victim in the presence of her three-year-old sister; (2) a witness testified that the victim's actions appeared to be done at the insistence and direction of the boy, and the boy appeared to put his hands on his private parts while the victim was taking off her clothes; and (3) the age disparity, the control by the juvenile, the location and secretive nature of their actions, and the attitude of the juvenile is evidence of the maturity and intent

of the juvenile.

Juveniles--delinquency hearing--right of parents to be heard

In re Powers, 144 NC App 140 (2001)

A juvenile's parents were not denied their right to present evidence at a dispositional hearing where the juvenile's parents were tendered for any questions the court might have, but the court did not question them. The record contains no evidence that the parents attempted to offer evidence or advise the court during the dispositional hearing and the court had no affirmative duty to question them. N.C.G.S. § 7B- 2501(b).

Juveniles--delinquency--longer sentence than adult committing same offense--no equal protection violation--rational basis

In re Allison, 143 N.C. App. 586 (2001)

The trial court did not err by entering a new dispositional order that committed a juvenile to training school for a minimum of six months and N.C.G.S. § 7B- 2513(a) was not unconstitutionally applied to the juvenile in violation of her equal protection rights even though an adult committing the same offense of unauthorized use of a motor vehicle in violation of N.C.G.S. § 14-72.2 would have received at most 120 days active punishment, because: (1) the differences are reasonably related to the purposes of the juvenile act to provide children with the needed supervision and control; and (2) the desire of the state to exercise its authority as *parens patriae* and to provide for the care and protection of its children supplies a compelling rational justification for the classification.

Juveniles--delinquency--disposition level--training school

In re Allison, 143 N.C. App. 586 (2001)

The trial court did not err by relying on N.C.G.S. § 7B-2508(d) to raise a juvenile's Level 2 dispositional limit under N.C.G.S. § 7B-2508(f) to Level 3 in order to commit the juvenile to training school for her unauthorized use of a motor vehicle, because the juvenile's prior commitment to training school under the old juvenile code is equivalent to a Level 3 disposition under the new code.

Juveniles--delinquency--crime against nature--motion to dismiss

In re Heil, 145 NCA 24 (2001)

The trial court did not err by failing to dismiss a juvenile delinquency petition at the close of all evidence regarding the charge of crime against nature under N.C.G.S. § 14-177, because: (1) there was some evidence from which the trial court could find that some penetration occurred; (2) any inconsistencies in the testimony cannot be the basis for granting a motion to dismiss or for overruling a trial court's denial of said motion; and (3) resolving contradictions in the evidence falls within the province of the trial court when it performs as the fact-finder.

Juveniles--probation violation--authority to extend original probation

In re T.J., 146 NCA 605 (2001)

The juvenile court did not err by finding that a juvenile violated his terms of probation and by extending the juvenile's probation after the expiration of his original term of probation, because: (1) N.C.G.S. § 7B-2510 confers limited discretion on the trial court to modify probation within a reasonable time after its expiration; (2) the determination of what amount of time is reasonable should be made in light of the time necessary to schedule a hearing on a juvenile's probation and the time needed by the juvenile and the State to prepare for such a hearing; and (3) the juvenile counselor in this case was affording the juvenile an extended opportunity to complete his required hours of community service, but to no avail.

Confessions and Incriminating Statements--voluntariness--juvenile

State v. Mckeithan, 140 N.C. App. 422 (2000)

The trial court did not err in a double first-degree murder case by denying defendant juvenile's motion to suppress his confession, because: (1) defendant was advised both orally and in writing of his rights under Miranda, and the warning fully satisfied the requirements of N.C.G.S. § 7A-595 (now N.C.G.S. § 7B-2101); and (2) defendant stated he understood his rights, was willing to waive his rights, and executed a written waiver.

Evidence and Witnesses 1246, 1261 (NCI4th) presence of parents and attorney in police station failure to advise juvenile admissibility of juvenile's confession

State v. Gibson, 342 N.C. 142 (1995) ___ S.E.2d ___

Law enforcement officials are not required to inform a juvenile that his parents or attorney are actually present in the police station before taking his voluntary confession, and their failure to do so does not render the juvenile's confession involuntary as a matter of law or otherwise inadmissible.

Criminal Law § 67 (NCI4th); Infants or Minors § 72 (NCI4th) defendant minor at time of crime superior court no jurisdiction to try after adulthood

State v. Dellinger, 343 N.C. 93 (1996) 468 S.E.2d 218

Age at the time of the alleged offense governs for purposes of determining subject matter jurisdiction over a juvenile, N.C.G.S. § 7A-523(a), and a juvenile offender does not "age out" of district court jurisdiction and by default become subject to superior court jurisdiction upon turning eighteen. Therefore, the superior court did not have subject matter jurisdiction to try defendant for the felony of crime against nature where defendant was twelve or thirteen years old at the time he allegedly committed the crime; he was indicted in superior court when he was sixteen; defendant appealed the denial of his motion to dismiss for lack of subject matter jurisdiction to the Court of Appeals and turned eighteen while the appeal was pending; and the district court never exercised jurisdiction and did not

transfer the case to the superior court in accordance with N.C.G.S. § 7A-608.

Infants and Minors § 99 (NCI4th) juvenile trial as adult statute governing transfer to Superior Court not unconstitutionally vague

State v. Green, 124 N.C. App. 269 (1996) 477 S.E.2d 182

The challenge of a juvenile defendant to N.C.G.S. § 7A-610, which provides for the transfer of juveniles to superior court for trial as adults, was without merit where defendant contended that the statute was vague and overbroad based on language which required the district court to determine whether the needs of the juvenile or the best interest of the State would be served by transfer to superior court. Identical language in the predecessor statute and was held not to violate a defendant's due process rights.

Infants and Minors § 99 (NCI4th) juvenile trial as adult discretion of district court judge statement of reasons findings not needed

State v. Green, 124 N.C. App. 269 (1996) 477 S.E.2d 182

The decision to transfer a juvenile's case to superior court lies solely within the discretion of the district court judge and, in making this decision, district court judges need only state the reasons for the transfer and need not make findings of fact to support the conclusion that the needs of the juvenile or the best interests of the State would be served by the transfer.

Infants and Minors § 98 (NCI4th) juvenile photo lineup improper subsequent confession not the result

State v. Green, 124 N.C. App. 269 (1996) 477 S.E.2d 182

There was no plain error in a district court's decision to transfer a juvenile to

superior court for trial as an adult where the court relied on a juvenile defendant's confession which defendant contended was the result of an illegal non-testimonial identification proceeding. While the detective did not comply with N.C.G.S. § 7A-596 in conducting a photo lineup, defendant has not produced evidence which tends to show that his subsequent confession was the direct result of the photo lineup; that the confession occurred after defendant learned that the victim had identified him in a photo lineup is too tenuous. Additionally, the court made several findings to support its transfer order which are wholly independent of the State's compliance with N.C.G.S. § 7A-596.

Infants and Minors § 99 (NCI4th) juvenile transferred for trial as adult thereafter treated as adult

State v. Green, 124 N.C. App. 269 (1996) 477 S.E.2d 182

The trial court did not err in a prosecution for first-degree sexual offense, attempted first-degree rape, and first-degree burglary by denying defendant's motion to dismiss and in not instructing the jury on the common law doctrine of doli incapax where defendant was thirteen years old at the time of the offenses. Although the doctrine of doli incapax may still apply in other contexts, the General Assembly has indicated an intent that thirteen year olds transferred pursuant to N.C.G.S. § 7A-608 and N.C.G.S. § 7A-610 are transferred for trial "as in the case of adults" and are thereafter to be treated as adults.

Constitutional Law § 165 (NCI4th) - second-degree rape-prior 1993 delinquency adjudication for rape - use as aggravating factor - no ex facto violation

State v. Taylor, 128 N.C. App. 394 (1998)

The trial court did not violate the ex post facto clauses of the state or federal constitutions when sentencing defendant as an adult for second-degree rape by considering defendant's previous adjudication of delinquency based on another second-degree rape in 1993, even though the current statute was not in effect in 1993. The new sentencing statute does not retroactively punish conduct that was innocent when done in that the 1993 conduct was indisputably proscribed at that

time, and does not aggravate the 1993 delinquency adjudication or inflict a greater punishment for that conduct than allowed at that time. The question of the level assigned to the delinquency adjudication was not raised at trial.

Evidence and Witnesses § 1331 (NCI4th) - juvenile confession - warnings before confession - evidence sufficient

State v. Flowers, 128 N.C. App. 697 (1998)

The trial court did not err in the prosecution of a juvenile as an adult for armed robbery and assault by denying defendant's motion to suppress his confession where the court's finding that a warning which fully satisfied Miranda and N.C.G.S. § 7A-595 (a) was read to defendant before he was questioned is supported by competent evidence and is therefore conclusive.

Evidence and Witnesses § 1263 (NCI4th) - juvenile confession - Miranda and statutory rights - express waiver not required

State v. Flowers, 128 N.C. App. 697 (1998)

The trial court did not err in the prosecution of a juvenile as an adult for armed robbery and assault by denying defendant's motion to suppress his confession where defendant argues that he never expressly waived his rights. The rule in North Carolina that a person could waive his Miranda rights only by an express statement has long since been repudiated and no statute requires an express waiver of juvenile rights.

Evidence and Witnesses § 1276 (NCI4th) - juvenile defendant - waiver of rights - capacity to understand

State v. Flowers, 128 N.C. App. 697 (1998)

The trial court correctly concluded that a juvenile defendant being tried as an adult for armed robbery and assault understood his Miranda rights and knowingly, intelligently, and voluntarily waived those rights before making a statement. There was no evidence of coercion and, although defendant argues that he lacked the capacity to understand his rights because of his youth and low mental ability, he invoked his right to remain silent when asked about an unrelated matter, indicating that he had the capacity to understand and exercise his rights. Moreover, he denied his participation in this robbery until his mother told him to tell the truth, suggesting that he was aware that speaking to the police could have negative consequences.

Infants or Minors § 141 (NCI4th) - jurisdiction over juvenile - transfer to superior court for trial as adult - order immediately appealable

State v. T.D.R., 347 N.C. 489 (1998)

The Court of Appeals erred by holding that an order entered by the district court transferring jurisdiction over a juvenile to superior court for trial as an adult pursuant to N.C.G.S. § 7A-608 is subject to appellate review by the Court of Appeals only "after entry of a final judgment by the superior court." Rather, a juvenile transfer order entered by the district court is a "final" order of the court in the juvenile matter within the meaning of N.C.G.S. § 7A-666(2) so that such order is immediately appealable to the Court of Appeals. The case of *In re Green*, 118 N.C. App. 336, 453 S.E.2d 191 is overruled to the extent that it may be read as holding to the contrary.

Infants or Minors § 99 (NCI4th); Criminal Law § 586 (NCI4th Rev.) - juvenile defendant – superior court - flagrant violation of rights - dismissal of indictment

State v. T.D.R., 347 N.C. 489 (1998)

Once the district court has transferred jurisdiction over a juvenile to the superior court, the superior court has authority, on motion of the juvenile defendant, to review criminal pleadings filed against the defendant in superior court and to dismiss those charging instruments if defendant's rights were "flagrantly violated

and there is such irreparable prejudice to the defendant's preparation of his case that there is no remedy but to dismiss the prosecution." N.C.G.S. § 15A-954(a)(4).

Infants or Minors § 99 (NCI4th) - juvenile - transfer to superior court for trial - right to hearing

State v. T.D.R., 347 N.C. 489 (1998)

When read in pari materia, N.C.G.S. §§ 7A-608, -609, and -610 were intended by our legislature to provide a juvenile the right to a hearing on the issue of whether his case should be transferred to the superior court for trial as in the case of an adult and the rights, among others, to be represented by counsel in accordance with N.C.G.S. § 7A-584, to testify as a witness in his own behalf, to call and examine witnesses, and to produce other evidence in his own behalf.

Infants or Minors § 99 (NCI4th) - juvenile defendant - transfer of jurisdiction to superior court - improper remand of jurisdiction to district court

State v. T.D.R., 347 N.C. 489 (1998)

The superior court erred by vacating indictments against a juvenile and purportedly remanding jurisdiction to the district court on the basis of its findings and conclusion that there was no competent expert evidence before the district court on the issue of the availability of rehabilitative services for defendant as a juvenile where an expert witness for the State testified on this issue; defendant failed to object to her testimony or to request that the court make findings of fact; there was sufficient evidence to support a finding that the witness was an expert; and it will be presumed that the court found the witness to be an expert before admitting her testimony even though there was no specific finding to this effect.

Infants or Minors § 99 (NCI4th) - transfer of juvenile cases to superior court - Kent factors – not constitutionally required - included in statute

State v. Green, 348 N.C. 588 (1998)

N.C.G.S. § 7A-610, which deals with the transfer of juvenile cases to superior court, is not constitutionally infirm without the factors set forth in the appendix to *Kent v. United States, 383 U.S. 541*. The *Kent* Court was merely exercising its supervisory role over the inferior court created by Congress for the District of Columbia. Moreover, all of the factors enunciated in *Kent* are already subjects of consideration by juvenile court judges and specifically appending the *Kent* factors would be duplicative and might unintentionally serve to limit the possible factors considered by juvenile court judges.

Infants or Minors § 99 (NCI4th) - first-degree sexual offense - thirteen year old defendant – transfer to superior court - within statutory guidelines

State v. Green, 348 N.C. 588 (1998)

A juvenile court judge acted within the statutory guidelines of N.C.G.S. § 7A-610 (c) in transferring to superior court a thirteen-year-old defendant accused of first-degree sexual offense and other crimes where the judge included in her transfer order as bases for her decision the seriousness of the offenses, that the victim was a stranger, the community's need to be aware of and protected from such serious crimes, defendant's history of assaultive behavior, defendant's acknowledgment of difficulty controlling his temper, and strong evidence of defendant's guilt considering his confession.