Juvenile Fire Setter and School Interrogation

In a recent unpublished decision in In re J.D.R., COA09-1340, 2010 WL 3465277 (N.C.App. Sept. 7, 2010), the North Carolina Court of Appeals addressed a Juvenile's appeal from a trial court's orders entered in Buncombe County District Court finding him to be a delinquent juvenile. Juvenile argued that the trial court erred by concluding that the evidence was sufficient to support a finding that: (1) he wantonly and willfully burned a schoolhouse in violation of N.C. Gen.Stat. § 14-60 ; and (2) that he created a public disturbance that interfered with the education of others in violation of N.C. Gen.Stat. § 14-288.4(a)(6). Juvenile argued that the trial court erred by denying his motion to suppress an inculpatory statement on the grounds that he had not freely and voluntarily waived his rights against self-incrimination. The appellate court affirmed the trial court's orders.

The State's Evidence showed that at approximately 1:30 p.m. on 20 November 2008, Matthew Carpenter, a teacher at Erwin High School in Asheville, smelled smoke. Upon briefly investigating the situation, Carpenter discovered that the smoke was emanating from a bathroom located immediately outside his classroom on the third floor. After Carpenter opened a panel on the bathroom's wall, a considerable amount of smoke escaped, prompting him to direct a fellow teacher to pull the nearby fire alarm.

School Principal Edward Burchfiel was in his office when the fire alarm sounded. After locating the source of the alarm on the fire alarm panel in his office, Burchfiel and Assistant Principal Terry Gossett immediately went to the third floor to assess the situation. After discovering burning paper towels at the bottom of a pipe chase that was accessed through the bathroom wall, Gossett put out the fire using a fire extinguisher. Approximately 1300 people were evacuated from the school for safety-related reasons.

Buncombe County Arson Task Force Investigator Jeffrey Tracz came to the school to investigate the incident. After examining the third floor bathroom, Tracz determined that the fire did not have an electrical origin and ruled out other causes. Tracz concluded that someone had started the fire and headed to the school's administrative offices to speak with the alleged culprits.

Meanwhile, Assistant Principal Jim Brown examined surveillance videos for the purpose of identifying the individuals who had been in the vicinity of the bathroom prior to the start of the fire. The video evidence showed that Juvenile and another student had entered the bathroom around the time that the fire began. After identifying the two juveniles, Brown had them taken to separate first floor offices and questioned. Burchfiel questioned Juvenile while Brown questioned the other student.

At the beginning of his conversation with Burchfiel, Juvenile denied any involvement in setting the fire. Juvenile subsequently admitted that he and the other student had entered the bathroom together, that he had handed a cigarette lighter to the other student, and that the other student lit and quickly dropped a paper towel down the pipe chase. The other student independently confirmed Juvenile's account while talking

with Brown. In a written statement which he prepared at Burchfiel's request, Juvenile stated that "[w]e walked into the bathroom and my friend ... was in the back stall looking down into the hole and it caught a paper towel on fire to start it so we got up and got out of there."

After Juvenile drafted this statement, Tracz joined the investigation. Tracz read a Constitutional Rights Warning/Waiver certificate to Juvenile and explained the document to Juvenile's father upon his arrival at the school. Juvenile's father instructed his son to cooperate with the investigation.

Juvenile's evidence showed that on 20 November 2008, Juvenile ate lunch in the school cafeteria with his mother, who was at the school in order to discuss concerns that Juvenile was being bullied. After finishing lunch, Juvenile announced that he needed to go to the bathroom. Juvenile's mother directed him to use the third floor bathroom in order to avoid encountering the bully. Juvenile's mother asked the other student to accompany Juvenile in case he encountered the bully. After the two students reached the bathroom, Juvenile mentioned that he had a cigarette lighter and said that he had previously thrown a cigar down a pipe chase which was accessed through a panel in the bathroom wall. The other student ignited a paper towel with Juvenile's lighter and dropped the burning towel down the pipe chase. After looking into the pipe chase and seeing a spark, Juvenile attempted to extinguish the fire by putting water into a plastic bag and pouring it down the pipe chase. As a result of his belief that any fire that might have been set in the pipe chase had been extinguished, Juvenile closed the panel leading to the pipe chase, after which the two students left the bathroom. In light of his concern that another individual in the bathroom had observed him in possession of the cigarette lighter, Juvenile hid it outside the school after departing from the bathroom.

On 22 December 2008, Officer Tracz filed two juvenile petitions with the Buncombe County District Court. One alleged that Juvenile should be adjudicated delinquent for having violated N.C. Gen.Stat. § 14-60 (felonious burning of a school building). The other alleged that Juvenile should be adjudicated delinquent for having violated N.C. Gen.Stat. § 14-288.4(a)(6) (causing a disturbance at an educational institution). Both petitions were approved for filing on 30 December 2008. On 13 July 2009, Juvenile filed a motion seeking the suppression of the statements made by Juvenile on 20 November 2008.

On 13 July 2009, adjudication and disposition hearings were conducted before the trial court. The trial court denied Juvenile's suppression motion on the grounds that Juvenile was not in custody when the statement was given and that his statement was given freely and voluntarily. At the conclusion of the proceedings, the trial court adjudicated Juvenile as delinquent on the basis of findings that he was responsible for committing both of the offenses alleged in the petitions and found that Juvenile was within the trial court's dispositional authority as a result of the fact that he had committed serious offenses as defined in N.C. Gen.Stat. § 7B-2508(a). At the dispositional phase of the proceeding, the trial court determined that it was required to order a Level 1

disposition and placed Juvenile on probation for a period of twelve months subject to the supervision of a court counselor. Juvenile appealed from the trial court's orders.

In his first argument on appeal, Juvenile contended that the trial court erred by denying his motion to suppress the statement that he gave to Burchfiel. Juvenile contended that he was in custody at the time that he gave this statement, that Burchfiel was acting on behalf of law enforcement at the time that he questioned Juvenile, that Juvenile was not properly advised of his constitutional and statutory rights before making his statement to Burchfiel, and that Juvenile's statement to Burchfiel was not freely and voluntarily made. The appellate court disagreed.

The custodial interrogation of criminal suspects conducted by law enforcement officials is subject to procedural safeguards "effective to secure the privilege against self-incrimination." *Miranda v. Arizona,* 384 U.S. 436, 444-45, 16 L.Ed.2d 694, 706 (1966). The protections afforded by *Miranda* and codified and enhanced in the juvenile context by N.C. Gen.Stat. § 7B-2101(a) "apply only to custodial interrogations by law enforcement." *In re J.D.B.,* 363 N.C. 664, 669, 686 S.E.2d 135, 138 (2009). In other words, a juvenile is not entitled to the exclusion of evidence obtained in the absence of effective warnings under *Miranda* and N.C. Gen.Stat. § 7B-2101(a) unless he or she was "in custody" at the time the incriminating statement was made. *Id.; see also Buchanan,* 353 N.C. at 337, 543 S.E.2d at 826 (citing *Oregon v. Elstad,* 470 U.S. 298, 306-07, 84 L.Ed.2d 222, 230-31 (1985).

A suspect has been subjected to custodial interrogation if, under the totality of the circumstances, there was a "formal arrest or a restraint on freedom of movement of the degree associated with a formal arrest." *Buchanan,* 353 N.C. at 339, 543 S.E.2d at 828 (citations and internal quotation marks omitted); *see also In re J .D.B.,* 363 N.C. at 669, 686 S.E.2d at 138. The standard for determining whether an individual is in custody is an objective one that examines whether "a reasonable person in [Juvenile's] position would have believed that he was under arrest or was restrained in his movement to that significant degree." *State v. Garcia,* 358 N.C. 382, 396-97, 597 S.E.2d 724, 737 (2004) (citing *Buchanan,* 353 N.C. at 339-40, 543 S.E.2d at 828). As the Supreme Court has noted, however, "[t]he uniquely structured nature of the school environment inherently deprives students of some freedom of action." *In re J.D.B.,* 363 N.C. at 669, 686 S.E.2d at 138. In order for a student in the school setting to be deemed "in custody" for purposes of *Miranda* and N.C. Gen.Stat. § 7B-2101(a), law enforcement officers must subject the student to a "'restraint on freedom of movement' that goes well beyond the limitations that are characteristic of the school environment in general." *Id.,* (citing *Buchanan,* 353 N.C. at 338, 543 S.E.2d at 827).

Juvenile contended that the "in custody" issue should be evaluated based on what a reasonable person of Juvenile's age would have believed. However, the Supreme Court stated in *In re J.D.B.,* 363 N.C. at 672, 686 S.E.2d at 140, that "we decline to extend the test for custody to include consideration of the age and academic standing of an individual subjected to questioning by police." Thus, the relevant question was what a reasonable person in general, rather than a reasonable person of Juvenile's

age, would have believed.

After carefully reviewing the record, the Court of Appeals concluded that the trial court's findings of fact were supported by competent evidence. For example, during the hearing held in connection with Juvenile's suppression motion, Burchfiel testified that Juvenile had been escorted to the administrative office by an assistant principal. After admitting his involvement in the series of events that led to the fire during his conversation with Burchfiel, Juvenile drafted a written statement admitting his involvement before Officer Tracz entered the room in which Burchfiel's questioning had occurred. When asked whether anyone else was present at that time, Burchfiel confirmed the presence of an assistant principal. However, Burchfiel stated that he did not think Officer Vicky Hutchinson, the school resource officer, had been in his office "at that time." Burchfiel explained that the school's routine policy when investigating incidents was to "speak with the student and then ... have them to write out a statement." Burchfiel never told Juvenile he could not leave or prohibited Juvenile from departing the room in which the questioning took place. Officer Hutchinson confirmed that she was not present when Juvenile was questioned, since her friendship with Juvenile's mother caused her to "distance [her]self from involvement." Officer Tracz also denied being present when Burchfiel questioned Juvenile and testified that Officer Hutchinson "was [not] in there at all."

Juvenile's version of the events that occurred during his questioning by Burchfiel differed from the description of that process provided by Burchfiel, Officer Tracz, and Officer Hutchinson. Among other things, Juvenile pointed out that he was questioned when his parents were not present and stated that he did not believe that he was free to leave. However, "[t]he subjective belief of [Juvenile] as to his freedom to leave is not in and of itself determinative" of whether an individual is "in custody." *State v. Jones,* 153 N.C.App. 358, 365, 570 S.E.2d 128, 134 (2002) (citation omitted). As a result, Juvenile's assertion that he believed himself to have been involuntarily detained does not establish that he was subjected to custodial interrogation at the time that he made his statement to Burchfiel. On the contrary, for there to be an "objective showing" that one is "in custody," the circumstances that the Supreme Court has deemed most relevant include a police officer standing guard at the door, locked doors or application of handcuffs. *In re J.D.B.,* 363 N.C. at 669, 686 S.E.2d at 138 (quoting *United States v. Mendenhall,* 446 U.S. 544, 554, 64 L.Ed.2d 497, 509 (1980)).

The evidence concerning the circumstances surrounding Juvenile's questioning by Burchfiel did not suffice to establish the required significant restraint on Juvenile's "freedom of movement" over and above that inherent in the school environment needed to undercut the trial court's determination that Juvenile was not in custody at the time that he made his inculpatory statement to Burchfiel. According to Burchfiel, Officer Hutchinson and Officer Tracz, "everybody was going in and out of different offices, different rooms," a fact that established that the door to the room in which Burchfiel questioned Juvenile was not locked. The fact that the record contained evidence to the effect that neither Officer Hutchinson nor Officer Tracz were present during the questioning conducted by Burchfiel provided support for the trial court's conclusion that Juvenile was not in law enforcement custody during his questioning by Burchfiel.

Similarly, the fact that Juvenile was escorted to the room in which he was questioned by Burchfiel and may have been instructed not to leave by Dr. Brown did not establish that Juvenile was subjected to custodial interrogation, given the limitations on student freedom of movement that are inherent in a school environment. *In re J.D.B.,* 363 N.C. at 669-71, 686 S.E.2d at 139. Finally, the record contained no indication that any other sort of physical restraint was imposed upon Juvenile. As a result, after considering the totality of the circumstances, the Court of Appeals concluded that the trial court correctly determined that Juvenile was not "in custody" at the time he was questioned by Burchfiel.

In addition, the fact that Juvenile was questioned by Burchfiel, rather than a law enforcement officer, provided further justification for the conclusion that Juvenile was not subjected to custodial interrogation for purposes of *Miranda* and N.C. Gen.Stat. § 7B-2101(a). "Custodial interrogation refers to questioning initiated by law enforcement officers after the accused has been deprived of his freedom." *State v. Etheridge,* 319 N.C. 34, 43, 352 S.E.2d 673, 679 (1987). "[S]tatements made to private individuals unconnected with law enforcement are admissible so long as they were made freely and voluntarily." *Etheridge,* 319 N.C. at 43, 352 S.E.2d at 679.

The appellate court noted that its decisions are replete with examples of individuals who, though occupying some official capacity or ostensible position of authority, have been ruled unconnected to law enforcement for *Miranda* purposes. See *State v. Barnett,* 307 N.C. 608, 300 S.E.2d 340 (1983) (magistrate not government agent where no evidence that police requested that he speak to defendant); *State v. Conard,* 55 N.C.App. 63, 284 S.E.2d 557 (1981), *disc. rev. denied,* 305 N.C. 303, 290 S.E.2d 704 (1982) (magistrate not a representative of the police); *State v. Perry,* 50 N.C.App. 540, 274 S.E.2d 261, *disc. rev. denied,* 302 N.C. 632, 280 S.E.2d 446 (1981) (bail bondsman not a law enforcement officer in spite of ability to make arrests); *In re Weaver,* 43 N.C.App. 222, 258 S.E.2d 492 (1979) (DSS worker not acting on behalf of law enforcement officers); *State v. Johnson,* 29 N.C.App. 141, 223 S .E.2d 400, *disc. rev. denied,* 290 N.C. 310, 225 S.E.2d 831 (1976) (radio dispatcher employed by police department not acting as a law enforcement officer). Particularly illuminating are those cases holding that medical personnel and hospital workers did not function as agents of the police where the accused made incriminating statements on his own initiative, out of the presence of police, and in response to questions not supplied by police. See, e.g., *State v. Alston,* 295 N.C. 629, 247 S.E.2d 898 (1978) (statement to hospital desk clerk admissible); *State v. Cooper,* 286 N.C. 549, 213 S.E.2d 305 (1975) (statements to nurse, doctor, and medical attendant admissible). *Etheridge,* 319 N.C. at 43, 352 S.E.2d at 679.

Juvenile contended that since his statement was subsequently given to Officer Tracz and Officer Hutchinson was in the vicinity during the questioning process, that Burchfiel was allegedly acting in a law enforcement capacity at the time that he questioned Juvenile. However, the appellate court concluded that the record amply supported the trial court's conclusion to the contrary.

The appellate court observed that as a general proposition, school officials do not function as law enforcement officers and that the foremost priority of a school principal is undoubtedly student safety. Accordingly, Burchfiel "had an ongoing duty to try and find out, No. 1, if there were anymore fires or danger for the students that remained there." As part of the process of determining whether a continued danger existed at the school in the aftermath of the fire, Burchfiel had little choice except to attempt to find out what had happened and to take steps to address any additional problems that might be identified during that process. Thus, instead of acting as an agent of law enforcement at the time that he questioned Juvenile, Burchfiel was carrying out his duties as a school administrator with responsibility for ensuring that the school facility and its students were no longer in jeopardy. The fact that Burchfiel gave the statement which he obtained from Juvenile to Officer Tracz does not change the fact that, at the time that Burchfiel took that statement, he was acting in his capacity as a school administrator rather than as an agent of law enforcement. Similarly, in the absence of evidence that Officer Hutchinson did more than come in and out of the room in which Burchfiel was questioning Juvenile, the fact that a school resource officer was in the vicinity does not establish that Juvenile was questioned by agents of law enforcement. *In re W.R.,* 363 N.C. 244, 675 S.E.2d 342 (2009) (stating that, in the absence of evidence that the school resource officer actually participated in the questioning of the student, the presence and participation of the school resource officer at the request of school administrators conducting the investigation did not render the questioning of the student a "custodial interrogation" requiring *Miranda* warnings and the protections of N.C.Gen.Stat. §7B-2101). Thus, the trial court correctly concluded that Juvenile's statement was not obtained in violation of his rights under *Miranda* and § 7B-2101(a).

Juvenile also contended that despite the trial court's determination to the contrary, the statement he gave to Burchfiel was not made freely and voluntarily. Juvenile argued that he was not advised that any statement that he made could be used against him or that he had a right to the presence of a parent during any questioning. Juvenile contended that he was tricked into making his statement to Burchfiel.

The appellate court reasoned that ". . . police coercion is a necessary predicate to a determination that a . . . statement was not given voluntarily . . . " *State v. McKoy,* 323 N.C. 1, 21-22, 372 S.E .2d 12, 23 (1988), *sentence vacated on other grounds,* 494 U.S. 433, 108 L.Ed.2d 369 (1990) (citing *Colorado v. Connelly,* 479 U.S. 157, 93 L.Ed.2d 473 (1986)); *see also Etheridge,* 319 N.C. at 44, 352 S.E.2d at 679 (noting that a statement to an individual not acting as a law enforcement officer was not made involuntarily since defendant was not under any compulsion to answer the questions and the record revealed no evidence of subtle coercion in the exchange).

The Court of Appeals noted that as a general proposition, establishing the lack of voluntariness usually involves proof of circumstances such as the use of deceit or trickery, holding the subject incommunicado, subjecting the subject to "prolonged uninterrupted interrogation" or "physical threats or shows of violence," the making of "promises to him in return for his confession," or other types of "mental or psychological coercion or pressure." *State v. Jackson,* 308 N.C. 549, 582 (1986), *judgment vacated*

on other grounds, 479 U.S. 1077, 94 L.Ed.2d 133 (1987) (citing *Carter v.. Garrison,* 656 F.2d 68 (4th Cir.1981), *cert. denied,* 455 U.S. 952, 71 L.Ed.2d 668 (1982); *Davis v. North Carolina,* 384 U.S. 737, 16 L.Ed.2d 895 (1966); *State v. Morgan,* 299 N.C. 191, 261 S.E.2d 827, *cert. denied,* 446 U.S. 986, 64 L.Ed.2d 844 (1980); *Brown v. Mississippi,* 297 U.S. 278, 80 L.Ed. 682 (1936); and *Schneckloth v. Bustamonte,* 412 U.S. 218, 36 L.Ed.2d 854 (1973)). The mere fact that Juvenile was not informed that his statement might be used against him or that he had the right to have a parent present during questioning did not establish that Juvenile was tricked into making a statement or that his statement was otherwise made involuntarily. In view of the total absence of any evidence tending to show that Juvenile's statement was not freely or voluntarily made, appellate court concluded that the trial court did not err in rejecting this aspect of Juvenile's objection to the evidentiary admission of his statement to Burchfiel. For these reasons, the appellate court determined that the trial court did not err in denying Juvenile's suppression motion.

The appellate court also addressed Juvenile's argument that the trial court erred by denying his motion to dismiss the charge for wanton and willful burning of a schoolhouse. According to Juvenile, the trial court erred by denying his motion to dismiss the wanton and willful burning of a schoolhouse charge because that crime required proof of a specific intent and because the evidence presented at trial did not establish the existence of the requisite intent. In essence, Juvenile argued that the undisputed evidence demonstrated that he gave the lighter to the other student, who ignited a paper towel that eventually fell down the pipe chase and set fire to other flammable materials. Juvenile contended that, at the time that he gave the lighter to the other student, he had no reason to believe that the other student would use the lighter for any purpose other than illuminating the pipe chase. After realizing the other student might have started a fire, Juvenile allegedly attempted to extinguish the fire by pouring water down the pipe chase and believed that his efforts had been successful. As a result, Juvenile contended that the evidence, even when taken in the light most favorable to the State, failed to show that he possessed the intent necessary for guilt of wantonly and willfully burning a schoolhouse in violation of N.C. Gen.Stat. § 14-60.

N.C. Gen.Stat. § 14-60 provides that, "[i]f any person shall wantonly and willfully set fire to or burn or cause to be burned or aid, counsel or procure the burning of, any schoolhouse or building ... he shall be punished as a Class F felon." "Wanton and willful" conduct is behavior engaged in "without legal excuse or justification, and with the knowledge that the act will endanger the rights or safety of others or with reasonable grounds to believe that the rights or safety of others may be endangered." *State v. Brackett,* 306 N.C. 138, 142, 291 S.E.2d 660, 662-63 (1982); *see also In re J.L.B.M.,* 176 N.C.App. 613, 626, 627 S.E.2d 239, 247 (2006) (stating that, "[t]o be wanton and willful, 'it must be shown that [an] act was done intentionally, without legal excuse or justification, and with knowledge of or reasonable grounds to believe that the act would endanger the rights or safety of others' ") (quoting *State v. Payne,* 149 N.C.App. 421, 424, 561 S.E.2d 507, 509 (2002)). "Under the doctrine of acting in concert, it is not necessary that the defendant do any particular act constituting a part of the crime charged, if he is present at the scene and acting together with another or others

pursuant to a common plan or purpose to commit the crime." *State v. Taylor,* 337 N.C. 597, 608, 447 S.E.2d 360, 367 (1994) (citations omitted).

The appellate court observed that Juvenile did not appear to claim that he had any legal justification or excuse for possessing a lighter on the school campus. In addition, Juvenile admitted that he knew that the other student intended to use the lighter to get a better view of the pipe chase, which was accessed through the rear stall in the third floor restroom. The resulting fire occurred when the other student's efforts to examine that part of the building went awry. After realizing that a fire had started in the pipe chase, Juvenile allegedly attempted to extinguish the fire himself rather than sounding an alarm. Juvenile was of an adequate age to understand the potential consequences of his actions, which helped endanger nearly 1300 other people. The appellate court found that this evidence was clearly sufficient to support a determination that Juvenile either aided the other student in wantonly and willfully burning a schoolhouse or, acting in concert with the other student, wantonly and willfully burned the school. *In re J.L.B.M.,* 176 N.C.App. at 626, 627 S.E.2d at 247-48 (holding that igniting fireworks and then laughing when an officer attempted to put them out was sufficient to support a finding that the juvenile acted wantonly and willfully in violation of N.C. Gen.Stat. § 14-59). The appellate court panel determined that as a result, if they had reached the merits of Juvenile's challenge to the sufficiency of the evidence to support the trial court's decision to find him responsible for wantonly and willfully burning a schoolhouse in violation of N.C. Gen.Stat. § 14-60, they would have found that the evidence was sufficient to support a finding of responsibility.

The Court of Appeals held that a careful examination of the record demonstrated that the evidence sufficiently supported the trial court's decision to find Juvenile responsible for disorderly conduct under the second prong of the offense defined in N.C. Gen.Stat. § 14-288.4(a)(6). According to the record evidence, Juvenile intentionally gave the lighter to the other student for the purpose of enabling him to get a better view of the pipe chase. The only way that the other student could have utilized the lighter for the purpose of better examining the pipe chase was to employ the lighter to generate a flame of some sort. The resulting fire was the natural consequence of Juvenile's decision to give the lighter to the other student. In addition, anyone of Juvenile's age and experience could have readily foreseen that the use of the lighter to generate a flame for the purpose of illuminating a darkened area created a significant risk that some sort of a fire would occur. Any fire in a school facility is likely to result in a disruption of the educational process given the necessity for school administrators to ensure student safety. Thus, Juvenile's intentional conduct led directly to a disruption of the educational process for the school's students.

For these reasons, the Court of Appeals concluded that Juvenile's challenges to the trial court's decision to find him responsible for wantonly and willfully burning a schoolhouse in violation of N.C. Gen.Stat. § 14-60 and disorderly conduct in violation of N.C. Gen.Stat. § 14-288.4(a)(6) did not justify appellate relief and the trial court's adjudication and disposition orders were affirmed.

In re J.D.R., COA09-1340, 2010 WL 3465277 (N.C.App. Sept. 7, 2010) (Unpublished Disposition)(An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority. Citation is disfavored, but may be permitted in accordance with the provisions of Rule 30(e)(3), N.C. Rules of Appellate Procedure.)

Submitted by the NCIAAI Chapter Attorney on 9/9/10

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