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IN THE MATTER OF: K.F., Juvenile Respondent

NO. COA04-293

COURT OF APPEALS OF NORTH CAROLINA

*2005 N.C. App. LEXIS 40*November 15, 2004, Heard in the Court of Appeals
January 4, 2005, Filed

NOTICE: [*1] PURSUANT TO RULE 32(b), NORTH CAROLINA RULES OF APPELLATE PROCEDURE, THIS DECISION IS NOT FINAL UNTIL EXPIRATION OF THE TWENTY-ONE DAY REHEARING PERIOD. THIS IS AN UNPUBLISHED OPINION. PLEASE REFER TO THE NORTH CAROLINA RULES OF APPELLATE PROCEDURE FOR CITATION OF UNPUBLISHED OPINIONS.

SUBSEQUENT HISTORY: Reported at *In re K.F.*, 606 S.E.2d 459, 2005 N.C. App. LEXIS 89 (N.C. Ct. App., Jan. 4, 2005)

PRIOR HISTORY: From Robeson County. No. 03 J 176.

DISPOSITION: Reversed.

COUNSEL: Attorney General Roy Cooper, by Assistant Attorney General Lori A. Kroll, for the State.

Jon W. Myers, Attorney for Respondent-Appellant.

JUDGES: MARTIN, Chief Judge. Judges McCullough and Steelman concur.

OPINION BY: MARTIN

OPINION:

Appeal by respondent from judgment entered 4 November 2003 by Judge James Gregory Bell in a Juvenile Session of Robeson County District Court. Heard in the Court of Appeals 15 November 2004.

MARTIN, Chief Judge.

Respondent appeals from a decision of the Robeson County District Court adjudicating him a delinquent juvenile as defined by *G.S. § 7B-1501(7)*.

At the time of the incident, respondent was an eighth grade student at Lumberton Junior High School in Lumberton, North Carolina. While respondent's regular teacher was away and the class was with a substitute, respondent allegedly disrupted the [*2] class by getting out of his seat, changing the television channel from the approved channel, and talking excessively. The substitute reported the behavior to the regular teacher, who sent a discipline referral to the assistant principal the following day.

Mr. Peavy, the assistant principal, called respondent to his office. His office was separated from the main hallway by a smaller hallway approximately six to seven feet in length. The small hallway connected three interior offices, one of which belonged to Officer Frank Scott, the School Resource Officer. Mr. Peavy informed respondent that he would receive a three-day suspension for his behavior. During the conversation, both Mr. Peavy and respondent began raising their voices. Officer Scott heard the raised voices from his office next door and went to investigate. Respondent then stated "fuck this shit." Mr. Peavy informed him he would receive additional days of suspension for his profanity, and respondent jumped up and went into the small hallway.

While in the hallway, respondent continued to talk loudly and use profane language. Respondent walked towards the main hall, and Officer Scott restrained him with handcuffs just as [*3] he reached it. There was conflicting evidence as to whether or not there were any other students in the main hall at the time. Mr. Peavy testified that classes were changing and students were walking by, but Officer Scott could not remember any other students present in the hall at the time.

Respondent was charged with disorderly conduct pursuant to *G.S. § 14-288.4(a)(6)*. The juvenile petition alleged only the incident in the assistant principal's office, not respondent's behavior in the classroom the day before. It described the offending behavior as "jumping

up in Mr. Peavy's office and saying, 'fuck the shit,' and then walking out of the principal's office" (as amended in open court on the State's motion).

The trial court found that respondent "engaged in conduct that disrupted the peace, order and discipline at Lumberton Junior High School, by jumping up while in Assist. Principal Peavy's office, using the 'F' word three or four times, walking out during the middle of classes changing" and adjudicated respondent delinquent. The court extended respondent's existing probation by six months, ordered him to spend fourteen days in juvenile detention, [*4] and required him to submit to any out-of-home placement or other treatment as recommended by the Department of Juvenile Justice, specifically the Eckerd Youth Alternatives Program.

G.S. § 14-288.4(a)(6) defines disorderly conduct as "a public disturbance intentionally caused by any person who . . . (6) disrupts, disturbs or interferes with the teaching of students at any public or private educational institution or engages in conduct which disturbs the peace, order or discipline at any public or private educational institution or on the grounds adjacent thereto." Our Supreme Court, in *State v. Wiggins*, 272 N.C. 147, 158 S.E.2d 37 (1967), cert. denied, 390 U.S. 1028, 20 L. Ed. 2d 285, 88 S. Ct. 1418 (1968), described disorderly conduct as "a substantial interference with, disruption of and confusion of the operation of the school in its program of instruction and training of students there enrolled." *Id.* at 154, 158 S.E.2d at 42. Although the Court in that case was construing G.S. § 14-273 (repealed in 1983), the language also applies to G.S. § 14-288.4(a)(6). In *re Eller*, 331 N.C. 714, 717-18, 417 S.E.2d 479, 481-82 (1992); [*5] See also *In re Grubb*, 103 N.C. App. 452, 454, 405 S.E.2d 797, 798 (1991); *In re Brown*, 150 N.C. App. 127, 130, 562 S.E.2d 583, 585 (2002). The State argues that respondent's behavior in Mr. Peavy's office constituted a "substantial interference" with the school's course of instruction. We disagree. *

The Supreme Court and this Court have found a substantial interference where classes have been so disrupted they are unable to continue. In *Wiggins*, a brick-laying class was effectively stopped because civil rights demonstrators were picketing outside the school and the teacher could not retain the students' attention. The classes inside the school building were also in a state of disorder because of the demonstration. In *State v. Midgett*, 8 N.C. App. 230, 174 S.E.2d 124 (1970), a group of students took over the school office, barricaded themselves in the office, turned over cabinets, and operated the school's bells at odd hours. School had to be let out early because of the disruption.

Minor classroom disruptions have been held insufficient to constitute disorderly conduct. Repeatedly knock-

ing on a radiator during class was found [*6] not to be a substantial interference with the operation of a school and its course of instruction. In *re Eller*, 331 N.C. 714, 417 S.E.2d 479 (1992). Nor was talking loudly, causing the teacher to reprimand the student several times during class, considered a substantial interference. In *re Grubb*, 103 N.C. App. 452, 405 S.E.2d 797 (1991). Here, respondent's behavior in Mr. Peavy's office did not disrupt a classroom, interfere with the instruction of other students, or cause the dismissal of any class or the entire school.

Our courts have also found a substantial interference with the operation of a school where a student's conduct forces a teacher to leave his or her assigned duties and that conduct is exacerbated by the student's use of profanity. In *In re Pineault*, 152 N.C. App. 196, 566 S.E.2d 854 (2002), disc. review denied, 356 N.C. 302, 570 S.E.2d 728 (2002), a student was taken to the principal's office for his use of profanity towards the teacher and another student. The incident required "the attention of several school officials including the principal, teachers, and the assistant principal. As a consequence [*7] of respondent's behavior, these officials stopped teaching and performing various administrative duties to attend to him." *Id.* at 200, 566 S.E.2d at 857. The Court held that "given the severity and nature of respondent's language, coupled with the fact that Ms. Carlson was required to stop teaching her class for at least several minutes, . . . respondent's actions substantially interfered with the operation of Ms. Carlson's classroom in the manner contemplated in *Wiggins*." *Id.* at 199, 566 S.E.2d at 857. Similarly, in *In re M.G.*, 156 N.C. App. 414, 576 S.E.2d 398 (2003), a student yelled profanity at a group of students in the hallway, and a teacher had to leave his assigned lunch duties to report the incident. He was away from his assigned post for several minutes. In the present case, however, no teacher had to leave other students to deal with respondent's behavior. The incident was contained mostly in Mr. Peavy's office and the interior hallway. Even if students were changing classes when Officer Scott restrained respondent in or near the main hallway, the students were between classes and no course of instruction was interrupted. [*8] Respondent's actions do not rise to the level of interference necessary to constitute a substantial interference with the operation of a school or its course of instruction. We cannot agree with the trial court that the evidence supported a finding of disorderly conduct as contemplated by G.S. § 14-288.4(a)(6) or by our Supreme Court in *Wiggins*, which must control our decision. Therefore, we are compelled to hold that the trial court should have granted respondent's motion to dismiss at the end of the State's evidence.

LEXSEE 150 N.C. APP. 127

IN THE MATTER OF: CHRISTOPHER BROWN

NO. COA00-1501

COURT OF APPEALS OF NORTH CAROLINA

*150 N.C. App. 127; 562 S.E.2d 583; 2002 N.C. App. LEXIS 401*December 4, 2001, Heard in the Court of Appeals
May 7, 2002, Filed

PRIOR HISTORY: [***1] Appeal by juvenile from order entered 15 August 2000 by Judge Shelly S. Holt in New Hanover County District Court.

DISPOSITION: Reversed.

HEADNOTES: Schools and Education-disorderly conduct-juvenile adjudication-insufficient evidence

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.

COUNSEL: Hall, Horne & Sullivan, L.L.P., by Patrick J. Mulligan, IV, for juvenile appellent.

Attorney General Roy Cooper, by Assistant Attorney General Donna D. Smith, for the State.

JUDGES: McCULLOUGH, Judge. Judges GREENE and CAMPBELL concur.

OPINION BY: McCULLOUGH

OPINION:

[**584] [*127] McCULLOUGH, Judge.

Respondent Christopher Brown was adjudicated delinquent on 8 August 2000 upon a violation of *N.C. Gen. Stat. § 14-288.4(a)(6)*, prohibiting disorderly conduct involving schools, at the 8 August 2000 Session of New Hanover County District Court. Respondent was ordered to be placed on probation for a period of 6 months, complete 24 hours of community service, have no similar

incidents to occur at school, and to continue in counseling.

The evidence for the State showed that on 17 March 2000, respondent was a student at Myrtle Grove Middle School. The teacher of his class was Katie Carbone, a student [***2] teacher at the time. On this day, Ms. Carbone was administering an algebra quiz.

According to Ms. Carbone, the class had been instructed that they would get a zero on the quiz if they talked during the quiz. Respondent was reprimanded "a time or two" for talking. Instead of [*128] giving respondent a zero, however, Ms. Carbone took him to a different classroom to finish the test.

When the time to take the test had expired, Ms. Carbone went to retrieve the respondent and his test. She found the respondent talking to another student also taking the test outside the classroom and became upset. Ms. Carbone reminded respondent that she could give him a zero, to which he replied, "Well give me a zero."

Respondent headed back to the classroom and slammed the door behind him. The slam was described as "really really loud right in [Ms. Carbone's] face." At this point Ms. Carbone called respondent back into the hallway. She began to write a "referral slip" to send respondent to the office. At this point respondent began begging the teacher not to send him to the office. He was crying and attempting to stay in front of her in an attempt to prevent her from going to the office. His actions were [***3] described as "kind of throwing a temper tantrum." Respondent held Ms. Carbone's arm in his attempt to block her. After being asked three or four times, respondent released Ms. Carbone after she told him that, "if you don't get your hands on [sic] me you are really gonna be in trouble." Respondent then ran to the office. Ms. Carbone arrived shortly afterward. She finished her referral slip and reported to her superior. She then returned to her class, which had been unattended throughout the incident.

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The student that respondent was speaking to in the hallway testified that respondent was reminding her to omit a certain problem on the quiz per Ms. Carbone's instructions when the teacher found them in the hallway. She and another student testified about respondent slamming the door as he entered the classroom and that the teacher got a referral slip and called respondent back out into the hallway. They described respondent's behavior as he and the teacher proceeded to the office. Their description matched that of Ms. Carbone's testimony in that respondent cried and protested being taken to the office.

Respondent testified at the hearing. He admitted slamming the door, although he [***4] said it was not his intent to slam the door or to do so in the teacher's face. He admitted to crying and being upset as he was being written up and taken to the office. Respondent explained that he was upset because his stepfather may hold him back a grade. Respondent's stepfather testified as to respondent's punishment and current behavior.

[**585] [*129] At the time of the hearing, respondent was 13 years old. Respondent made a motion to dismiss the charges which was denied at the close of the State's evidence. The trial court found:

That there was sufficient evidence to prove the juvenile did as set out in the petition.

That on or about the 17th day of March 2000, the juvenile unlawfully and willfully did intentionally cause a public disturbance at Myrtle Grove Middle School, Wilmington, NC, by engaging in conduct which disturbs the peace, order or discipline at any public educational institution. This conduct consisted of the [respondent's] talking during a quiz, refusing to follow instructions; slamming the door in the teacher's face and tried to restrict her from going to the office. This is in violation of *G.S. 14-288.4(a)(6)*.

I.

Respondent's sole assignment [***5] of error is that the trial court abused its discretion by denying respondent's motion to dismiss. Respondent contends that the record is devoid of any evidence of a substantial interruption of the course of instruction at the school.

"In order to withstand a motion to dismiss the charges contained in a juvenile petition, there must be substantial evidence of each of the material elements of the offense charged." *In re Bass*, 77 N.C. App. 110, 115, 334 S.E.2d 779, 782 (1985). The evidence must be considered in the light most favorable to the State, and the State is entitled to receive every reasonable inference of fact that may be drawn from the evidence. *State v. East-erling*, 300 N.C. 594, 268 S.E.2d 800 (1980).

N.C. Gen. Stat. § 14-288.4(a)(6) prohibits the following:

(a) Disorderly conduct is a public disturbance intentionally caused by any person who:

* * * *

(6) Disrupts, disturbs or interferes with the teaching of students at any public or private educational institution or engages in conduct which disturbs the peace, order or discipline at any public or private educational institution or on the grounds adjacent [***6] thereto.

N.C. Gen. Stat. § 14-288.4(a)(6) (1999).

[*130] The definitive case on the meaning of the "disruptive conduct" is *State v. Wiggins*, 272 N.C. 147, 158 S.E.2d 37 (1967), cert. denied, 390 U.S. 1028, 20 L. Ed. 2d 285, 88 S. Ct. 1418 (1968) (construing N.C. Gen. Stat. § 14-273 (1953) (repealed 1971)). In *Wiggins*, our Supreme Court said,

when the words "interrupt" and "disturb" are used in conjunction with the word "school," they mean to a person of ordinary intelligence a substantial interference with, disruption of and confusion of the operation of the school in its program of instruction and training of students there enrolled.

Wiggins, 272 N.C. at 154, 158 S.E.2d at 42.

This Court has continued to follow the *Wiggins* case since the enactment of the current disorderly conduct statute *N.C. Gen. Stat. § 14-288.4*. In *In re Grubb*, 103 N.C. App. 452, 405 S.E.2d 797 (1991), this Court said, "The fact that the word "interrupt" does not appear in the present statute does not change the plain meaning of the language contained [***7] therein. The conduct in question must substantially interfere with the operation of school." *Grubb*, 103 N.C. at 454, 405 S.E.2d at 798.

Previous decisions by this Court and the Supreme Court shed light on the level of interference required to sustain a conviction of disorderly conduct in the school scenario. In *Wiggins*, students picketed a high school. The students were protesting alleged racial inequality. Testimony in that case showed that classes stopped because students were leaving their seats and classrooms to see the demonstration. A class that was being conducted outside on the school grounds had to be canceled. The disorder in the entire school created as a direct result of the picketing sustained the convictions of the defendants of disorderly conduct. *Wiggins*, 272 N.C. at 150-52, 158 S.E.2d at 39-41.

In *State v. Midgett*, 8 N.C. App. 230, 174 S.E.2d 124 (1970), defendants took over the school office. In fact, they were so bold as to tell the school's secretary that

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"they were [**586] going to interrupt [the school] that day." *Midgett*, 8 N.C. App. at 231, 174 S.E.2d at 126. Defendants barricaded themselves [***8] in the office, overturned cabinets, and operated the school's bell system. *Id.* The disruption of the school's proper functioning was so great that it necessitated early dismissal. *Id.* at 233, 174 S.E.2d at 127. This Court held that the evidence "amply" satisfied the statute and affirmed the convictions. *Id.* at 234, 174 S.E.2d at 128.

[*131] On the other hand, this Court reversed a conviction (denial of motion to dismiss) of disorderly conduct under *N.C. Gen. Stat. § 14-288.4(a)(6)* in *Grubb*, 103 N.C. App. 452, 405 S.E.2d 797. Respondent momentarily disrupted class when she was talking loud during class. She had to be reprimanded several times before she would cease the loud talking. The *Grubb* Court held that this evidence alone was insufficient upon which to base a conviction, and respondent's motion to dismiss should have been granted.

The Supreme Court also reversed a disorderly conduct conviction for substantially interfering with school in *In re Eller*, 331 N.C. 714, 417 S.E.2d 479 (1992). In that case, the teacher saw one defendant swing something at another student. Upon first inquiry, [***9] that defendant willingly gave the teacher a carpenter's nail he had in his hand. On another occasion, that same defendant was joined by another student in banging the classroom's radiator while class was being conducted. They did so a couple of times, distracting the class of 15 each time. The Supreme Court held that the evidence did not show substantial interference within the meaning of *Wiggins*. *Id.* at 718, 417 S.E.2d at 482.

The evidence in the case *sub judice* shows a student who talked during a test, slammed a door, and begged a teacher in the hallway that he not be sent to the office. It is probable that some students were briefly distracted by the door slam and the sounds of a student crying in the hallway. We also note that the class was without its teacher while this occurred. The record does not reveal

how long the teacher was away, but it does not seem to have lasted more than several minutes. We hold that this evidence is insufficient to show a substantial interference with the operation of the school.

This Court does not doubt that when students act as respondents in this case, they are troublesome and a burden in the classroom. These are the [***10] trials faced by teachers in today's schools. But if we were to hold that the present actions are of such gravity that they warrant a conviction of disorderly conduct, every child that is sent to the office for momentary lapses in behavior could be convicted under such precedent.

As the *Eller* Court stated,

while egregious behavior such as that condemned in *Wiggins* and *Midgett* is not required to violate *N. C.G.S. § 14-288.4(a)(6)*, more than that present in the case at bar is necessary.

[*132] Further support for our view is found in the location of *N. C.G.S. § 14-288.4(a)(6)* within our statute books. The statute is contained within Article 36A, which concerns "Riots and Civil Disorders." This article was passed by our legislature in 1969, amid the concern generated by the tumult of the dramatic civil unrest gripping the nation and this state in the late 1960's. To say that the relatively modest disturbances caused by respondents in the instant case do not rise to this level of concern would appear self-evident.

Eller, 331 N.C. at 719-20, 417 S.E.2d at 483.

Because we hold it was error to deny respondent's [***11] motion to dismiss, the adjudication of respondent as a juvenile delinquent is

Reversed.

Judges GREENE and CAMPBELL concur.

**SCHOOL RESOURCE OFFICERS:
WHAT WE KNOW, WHAT WE THINK WE KNOW, WHAT WE NEED TO KNOW**

by

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originally for

School Safety Strategic Planning Meeting
United States Department of Justice
April, 1999

revised
June 2001

Introduction

With more attention being paid to the safety of young people while they are at school, many communities are considering strategies which are intended to make schools safer environments. Although statistics on school crime and violence convey that such crime and violence are not necessarily occurring in greater numbers, there is, at a minimum, anecdotal evidence which suggests that the types of incidents which are taking place on school property may be more severe in nature and may be having marked negative impact on the educational processes for which schools are responsible. Additionally, media coverage of the tragic shootings which occurred during the 1990s school year has motivated many communities to act.

One of the ways communities are taking action is by making decisions that law enforcement officers of some type need to be assigned to provide coverage to schools so that safety, security, and order can be better maintained. The underlying rationale which is being employed by communities is that a given school's crime and violence problems are not just that school's problems but are reflective of community problems. Such a rationale leads to consideration of community approaches. Hence, in many communities the "School Resource Officer" (SRO) approach is being considered.

The following report will examine where we stand with reference to the SRO approach as we head into the next century. It will cover what we know about SROs at this point, what we think we know, and what we need to know. Much of the information which will be offered is reflective of work which focuses on SROs carried out since 1994 by the Center for the Prevention of School Violence, a division of the North Carolina Department of Juvenile Justice and Delinquency

Prevention, located in Raleigh, North Carolina. As the following imparts, what we know with certainty about SROs is minimal, what we think we know is quite extensive, and what we need to know will keep us busy well beyond the beginning of the next century.

What We Know

As stated above, what we know about SROs with certainty is minimal. From our work, we know that the term "School Resource Officer" is increasingly being used. The initial work the Center for the Prevention of School Violence did in 1994 which focused on SROs often received by law enforcement and education professionals as well as lay persons with questions about what the letters "S" "R" "O" represent. Now, the acronym "SRO" is gaining meaning. Inquiries to the Center from across the country provide evidence that what once was met with question is now increasingly being used.

That is not to say that what we know with certainty is that everyone understands what "SRO" represents. In fact, what we know with certainty is that many still do not know, and, of those that do, we know with certainty that their definitions of the term differ. In fact, what we know with certainty is that there is no one standardized definition for what a "School Resource Officer" is. The requests for proposals for the "Safe Schools/Healthy Students Initiative," sponsored by the Departments of Education, Health and Human Services, and Justice, in 1998 provided for the first time a federal definition for "School Resource Officer" to which practitioners at the school district level across the country have been exposed:

A career law enforcement officer, with sworn authority, deployed in community-oriented policing, and assigned by the employing police department or agency to work in collaboration with schools and community-based organizations to: (a) address crime and disorder problems, gangs, and drug activities affecting or

occurring in or around an elementary or secondary school; (b) develop or expand crime prevention efforts for students; (c) educate likely school-age victims in crime prevention and safety; (d) develop or expand community justice initiatives for students; (e) train students in conflict resolution, restorative justice, and crime awareness; (f) assist in the identification of physical changes in the environment that may reduce crime in or around the school; and (g) assist in developing school policy that addressed crime and recommend procedural changes (Safe Schools/Healthy Students Initiative).

The National Association of School Resource Officers (NASRO) defines “School Resource Officer”:

Officers [who] promote a better understanding of our laws, why they were enacted and their benefits. They provide a visible and positive image for law enforcement. They serve as a confidential source of counseling to students concerning problems they face. They bring expertise into schools that will help young people make more positive choices in their lives. They also work to protect the school environment and to maintain an atmosphere where teachers feel safe to teach and students feel safe enough to learn (NASRO web site).

The Center for the Prevention of School Violence’s definition of “School Resource Officer,” developed after the initial years of research and based upon encounters with law enforcement officers throughout the country who are assigned to schools, exists as a third definition:

An SRO is a certified law enforcement officer who is permanently assigned to provide coverage to a school or a set of schools. The SRO is specifically trained to perform three roles: law enforcement officer; law-related counselor; and law-related education teacher. The SRO is not necessarily a DARE officer (although many have received such training), security guard, or officer who has been placed temporarily in a school in response to a crisis situation but rather acts as a comprehensive resource for his/her school (Center for the Prevention of School Violence material).

Although these definitions have much in common, each defines “School Resource Officer” differently with different emphases. Since each comes from well recognized sources, each definition may be perceived as THE definition of SRO. Thus, what we know with certainty is that there is no one agreed upon standardized definition for SRO.