In the Matter of T.K.: Does a Student's Use of Profanity in the Hallway Constitute Disorderly Conduct at School?

Update: On June 5, 2017, the NC Supreme Court allowed the state's motion for a temporary stay of the Court of Appeals' opinion in *T.K.*, which indicates that further appellate review is possible. Pursuant to NC Rules of Appellate Procedure 15(b) and 32(b), the state has until June 20, 2017, to file a petition for discretionary review of the Court of Appeals' opinion.

Last month, the Court of Appeals decided *In the Matter of T.K.*, __ N.C. App.__ (May 16, 2017), which vacated an adjudication of delinquency for disorderly conduct based upon a jurisdictional error. The court held that a court counselor's failure to sign the juvenile petition and mark it "Approved for Filing," as required by G.S. 7B-1703(b), deprived the trial court of subject matter jurisdiction. Some juvenile advocates are celebrating the decision because it declined to extend the holding of *In re D.S.*, 364 N.C. 184 (2010), which held that the timelines imposed by G.S. 7B-1703(b) are *not* prerequisites to subject matter jurisdiction. While *T.K.*'s holding is significant, it was the concurring opinion's detailed analysis of the disorderly conduct adjudication that grabbed my attention. It concludes that even absent the jurisdictional error, there was no evidence of disorderly conduct and appears to question why the juvenile petition was ever filed. The case serves as a good reminder of the required elements of disorderly conduct, a frequently charged school-based offense.

The Facts

Thomas (a pseudonym used by the court) was a student at Goldsboro High School. On the morning of the incident, he approached the school's behavioral specialist, Mr. Wooten, and told Mr. Wooten that he did not want to get into trouble, so he was going to stand in the hallway beside Mr. Wooten until school started. Soon thereafter, another student walked up to Thomas and punched him in the face. Thomas fell to the floor and the other student continued punching him, as more students gathered to watch. Thomas put up an arm to defend himself and threw one or two punches before Mr. Wooten and another school official broke up the fight.

As Mr. Wooten escorted Thomas to his office, he heard Thomas utter "profanity" but could not recall any particular words or phrases that Thomas used. When Mr. Wooten instructed Thomas to stop "cursing," Thomas complied. There was no evidence that anyone other than Mr. Wooten heard the profanity, although other students were in the hallway. After Thomas calmed down, he told Mr. Wooten that he and the other student had a disagreement about something a week earlier, which led to an argument that morning in the cafeteria. Thomas did not want to get into trouble because he was on juvenile probation and was almost done. Therefore, to avoid trouble, he went to Mr. Wooten in the hallway.

The state filed juvenile petitions against Thomas for both simple affray and disorderly conduct at school, but dismissed the simple affray petition before trial. The disorderly conduct petition alleged that Thomas violated G.S. 14-288.4(a)(6) by "arguing loudly in a Goldsboro High School hallway with another student, which ultimately led to a physical altercation in the Goldsboro High School hallway." (See the Court of Appeals opinion)

The Law

G.S. 14-288.4(a)(6) provides that:

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

...

(6) [d]isrupts, 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.

The NC Supreme Court has held that the intentional conduct must cause "a substantial interference with, disruption of, and confusion of the operation of the school in its program of instruction and training of students[.]" *State v. Wiggins*, 272 N.C. 147, 154 (1967).

There is no bright-line rule for what constitutes a "substantial interference," but appellate courts tend to uphold disorderly conduct adjudications based upon: (1) the use of vulgar language or profanity, (2) aggressive or violent behavior, or (3) disruptive behavior serious enough to require teachers or other school officials to abandon their normal duties in order to discipline the student. *In re S.M.*, 190 N.C. App. 579, 583-84 (2008). *See also*,

- *In re M.J.G.*, 234 N.C. App. 350 (2014), where the juvenile shouted profanities at two teachers in a hallway, put his finger in their faces, "postured up chest to chest," calling one of them a "mother-f***ing b****" and had to be physically removed by an SRO; and
- *In re Pineault*, 152 N.C. App. 196 (2002), where the juvenile yelled "f__ you" in a loud, angry voice, requiring the teacher to stop class for several minutes in order to escort the juvenile to the principal's office, and the juvenile twice yelled profanities at the teacher as she escorted him out of class, evincing a clear disrespect for her authority.

On the other hand, "ordinary misbehavior or rule-breaking" that causes a minor disruption to the classroom or school is insufficient. *S.M.*, 190 N.C. App. at 584. *See also*,

- *In re S.M.*, 190 N.C. App. 579 (2008), where the juvenile and a friend were walking and giggling in a hallway when they should have been in class but there was no substantial disruption of the school or classroom instruction, and there was no evidence the juvenile

was aggressive or violent or used vulgar language; and
- *In re Grubb*, 103 N.C. App. 452 (1991), where the juvenile was talking during class in a loud and disruptive voice, but stopped talking when the teacher asked her to a second time.

The Concurring Opinion in *T.K.*

Although it was unnecessary to address the insufficiency of the evidence in Thomas's case given the jurisdictional error, Judge Stroud felt "compelled" to do so. Her concurring opinion outlines the requirements of G.S. 14-288.4(a)(6), as interpreted by prior decisions, and provides a lengthy discussion of why the evidence in this case falls short. Specifically, she found there was no evidence of either an *intention to disturb* or an *actual disturbance* of the school, as required by the statute.

The juvenile petition alleged that Thomas "argu[ed] loudly in a . . . . hallway with another student" *prior* to the altercation, but his adjudication of delinquency was based solely on his use of "profanity" *after* he had "just been punched in the face." Judge Stroud found that this language was a response to being attacked and not an intent to "disrupt, disturb or interfere with the teaching of students." The fact that Thomas stopped "cussing" when Mr. Wooten instructed him to further indicated a lack of intent to disrupt the school.

Judge Stroud also found there was no evidence of an actual disruption of the school by Thomas's profanity because Mr. Wooten was the only person who heard it. Even assuming that other students who were in the hallway heard it, there was no evidence that any class or school activity was interrupted, since classes had not yet begun for the day. Furthermore, Thomas did not take Mr. Wooten away from his normal work duties because as the behavioral specialist, "helping Thomas was Mr. Wooten's work duty."

Beyond finding a lack of evidence to support the adjudication, Judge Stroud also emphasized that Thomas was the victim in this case and tried to do "the right thing" when he sought assistance from Mr. Wooten. Mr. Wooten testified at trial that as part of his role as a behavioral specialist, he encourages students to turn to him for help instead of trying to "fight your [own] battles." In this case, when trouble did occur, all parties agreed, "Thomas did exactly that - - he walked away from the issue in the cafeteria and went to Mr. Wooten for help."

In addition to the jurisdictional debate, *T.K.* will likely spark discussions about school-based offenses and appropriate responses to student misconduct, which I have previously written about here. What are your thoughts and reactions to this case? Please share.