

817 S.E.2d 174
Supreme Court of North Carolina.

STATE of North Carolina
v.
Felix Ricardo SALDIERNA

No. 271PA15-2
|
Filed August 17, 2018

Synopsis

Background: After juvenile's motion to suppress was denied, he entered a negotiated plea in the Superior Court, Mecklenburg County, [Forrest Donald Bridges](#) and [Jesse B. Caldwell, JJ.](#), to conspiracy to commit breaking or entering. Juvenile appealed. The Court of Appeals, [242 N.C. App. 347, 775 S.E.2d 326](#), reversed and remanded. The State petitioned for discretionary review. The Supreme Court, [369 N.C. 401, 794 S.E.2d 474](#), reversed and remanded. The Court of Appeals, [803 S.E.2d 33](#), reversed and remanded. The State sought discretionary review.

[Holding:] The Supreme Court, [Ervin, J.](#), held that evidence supported finding that juvenile knowingly and voluntarily waived his juvenile rights.

Reversed.

[Beasley, J.](#), filed a dissenting opinion.

West Headnotes (12)

[1] Infants

🔑 Scope, Standards, and Questions on Review

Infants

🔑 Manner and conduct of proceedings; evidence

The standard of review in evaluating the denial of a motion to suppress in a juvenile delinquency proceeding is whether competent evidence supports the trial court's findings of

fact and whether the findings of fact support the conclusions of law.

[Cases that cite this headnote](#)

[2] Infants

🔑 Manner and conduct of proceedings; evidence

The trial court's findings of fact in a juvenile delinquency proceeding are conclusive on appeal if supported by competent evidence, even if the evidence is conflicting.

[Cases that cite this headnote](#)

[3] Infants

🔑 Questions considered

The conclusions of law made by the trial court from its findings of fact in a juvenile delinquency proceeding are fully reviewable on appeal.

[Cases that cite this headnote](#)

[4] Infants

🔑 Manner and conduct of proceedings; evidence

An appellate court accords great deference to the trial court in a juvenile delinquency proceeding because it is entrusted with the duty to hear testimony, weigh and resolve any conflicts in the evidence, find the facts, and then, based upon those findings, render a legal decision, in the first instance, as to whether or not a constitutional violation of some kind has occurred.

[Cases that cite this headnote](#)

[5] Infants

🔑 Evidence as to circumstances and voluntariness

The State bears the burden of demonstrating that the juvenile's waiver of his or her rights during custodial interrogation was knowingly and intelligently made, and an express written waiver, while strong proof of the validity of the waiver, is not inevitably sufficient to

establish a valid waiver. [N.C. Gen. Stat. Ann. § 7B-2101\(a\)](#).

[Cases that cite this headnote](#)

[6] Infants

 [Warnings and counsel;waivers](#)

Whether a juvenile's waiver of his or her rights during custodial interrogation is knowingly and intelligently made depends on the specific facts and circumstances of each case, including the background, experience, and conduct of the accused. [N.C. Gen. Stat. Ann. § 7B-2101\(a\)](#).

[Cases that cite this headnote](#)

[7] Infants

 [Warnings and counsel;waivers](#)

The court is required to look at the totality of the circumstances surrounding the statement in order to determine whether the State has adequately established that a juvenile's waiver of his or her rights during custodial interrogation was knowingly and intelligently made. [N.C. Gen. Stat. Ann. § 7B-2101\(a\)](#).

[Cases that cite this headnote](#)

[8] Infants

 [Warnings and counsel;waivers](#)

The totality-of-the-circumstances approach is adequate to determine whether there has been a waiver of rights even where interrogation of juveniles is involved.

[Cases that cite this headnote](#)

[9] Infants

 [Warnings and counsel;waivers](#)

When considering a waiver of rights, the totality-of-the-circumstances approach permits, indeed, it mandates, inquiry into all the circumstances surrounding the interrogation of juvenile, including evaluation of the juvenile's age, experience, education, background, and intelligence, and into whether he has the capacity to understand the

warnings given him, the nature of his rights, and the consequences of waiving those rights.

[Cases that cite this headnote](#)

[10] Infants

 [Warnings and counsel;waivers](#)

In applying the totality-of-the-circumstances test in cases involving the custodial interrogation of juveniles, the record must be carefully scrutinized, with particular attention to both the characteristics of the accused and the details of the interrogation.

[Cases that cite this headnote](#)

[11] Infants

 [Warnings and counsel;waivers](#)

Defendant's juvenile status does not compel a determination that he did not knowingly and intelligently waive his *Miranda* rights; instead, the juvenile's age is a factor to consider along with the characteristics of the accused and the details of the interrogation.

[Cases that cite this headnote](#)

[12] Infants

 [Evidence as to circumstances and voluntariness](#)

Evidence supported finding that juvenile knowingly and voluntarily waived his juvenile rights; police detective advised juvenile of his rights in spoken English, written Spanish, and written English, juvenile initialed each of the rights enumerated on the juvenile rights waiver form that police detective reviewed with him and signed the juvenile rights waiver form in such a manner as to indicate that he had decided to waive his juvenile rights and to speak with detective without the presence of a parent, guardian, custodian, or attorney, and juvenile answered affirmatively when asked if he understood his rights.

[Cases that cite this headnote](#)

On discretionary review pursuant to N.C.G.S. § 7A-31 of a unanimous decision of the Court of Appeals, — N.C. App. —, 803 S.E.2d 33 (2017), reversing an order denying defendant’s motion to suppress entered on 20 February 2014 by Judge [Forrest Donald Bridges](#), vacating a judgment entered on 4 June 2014 by Judge [Jesse B. Caldwell](#), both in Superior Court, Mecklenburg County, and remanding the case for further proceedings after the Supreme Court of North Carolina remanded the Court of Appeals’ prior decision in this case, *State v. Saldierna*, 242 N.C. App. 347, 775 S.E.2d 326 (2015). Heard in the Supreme Court on 14 May 2018 in session in the Old Burke County Courthouse in the City of Morganton pursuant to N.C.G.S. § 7A-10(a).

Attorneys and Law Firms

*175 [Joshua H. Stein](#), Attorney General, by [Kimberly N. Callahan](#), Assistant Attorney General, for the State-appellant.

Goodman Carr, PLLC, Charlotte, by [W. Rob Heroy](#), for defendant-appellee.

Opinion

[ERVIN](#), Justice.

The issue before the Court in this case is whether the trial court’s order denying defendant’s suppression motion contained sufficient findings of fact to support its conclusion that defendant knowingly and voluntarily waived his juvenile rights pursuant to N.C.G.S. § 7B-2101 before making certain *176 incriminating statements. After careful consideration of defendant’s challenge to the denial of his suppression motion in light of the record and the applicable law, we hold that the trial court’s order contained sufficient findings to support this conclusion and reverse the decision of the Court of Appeals to the contrary.

From 26 November 2012 to 3 January 2013, defendant Felix Ricardo Saldierna and seven other individuals were involved in a series of breakings and enterings that occurred in the Charlotte area. After coming home from work on 17 December 2012, Cheryl Brewer¹ discovered that someone had entered her residence through a broken window, scrawled “Merry Chritmas” [sic] across a wall, and stolen a 32-inch television and a lock box. On 18 December, a 42-inch television, an Xbox game system, and

jewelry were stolen from the residence of William Nunez. Another individual suspected in the commission of these crimes told investigating officers that defendant had been involved in the underlying break-ins. In January 2013, warrants for arrest charging defendant with felonious breaking or entering and conspiracy to commit breaking or entering were issued. Based upon the issuance of these warrants for arrest, defendant was taken into custody at his home in Fort Mill, South Carolina.

After having been placed under arrest, defendant was transported to the York County Justice Center, where he was interviewed by Detective Aimee Kelly of the Charlotte-Mecklenburg Police Department. At the beginning of this interview, Detective Kelly informed defendant that she was required to inform him of his rights. Defendant responded to Detective Kelly’s statement by telling her that “my English is good, but like when you say something like that much it’s kind of confusing.” After stating that he was sixteen years old, defendant informed Detective Kelly that he was taking courses intended for both freshman and sophomore high school students. When Detective Kelly asked defendant if he could read, defendant responded in the affirmative before adding that he could read English “kind of, a little bit,” and that he could read Spanish. At that point, Detective Kelly told defendant that she would provide him with a copy of a juvenile rights waiver form in both English and Spanish so that he would be able to read along with her while she informed him of his rights. At the conclusion of this portion of their discussion, Detective Kelly and defendant had the following exchange:

[Kelly]: You understand I’m a police officer, right?

[Defendant]: Yes ma[']am[.]

[Kelly]: Ok, and that I would like to talk to you about this. And this officer has also explained to me and I understand that I have the right to remain silent, that means that I don’t have to say anything or answer any questions. Should be right there number 1 right on there. Do you understand that?

[Defendant]: [unintelligible] questions?

[Kelly]: Yes, that is your right? So do you understand that? If you understand that, put your initials right there showing that you understand that. On this sheet. On this one. You can put it on both. Anything I say can be used against me. Do you understand that?

[Defendant]: Yes ma[*]am.

[Kelly]: I have the right to have a parent[,] guardian or custodian here with me now during questioning. Parent means my mother, father, stepmother, or stepfather. Guardian means the person responsible for taking care of me. Custodian means the person in charge of me where I am living. Do you understand that? Do you want to read that?

[Defendant]: Yeah.

[Kelly]: Do you understand that?

[Defendant]: [no response]

[Kelly]: I have the right to talk to a lawyer and to have a lawyer here with me now to *177 advise and help during questioning. Do you understand that?

[Defendant]: [unintelligible]

[Kelly]: If I want to have a lawyer with me during questioning one will be provided to me at no cost before any questioning. Do you understand that?

[Defendant]: Yes ma[*]am.

[Kelly]: Ok. Now I want to talk to you about some stuff that's happened in Charlotte. And um, I will tell you this. There's been some friends of yours that have already been questioned about these items and these issues. And they've been locked up. And that's what I want to talk to you about. Do you want to help me out and to help me understand what's been going on with some of these cases and talk to me about this now here?

[Defendant]: Uh

[Kelly]: Are you willing to talk to me is what I'm asking.

[Defendant]: Yes ma[*]am.

[Kelly]: Ok. So I am 14 years or more. Let me see that pen. And I understand my rights as they've been explained by [D]etective Kelly. I do wish to answer questions now without a lawyer, parent, guardian or custodian here with me? My decision to answer questions now is made freely and is my own choice. No one has threatened me in any way or has promised me any special treatment because I have decided to answer

questions now. I am signing my name below. Do you understand this? Initial, sign, date and time.

[Kelly]: It is 1/9/13. It is 12:10PM.

[Defendant]: Um, Can I call my mom?

[Kelly]: Call your mom now?

[Defendant]: She's on her um. I think she is on her lunch now.

[Kelly]: You want to call her now before we talk?

[Kelly] [to other officers]: He wants to call his mom.

....

[Other Officer]: [S]tep back outside and we'll let you call your mom outside. ...

....

9:50: [Defendant] [can be heard on phone. Call is not intelligible.]

....

[Kelly]: 12:20: Alright Felix, so, let's talk about this thing going on. Like I said a lot of your friends have been locked up and everybody's talking. They're telling me about what's going on and what you've been up to. I'm not saying you're the ringleader of this here thing and some kind of mastermind right but I think you've gone along with these guys and gotten yourself into a little bit of trouble here. This is not something that's going to end your life. You know what I'm saying. This is not a huge deal. I know you guys were going into houses when nobody was home. You weren't looking to hurt anybody or anything like that. I just want to hear your side of the story. We can start off. I'm going to ask you questions I know the answer to. A lot of these questions are to tell if you're being truthful to me.

At that point, Detective Kelly interviewed defendant for approximately fifty-four minutes concerning the extent of his involvement in the commission of the crimes that Detective Kelly was investigating. During the course of the ensuing interrogation, defendant confessed to having been involved in the break-ins that had occurred at the residences of Ms. Brewer and Mr. Nunez.

On 22 January 2013, the Mecklenburg County grand jury returned bills of indictment charging defendant with two counts of conspiracy to commit felonious breaking, entering, and larceny and two counts of felonious breaking or entering. On 9 October 2013, defendant filed a motion seeking to have his confession and all of the evidence that the State had obtained as a result of the statements that defendant made to Detective Kelly suppressed on the grounds that his confession had been obtained as the result of violations of [N.C.G.S. § 7B-2101](#) and his federal constitutional right not to be deprived of liberty without due process of law. According to defendant, “[b]y asking to speak to his mother prior to questioning, [d]efendant invoked his rights under [N.C.G.S. § 7B-2101](#).” In addition, defendant alleged that, in light of his “indicat[ion] that *178 he was not ready to be questioned without her,” “[t]he interview should have ceased at that moment and not continued until [d]efendant’s mother was present, or should have simply ceased.”

On 31 January 2014, defendant’s suppression motion came on for hearing before Judge Forrest Donald Bridges in the Superior Court, Mecklenburg County. At the suppression hearing, Detective Kelly testified that, while defendant “spoke English clearly and understood what [she] was saying,” “[he] said he wasn’t very good at reading English.” Although Detective Kelly acknowledged that defendant might have claimed to have had “some issues understanding English,” she stated that defendant “seemed to very clearly understand what [she] was asking him” and that she had had no trouble understanding defendant at any point during the interview. Detective Kelly “found [defendant’s English] to be fine” and believed “that he understood [his juvenile] rights.” According to Detective Kelly, defendant followed along and initialed the relevant portions of the juvenile rights waiver form while she read his juvenile rights to him.

In addition, Detective Kelly asserted at the suppression hearing that defendant “never said he wanted his mother [at the interview].” On the other hand, Detective Kelly did not ask defendant “whether or not he was ready to proceed” after he requested to be allowed to speak with his mother. In fact, defendant had signed the juvenile rights waiver form before asking the investigating officers to give him an opportunity to call his mother. Detective Kelly had an “understanding” that defendant had called his mother “to let her know where he was and that he was arrested.”

On 20 February 2014, the trial court entered an order denying defendant’s suppression motion in which the court found as a fact:

1. That Defendant was in custody.
2. That Defendant was advised of his juvenile rights pursuant to [North Carolina General Statute § 7B-2101](#).
3. That Detective Kelly of the Charlotte-Mecklenburg Police Department advised Defendant of his juvenile rights.
4. That Defendant was advised of his juvenile rights in three manners. Defendant was advised of his juvenile rights in spoken English, in written English, and in written Spanish.
5. That Defendant indicated that he understood his juvenile rights as given to him by Detective Kelly.
6. That Defendant indicated he understood his rights after being given and reviewing a form enumerating those rights in Spanish.
7. That Defendant indicated that he understood that he had the right to remain silent. Defendant understood that to mean that he did not have to say anything or answer any questions. Defendant initialed next to this right at number 1 on the English rights form provided to him by Detective Kelly to signify his understanding.
8. That Defendant indicated he understood that anything he said could be used against him. Defendant initialed next to this right at number 2 on the English rights form provided to him by Detective Kelly to signify his understanding.
9. That Defendant indicated he understood that he had the right to have a parent, guardian, or custodian there with him during questioning. Defendant understood the word parent meant his mother, father, stepmother, or stepfather. Defendant understood the word guardian meant the person responsible for taking care of him. Defendant understood the word custodian meant the person in charge of him where he was living. Defendant initialed next to this right at number 3 on the English rights form provided to him by Detective Kelly to signify his understanding.

10. That Defendant indicated he understood that he had the right to have a lawyer and that he had the right to have a lawyer there with him at the time to advise and help him during questioning. Defendant initialed next to this right at number 4 on the English rights form provided to him by Detective Kelly to signify his understanding.

***179** 11. That Defendant indicated he understood that if he wanted a lawyer there with him during questioning, a lawyer would be provided to him at no cost prior to questioning. Defendant initialed next to this right at number 5 on the English rights form provided to him by Detective Kelly to signify his understanding.

12. That Defendant initialed a space below the enumerated rights on the English rights form that stated the following: "I am 14 years old or more and I understand my rights as explained by Detective Kelly. I DO wi[s]h to answer questions now, WITHOUT a lawyer, parent, guardian, or custodian here with me. My decision to answer questions now is made freely and is my own choice. No one has threatened me in any way or promised me special treatment. Because I have decided to answer questions now, I am signing my name below."

13. That Defendant's signature appears on the English rights form below the initialed portions of the form. Defendant's signature appears next to the date, 1-9-13, and the time, 12:10. Detective Kelly signed her name as a witness below Defendant's signature.

14. That after being informed of his rights, informing Detective Kelly he wished to waive those rights, and signing the rights form, Defendant communicated to Detective Kelly that he wished to contact his mother by phone. Defendant was given permission to do so.

15. That Defendant attempted to call his mother, but was unable to speak to her.

16. That Defendant indicated that his mother was on her lunch break at the time he tried to contact her.

17. That Defendant did not at that time or any other time indicate that he changed his mind regarding his desire to speak to Detective Kelly. That Defendant did not at that time or any other time indicate that he revoked his waiver.

18. That Defendant only asked to speak to his mother.

19. That Defendant did not make his interview conditional on having his mother present or conditional on speaking to his mother.

20. That Defendant did not ask to have his mother present at the interview site.

21. That, upon review of the totality of the circumstances, the Court finds that Defendant's request to speak to his mother was at best an ambiguous request to speak to his mother.

22. That at no time did Defendant make an unambiguous request to have his mother present during questioning.

23. That Defendant never indicated that his mother was on the way or could be present during questioning.

24. That Defendant made no request for a delay of questioning.

Based upon these findings of fact, the trial court concluded as a matter of law:

1. That the State carried its burden by a preponderance of the evidence that Defendant knowingly, willingly, and understandingly waived his juvenile rights.

2. That the interview process in this case was consistent with the interrogation procedures as set forth in [North Carolina General Statute § 7B-2101](#).

3. That none of Defendant's State or Federal rights were violated during the interview conducted of Defendant.

4. That statements made by Defendant were not gathered as a result of any State or Federal rights violation.

In light of these findings and conclusions, the trial court denied defendant's suppression motion.

On 4 June 2014, defendant entered a negotiated plea of guilty to two counts of felonious breaking or entering and two counts of conspiracy to commit breaking or entering while reserving the right to seek appellate review of the denial of his suppression motion.² ***180** Based upon defendant's plea, Judge Caldwell consolidated defendant's convictions for judgment and entered a

judgment sentencing defendant to a term of six to seventeen months imprisonment, with this sentence being suspended and defendant placed on supervised probation for a period of thirty-six months on the condition that defendant serve a forty-five day active sentence, for which he received forty-five days' credit for time spent in pretrial confinement; pay the costs; comply with the usual terms and conditions of probation; and have no contact with the victim.³ Defendant noted an appeal from Judge Caldwell's judgment to the Court of Appeals.

In seeking relief from the Court of Appeals, defendant argued that his request to call his mother during his conversation with Detective Kelly had constituted "an unambiguous invocation of his right to have a parent present during a custodial interrogation" and that, in the alternative, even if his request for the presence of his mother had been ambiguous, "[Detective] Kelly was required to make further inquiries to clarify whether he actually meant that he was invoking his right to end the interrogation until his mother was present." *State v. Saldierna*, 242 N.C. App. 347, 353, 775 S.E.2d 326, 330 (2015) (*Saldierna I*). In addition, defendant contended that the trial court had failed to "appropriately consider his juvenile status in determining that his waiver of rights was knowing and voluntary." *Id.* at 354, 775 S.E.2d at 331.

In holding that the trial court had erred by denying defendant's suppression motion, the Court of Appeals determined "that[, while] the findings of fact regarding the ambiguous nature of [defendant's] statement, 'Can I call my mom[,] are supported by competent evidence,' the 'ambiguous [nature of that] statement required [Detective] Kelly to clarify whether [defendant] was invoking his right to have a parent present during the interview.'" *Id.* at 360, 775 S.E.2d at 334. As a result, the Court of Appeals held "that the trial court erred in concluding that [Detective] Kelly complied with the provisions of section 7B-2101" and "reverse[d] the trial court's order, vacate[d] the judgments entered upon [defendant's] guilty pleas, and remand[ed] to the trial court with instructions to grant the motion to suppress." *Id.* at 360, 775 S.E.2d at 334. This Court granted the State's petition seeking discretionary review of the Court of Appeals' decision, reversed that decision, and remanded this case to the Court of Appeals for consideration of defendant's remaining challenge to the trial court's suppression order. *State v. Saldierna*, 369 N.C. 401, 409, 794 S.E.2d 474, 479 (2016).⁴

In overturning the Court of Appeals' decision in *Saldierna I*, this Court concluded that defendant's statement, "Um, [c]an I call my mom?", did not constitute "a clear and unambiguous invocation of his right to have his parent or guardian present during questioning." *Id.* at 408, 794 S.E.2d at 479 (citing *Davis v. United States*, 512 U.S. 452, 459, 114 S.Ct. 2350, 2355, 129 L.Ed. 2d 362, 371 (1994) (holding that invocation of the right to counsel "requires, at a minimum, some statement that can reasonably be construed to be an expression of a desire for the assistance of an attorney")). "Although defendant asked to call his mother, he never gave any indication that he wanted to have her present for his interrogation, nor did he condition his interview on first speaking with her." *Id.* at 408, 794 S.E.2d at 479. As a result, we determined *181 that the Court of Appeals had erred by holding that the ambiguous nature of defendant's request to be allowed to call his mother required Detective Kelly to make further inquiry into the extent to which defendant intended to invoke his right to have his mother present before any custodial interrogation could commence. *Id.* at 409, 794 S.E.2d at 479.

On remand before the Court of Appeals, defendant argued that the trial court had erred by denying his suppression motion on the grounds that his confession had been obtained as the result of a violation of both his statutory and constitutional rights as a juvenile. According to defendant, the United States Supreme Court held in *J.D.B. v. North Carolina* "that reviewing courts must take into account the juvenile's age and maturity when determining the admissibility of a confession, and not to evaluate the confession as if the juvenile were an adult," citing *J.D.B. v. North Carolina*, 564 U.S. 261, 272, 131 S.Ct. 2394, 2403, 180 L.Ed. 2d 310, 323-24 (2011). Defendant argued "that the *Davis* test should not be applied to the context of a juvenile interrogation" because "*Davis* involved an adult," because "the [United States] Supreme Court did not announce that the rule applied equally to juvenile confessions," and because "the [United States] Supreme Court has made clear ... that juvenile confessions should be evaluated differently than adult confessions," citing, *inter alia*, *In re Gault*, 387 U.S. 1, 87 S.Ct. 1428, 18 L.Ed.2d 527 (1967), and *J.D.B.*, 564 U.S. 261, 131 S.Ct. 2394, 180 L.Ed. 2d 310.

In addition, defendant argued that, in light of the totality-of-the-circumstances approach outlined in *J.D.B.*, the trial

court had erred by failing to consider that defendant “was in custody and outnumbered by three law enforcement officers”; had “stated to the detective plainly, ‘[c]an I call my mom now?’ ”; was sixteen years old and had only completed the eighth grade as of the date of the interrogation; “indicated to [Detective Kelly] that his native language was Spanish, that he could not write in English, and he may have stated he had difficulty understanding” Detective Kelly; provided “unclear” responses to questions that Detective Kelly posed during the interrogation; and expressed a desire to call his mother. According to defendant, an analysis of the totality of the circumstances surrounding defendant’s interrogation established that the trial court had erred by finding that defendant had knowingly and voluntarily waived his statutory and constitutional rights.

The State, on the other hand, argued before the Court of Appeals that defendant had knowingly, willingly, and understandingly waived his juvenile rights when he was advised of those rights in spoken English, written English, and written Spanish; had acknowledged that he understood those rights; and had expressed, both verbally and in writing, his willingness to waive those rights. “[A]s [] evidence of his understanding and intention to proceed with the interview,” the State pointed to the fact that defendant had “signed each paragraph of the Rights Waiver Form” and had gone “on to answer Detective Kelly’s questions for nearly an hour without ever once indicating.... he did not understand the rights read to him or that he was at all unclear about the choice he made to answer questions.” Although “age is to be considered by the trial judge,” the State asserted that defendant’s juvenile status and grade level did not preclude him from understanding and waiving his juvenile rights. Moreover, the State claimed that “[t]here is no evidence of mistreatment or coercion” during the interrogation. In spite of the fact that it involved the interrogation of an adult rather than a juvenile, the State contended that the United States Supreme Court’s decision in *Davis* remains applicable in determining whether defendant had validly waived his juvenile rights. Finally, the State argued that defendant’s reliance upon *J.D.B.* was misplaced given that *J.D.B.* involved the issue of a juvenile’s age as “relevant to the determination of whether the child was considered to have been ‘in custody’ for *Miranda* purposes” and given that the United States Supreme Court had stated in *J.D.B.* that “a child’s age will [not] be determinative, or even a

significant factor in every case,” quoting *J.D.B.*, 564 U.S. at 277, 131 S.Ct. at 2406, 180 L.Ed. 2d at 326.

*182 In holding that the trial court had erred by denying defendant’s suppression motion, the Court of Appeals concluded on remand that defendant did not “knowingly, willingly, and understandingly waive[] his rights under section 7B-2101 of the North Carolina General Statutes and under the constitutions of North Carolina and the United States.” *State v. Saldierna*, — N.C. App. —, —, 803 S.E.2d 33, 35 (2017) (*Saldierna II*). In reaching this conclusion, the Court of Appeals explained that, “[w]hether a waiver is knowingly and intelligently made depends on the specific facts and circumstances of each case, including the background, experience, and conduct of the accused.” *Id.* at —, 803 S.E.2d at 36 (quoting *State v. Simpson*, 314 N.C. 359, 367, 334 S.E.2d 53, 59 (1985)). According to the Court of Appeals, “[t]he totality of the circumstances *must be carefully scrutinized* when determining if a youthful defendant has legitimately waived his *Miranda* rights,” *id.* at —, 803 S.E.2d at 40 (quoting *State v. Reid*, 335 N.C. 647, 663, 440 S.E.2d 776, 785 (1994) (emphasis added)), given that juveniles possess “unique vulnerabilities,” in that “(1) they are less likely than adults to understand their rights; and (2) they are distinctly susceptible to police interrogation techniques,” *id.* at —, 803 S.E.2d at 42 (emphasis omitted) (quoting Cara A. Gardner, *Failing to Serve and Protect: A Proposal for an Amendment to a Juvenile’s Right to a Parent, Guardian, or Custodian During a Police Interrogation After State v. Oglesby*, 86 N.C. L. Rev. 1685, 1698 (2008)).

The Court of Appeals stated that, “despite the trial court’s many findings of fact that defendant ‘indicated he understood’ Detective Kelly’s questions and statements regarding his rights, the evidence as recorded contemporaneously during the questioning and as noted in testimony from the hearing, does not support those findings.” *Id.* at —, 803 S.E.2d at 41. In addition, the Court of Appeals stated that “the findings do not reflect the scrutiny that a trial court is required to give in juvenile cases.” *Id.* at —, 803 S.E.2d at 41. Among other things, the Court of Appeals noted that “no response [was] recorded that [defendant] ‘understood’ ” that Detective Kelly had asked defendant to initial, sign, and date the English version of the juvenile rights waiver form. *Id.* at —, 803 S.E.2d at 41. For that reason, the Court of Appeals held that the finding of fact “ ‘[t]hat [d]efendant was advised of his juvenile rights ... in written

Spanish,’ is not supported by competent *documentary* evidence in the record” and that “the evidence does not support the trial court’s ultimate conclusion that defendant executed a valid waiver.” *Id.* at —, 803 S.E.2d at 41 (alterations in original). As a result, the Court of Appeals determined that “the totality of the circumstances set forth in this record ultimately do not fully support the trial court’s conclusions of law, namely, ‘[t]hat the State carried its burden by a preponderance of the evidence that [d]efendant knowingly, willingly, and understandingly waived his juvenile rights.’ ” *Id.* at —, 803 S.E.2d at 43 (alterations in original). This Court granted the State’s petition for discretionary review of the Court of Appeals’ remand decision in *Saldierna II* on 1 November 2017.

In seeking to persuade us to reverse the Court of Appeals’ decision, the State claims that the Court of Appeals failed to properly apply the applicable standard of appellate review. According to the State, the Court of Appeals should have focused upon determining “whether the unchallenged findings of fact supported the trial court’s conclusion of law that defendant knowingly and voluntarily waived his juvenile rights.” The State further contends that, even if the trial court’s findings had been challenged by defendant as lacking in sufficient evidentiary support, they would nevertheless be “conclusive on appeal” because they were “supported by competent evidence, even if the evidence is conflicting,” quoting *State v. Eason*, 336 N.C. 730, 745, 445 S.E.2d 917, 926 (1994), *cert. denied*, 513 U.S. 1096, 115 S.Ct. 764, 130 L.Ed. 2d 661 (1995). In the State’s view, the audio recording of defendant’s interview with Detective Kelly “demonstrates that defendant had the ability to understand Detective Kelly as she read him his juvenile rights.” In addition, the State notes that, in instances in which defendant failed to provide an audible response to Detective Kelly’s inquiries concerning the extent to which defendant understood specific juvenile rights, defendant placed his initials *183 by the relevant paragraph on the juvenile rights waiver form. Finally, the State asserts that Detective Kelly’s suppression hearing testimony sufficed to support the trial court’s findings to the effect that defendant understood Detective Kelly as she read his juvenile rights to him.

Defendant, on the other hand, contends that the State failed to meet its burden of demonstrating that he knowingly, willingly, and understandingly waived

his statutory and constitutional rights. According to defendant, this Court should consider defendant’s youth, his request to call his mother, the number of officers present during the interrogation, and the misleading statements made to defendant by investigating officers in determining that the trial court had erred by denying defendant’s suppression motion. In spite of the fact that defendant had initialed the juvenile rights waiver form, defendant argues that the fact that his responses to Detective Kelly’s questions regarding the extent to which he understood his rights were unclear indicates that he had not understood the questions that Detective Kelly had posed to him. In addition, defendant notes that the trial court failed to make any findings of fact concerning defendant’s “experience, education, background, ... intelligence,” and “capacity to understand the warnings given [to] him” as required by the totality-of-the-circumstances analysis enunciated in *Fare v. Michael C.*, quoting *Fare v. Michael C.*, 442 U.S. 707, 725, 99 S.Ct. 2560, 2571, 61 L.Ed. 2d 197, 212 (1979). In light of these deficiencies in the trial court’s findings of fact and the fact that, in the Court of Appeals’ view, the relevant findings were actually mixed findings of fact and conclusions of law, defendant contends that the Court of Appeals appropriately examined the evidence anew, citing, *inter alia*, *Olivetti Corp. v. Ames Business Systems, Inc.*, 319 N.C. 534, 548, 356 S.E.2d 578, 586-87 (1987), and had not committed any error of law in the course of overturning the trial court’s suppression order.

[1] [2] [3] [4] “The standard of review in evaluating the denial of a motion to suppress is whether competent evidence supports the trial court’s findings of fact and whether the findings of fact support the conclusions of law.” *State v. Biber*, 365 N.C. 162, 167-68, 712 S.E.2d 874, 878 (2011) (citation omitted). The trial court’s findings of fact “are conclusive on appeal if supported by competent evidence, even if the evidence is conflicting.” *Eason*, 336 N.C. at 745, 445 S.E.2d at 926. “The conclusions of law made by the trial court from such findings, however, are fully reviewable on appeal.” *State v. McCollum*, 334 N.C. 208, 237, 433 S.E.2d 144, 160 (1993) (citation omitted), *cert. denied*, 512 U.S. 1254, 114 S.Ct. 2784, 129 L.Ed. 2d 895 (1994), *post-conviction relief granted*, *State v. McCollum*, No. 83 CRS 15506-07, 2014 WL 4345428 (N.C. Super. Ct. Robeson County Sept. 2, 2014) (order vacating defendant’s convictions and the trial court’s judgment, and mandating defendant’s immediate release from custody). “[A]n appellate court accords great

deference to the trial court ... because it is entrusted with the duty to hear testimony, weigh and resolve any conflicts in the evidence, find the facts, and, then based upon those findings, render a legal decision, in the first instance, as to whether or not a constitutional violation of some kind has occurred.” *State v. Cooke*, 306 N.C. 132, 134, 291 S.E.2d 618, 619-20 (1982).

[5] [6] [7] N.C.G.S. § 7B-2101(a) states that

(a) [a]ny juvenile in custody must be advised prior to questioning:

- (1) That the juvenile has a right to remain silent;
- (2) That any statement the juvenile does make can be and may be used against the juvenile;
- (3) That the juvenile has a right to have a parent, guardian, or custodian present during questioning; and
- (4) That the juvenile has a right to consult with an attorney and that one will be appointed for the juvenile if the juvenile is not represented and wants representation.

N.C.G.S. § 7B-2101(a) (2015).⁵ The relevant statutory language is clearly intended to codify *184 the rights afforded to a juvenile subjected to custodial interrogation pursuant to *Miranda* in addition to affording a juvenile the State statutory right to have a parent, guardian, or custodian present during the interrogation process. See *Miranda v. Arizona*, 384 U.S. 436, 444, 86 S.Ct. 1602, 1612, 16 L.Ed. 2d 694, 706-07 (1966) (holding that, “[p]rior to any questioning, [a] person [subjected to custodial interrogation] must be warned that he has a right to remain silent, that any statement he does make may be used as evidence against him, and that he has a right to the presence of an attorney, either retained or appointed,” although “[t]he defendant may waive effectuation of these rights, provided the waiver is made voluntarily, knowingly and intelligently”). “If the juvenile indicates in any manner and at any stage of questioning pursuant to this section that the juvenile does not wish to be questioned further, the officer shall cease questioning.” N.C.G.S. § 7B-2101(c). “Before admitting into evidence any statement resulting from custodial interrogation, the court shall find that the juvenile knowingly, willingly, and understandingly waived the juvenile’s rights.” *Id.* § 7B-2101(d) (2017). The State

“bears the burden of demonstrating that the waiver was knowingly and intelligently made, and an express written waiver, while strong proof of the validity of the waiver, is not inevitably sufficient to establish a valid waiver.” *Simpson*, 314 N.C. at 367, 334 S.E.2d at 59 (citations omitted); see also *State v. Thibodeaux*, 341 N.C. 53, 58, 459 S.E.2d 501, 505 (1995) (explaining that “[t]he State has the burden of showing by a preponderance of the evidence that the defendant made a knowing and intelligent waiver of his rights and that his statement was voluntary”). “Whether a waiver is knowingly and intelligently made depends on the specific facts and circumstances of each case, including the background, experience, and conduct of the accused.” *Simpson*, 314 N.C. at 367, 334 S.E.2d at 59 (citations omitted). As a result, “the court [is required to look] at the totality of the circumstances surrounding the statement” in order to determine whether the State has adequately established that a waiver was knowingly and intelligently made. *Thibodeaux*, 341 N.C. at 58, 459 S.E.2d at 505.

[8] [9] [10] [11] “This totality-of-the-circumstances approach is adequate to determine whether there was been a waiver even where interrogation of juveniles is involved.” *Fare*, 442 U.S. at 725, 99 S.Ct. at 2572, 61 L.Ed. 2d at 212. “The totality approach permits—indeed, it mandates—inquiry into all the circumstances surrounding the interrogation,” including “evaluation of the juvenile’s age, experience, education, background, and intelligence, and into whether he has the capacity to understand the warnings given him, the nature of his ... rights, and the consequences of waiving those rights.” *Id.* at 725, 99 S.Ct. at 2572, 61 L.Ed. 2d at 212 (citing *North Carolina v. Butler*, 441 U.S. 369, 99 S.Ct. 1755, 60 L.Ed. 2d 286 (1979)). In applying the totality-of-the-circumstances test in cases involving the custodial interrogation of juveniles, we have noted that “the record must be carefully scrutinized, with particular attention to both the characteristics *185 of the accused and the details of the interrogation.” *State v. Fincher*, 309 N.C. 1, 19, 305 S.E.2d 685, 697 (1983) (quoting *State v. Spence*, 36 N.C. App. 627, 629, 244 S.E.2d 442, 443, disc. rev. denied, 295 N.C. 556, 248 S.E.2d 734 (1978)). However, a defendant’s juvenile status “does not compel a determination that he did not knowingly and intelligently waive his *Miranda* rights.” *Id.* at 19, 305 S.E.2d at 696-97 (citation omitted). Instead, the juvenile’s age is a factor to consider along with “the characteristics of the accused and the details of the interrogation.” *Id.* at

19, 305 S.E.2d at 697 (quoting *Spence*, 36 N.C. App. at 629, 244 S.E.2d at 443).

[12] A careful review of the record satisfies us that the trial court's findings of fact have adequate evidentiary support and that those findings support the trial court's conclusion that defendant knowingly and voluntarily waived his juvenile rights. In reaching a contrary conclusion, the Court of Appeals failed to focus upon the sufficiency of the evidence to support the findings of fact that the trial court actually made and to give proper deference to those findings. *Cooke*, 306 N.C. at 134, 291 S.E.2d at 619-20. Although the Court of Appeals concluded that "the evidence does not support the trial court's findings of fact ... that defendant 'understood' Detective Kelly's questions and statements regarding his rights," *Saldierna II*, — N.C. App. at —, 803 S.E.2d at 41, the record contains ample support for the trial court's determination that defendant understood his juvenile rights, with this determination resting upon the existence of evidence tending to show that Detective Kelly advised defendant of his juvenile rights in spoken English, written Spanish, and written English;⁶ that defendant initialed each of the rights enumerated on the juvenile rights waiver form that Detective Kelly reviewed with him and signed the juvenile rights waiver form in such a manner as to indicate that he had decided to waive his juvenile rights and to speak with Detective Kelly without the presence of a parent, guardian, custodian, or attorney; that defendant answered affirmatively when questioned about the extent to which he understood his rights; and that defendant "understood what [Detective Kelly] was saying." As a result, we hold that the Court of Appeals erred in determining that the record did not support the trial court's findings to the effect that defendant understood his juvenile rights.

Admittedly, the record does contain evidence that would have supported a different determination concerning the issue of whether defendant understood the juvenile rights that were available to him. For example, the record does reflect that some of defendant's responses to Detective Kelly's inquiries concerning the extent to which he understood certain of his rights were "unintelligible" and that English was not defendant's primary language. However, given the evidence recited above, including Detective Kelly's suppression hearing testimony that defendant "seemed to very clearly understand what [she] was asking him" and that his English was "fine," the record concerning the extent to which defendant was

able to understand the English language in general and Detective Kelly's questions in particular was, at most, in conflict. According to well-established North Carolina law, resolution of such evidentiary conflicts is a matter for the trial court, which has the opportunity to see and hear the witnesses, rather than an appellate court, which is necessarily limited to consideration of a cold record even in cases involving audio recordings and videographic evidence.

In addition, the trial court's findings support its conclusion of law that "[d]efendant knowingly, willingly, and understandingly waived his juvenile rights." Among other things, the record contains defendant's express written waiver of his juvenile rights which, while not determinative, is "strong proof of the validity of the waiver." *Simpson*, 314 N.C. at 367, 334 S.E.2d at 59. In addition to the express written waiver, the record contains evidence tending to show, and the trial court found, that defendant was advised of his rights in both written English and Spanish and in spoken English. Moreover, the transcript of defendant's interview with Detective Kelly indicates that, in all but two instances, defendant verbally affirmed that he understood his rights and that he was willing to answer Detective Kelly's questions. Aside from the fact that defendant's suggestion that the inaudibility of certain of defendant's responses demonstrated that he did not understand his rights conflicts with Detective *186 Kelly's suppression hearing testimony to the contrary and the fact that the record contains no evidence tending to show that defendant ever expressed a lack of willingness to speak with Detective Kelly, sought to invoke his rights, or was unable to adequately communicate with the investigating officers, this aspect of defendant's argument represents, in essence, an attempt to persuade us to reweigh the evidence and reach a different result with respect to a factual issue other than that deemed appropriate by the trial court. Similarly, the Court of Appeals' determinations that defendant's request to call his mother "shows enough uncertainty, enough anxiety on [defendant's] behalf, so as to call into question whether, under all the circumstances present in this case, the waiver was (unequivocally) valid" and that defendant's "last ditch effort to call his mother (for help), after his prior attempt to call her had been unsuccessful,^[7] was a strong indication that he did not want to waive his rights at all," *Saldierna II*, — N.C. App. at —, 803 S.E.2d at 42, are inconsistent with the trial court's findings of fact concerning the circumstances

surrounding defendant's attempt to call his mother, which we have already found to have adequate record support. Finally, the record contains no allegations of coercive police conduct or the use of improper interrogation techniques.⁸ As a result, we hold that the trial court did not err by concluding that defendant had knowingly, willingly, and understandingly waived his juvenile rights and that the Court of Appeals' decision to the contrary should be reversed.⁹

REVERSED.

Justice BEASLEY dissenting.

In *Saldierna I*, I dissented because defendant's statement, "Um, [c]an I call my mom?", was an unambiguous invocation of his right to have a parent present during

questioning. See *State v. Saldierna (Saldierna I)*, 369 N.C. 401, 409, 794 S.E.2d 474, 479 (2016) (Beasley, J., dissenting). Upon this unambiguous invocation, law enforcement should have immediately ceased questioning and not resumed until defendant's mother was present or he reinitiated the conversation. See *id.* at 412, 794 S.E.2d at 481 (citing *Edwards v. Arizona*, 451 U.S. 477, 484-85, 101 S.Ct. 1880, 1884-85, 68 L.Ed. 2d 378, 386 (1981)). Defendant did not knowingly, intelligently, and voluntarily waive his right to have his mother present—rather, he unambiguously invoked that right. Thus, for the reasons stated in my dissent to *Saldierna I*, I respectfully dissent.

All Citations

817 S.E.2d 174

Footnotes

- 1 The name of the victim set out in the text of this opinion is derived from the factual basis statement provided by the prosecutor at the time that defendant entered his negotiated guilty plea. The indictment returned against defendant in the relevant cases named the alleged victim as Cheryl Drew.
- 2 The plea agreement between defendant and the State provided that, in return for defendant's guilty pleas, the State would voluntarily dismiss one additional count of felonious breaking or entering, one count of conspiracy to break or enter, and three counts of felonious larceny and that defendant would receive a sentence of six to seventeen months imprisonment, with this sentence to be suspended and with defendant to be on supervised probation for a period of thirty-six months, with the terms and conditions of defendant's probation including a requirement that he serve a forty-five day split sentence, subject to credit for time served in pretrial confinement, and that he be subject to intensive probation for a period of one year.
- 3 The final page of Judge Caldwell's judgment was omitted from the record on appeal. Having obtained a copy of that page from the office of the Clerk of Superior Court, Mecklenburg County, we have added it to the record on appeal upon our own motion pursuant to N.C.R. App. P. 9(b)(5)b.
- 4 Justice Beasley dissented from the Court's decision to reverse the Court of Appeals based upon her belief that the record established that defendant had unambiguously invoked his right to the presence of a parent and that investigating officers had an obligation to obtain clarification of any ambiguous statement that defendant may have made regarding the extent to which he desired the presence of a parent prior to being interrogated by Detective Kelly. *Saldierna*, 369 N.C. at 409, 794 S.E.2d at 479-80 (Beasley, J., dissenting).
- 5 At the time that the interrogation at issue in this case occurred, N.C.G.S. § 7B-2101(b) provided that, "[w]hen the juvenile is less than 14 years of age, no in-custody admission or confession resulting from interrogation may be admitted into evidence unless the confession or admission was made in the presence of the juvenile's parent, guardian, custodian, or attorney." For offenses committed on or after 1 December 2015, the General Assembly amended N.C.G.S. § 7B-2101(b) by raising the age at which the presence of the juvenile's parent, guardian, custodian, or attorney is required from less than fourteen to less than sixteen. Act of May 26, 2015, ch. 58, secs. 1.1, 4. 2015 N.C. Sess. Laws 126, 126, 130. However, given that defendant was sixteen years old at the time of the interrogation at issue in this case, neither version of N.C.G.S. § 7B-2101(b) would have barred the admission of defendant's incriminating statements concerning his involvement in the unlawful break-ins at the residence of Ms. Brewer and Mr. Nunez.
- 6 In spite of the fact that the record does not contain the Spanish language version of the juvenile rights waiver form, the trial court's determination that defendant was informed of his juvenile rights in written form using the Spanish language is amply supported by Detective Kelly's suppression hearing testimony.

- 7 A number of statements that were made by investigating officers during Detective Kelly's interview with defendant suggest that defendant had made an earlier, unsuccessful attempt to reach his mother before the phone call reflected in the interview transcript.
- 8 Both defendant and the Court of Appeals appear to assert that Detective Kelly's statement to defendant that "[t]his is not something that's going to end your life" and "is not a huge deal" constituted a deceptive statement that should be weighed in favor of a finding that defendant had not voluntarily waived his juvenile rights. We are acutely aware that the incurrance of a felony conviction can have significant, and lasting, effects upon a juvenile's prospects. However, we are not persuaded that the statement in question constitutes official misconduct sufficient to compel a conclusion that defendant's will was overborne at the time that he decided to waive his juvenile rights and speak with Detective Kelly and believe that it simply reflects Detective Kelly's opinion that defendant was not suspected of having committed other, more serious criminal offenses.
- 9 A considerable amount of defendant's argument to this Court focuses upon policy, rather than legal or evidentiary, considerations. Although defendant points to a substantial body of research that suggests that juveniles are unable to understand the language typically used in informing them of their rights, the approach that defendant advocates in reliance upon this information lacks support in the precedent of the United States Supreme Court or of this Court. On the contrary, as we have already noted, the United States Supreme Court has explicitly held that the totality-of-the-circumstances test for determining the validity of waivers of a defendant's *Miranda* rights is equally applicable to adults and juveniles, see *Fare*, 442 U.S. at 725, 99 S.Ct. at 2572, 61 L.Ed. 2d at 212, with a juvenile's age being a relevant, but not determinative, factor in the required analysis. Nothing in the record that has been presented for our consideration tends to show that the trial court failed to properly incorporate evidence concerning defendant's age or his linguistic and educational status into the required totality-of-the-circumstances evaluation.

 KeyCite Red Flag - Severe Negative Treatment
Reversed by [State v. Saldierna](#), N.C., August 17, 2018

803 S.E.2d 33

Court of Appeals of North Carolina.

STATE of North Carolina
v.
Felix Ricardo SALDIERNA

No. COA14-1345-2

|
Filed: July 18, 2017

Synopsis

Background: Juvenile defendant pleaded guilty in the Superior Court, Mecklenburg County, Nos. 13 CRS 201161, 201164, 202210, and 202213, [Jesse B. Caldwell](#), J., to felony breaking and entering and conspiracy to commit breaking and entering. Juvenile defendant appealed. The Court of Appeals, [775 S.E.2d 326](#), reversed, vacated, and remanded. The Supreme Court, [794 S.E.2d 474](#), granted State's petition for discretionary review, reversed, and remanded to Court of Appeals for consideration of validity of juvenile defendant's waiver of his statutory and constitutional rights.

[Holding:] The Court of Appeals, [Bryant](#), J., held that juvenile defendant did not knowingly, willingly, and understandingly waive his *Miranda* rights and his rights under statute which governed interrogation of juveniles.

Vacated, reversed, and remanded.

West Headnotes (12)

[1] Criminal Law

 Illegally obtained evidence

Criminal Law

 Evidence wrongfully obtained

The standard of review in evaluating the denial of a motion to suppress is whether competent evidence supports the trial court's

findings of fact and whether the findings of fact support the conclusions of law.

1 Cases that cite this headnote

[2] Criminal Law

 Questions of Fact and Findings

Findings of fact as to whether a waiver of rights was made knowingly, willingly, and understandingly are binding on appeal if they are supported by competent evidence.

1 Cases that cite this headnote

[3] Criminal Law

 Review De Novo

Conclusions of law regarding whether a waiver of rights was valid and a subsequent confession voluntary are reviewed de novo.

1 Cases that cite this headnote

[4] Criminal Law

 Necessity in general

Infants

 Warnings and counsel;waivers

In order to protect the Fifth Amendment right against compelled self-incrimination, suspects, including juveniles, are entitled to the warnings set forth in *Miranda* prior to police questioning. *U.S. Const. Amend. 5*.

Cases that cite this headnote

[5] Infants

 Warnings and counsel;waivers

The general *Miranda* custodial interrogation framework is applicable to the statute requiring a juvenile in custody to be advised of certain rights prior to questioning. *N.C. Gen. Stat. Ann. § 7B-2101(a)*.

Cases that cite this headnote

[6] Criminal Law

 Form and sufficiency in general

Whether a waiver of *Miranda* rights is knowingly and intelligently made depends on the specific facts and circumstances of each case, including the background, experience, and conduct of the accused.

Cases that cite this headnote

[7] **Criminal Law**

🔑 What constitutes voluntary statement, admission, or confession

When determining the voluntariness of a confession, courts examine the totality of the circumstances surrounding the confession.

Cases that cite this headnote

[8] **Criminal Law**

🔑 Waiver of rights

An express written waiver of *Miranda* rights, while strong proof of the validity of the waiver, is not inevitably sufficient to establish a valid waiver.

Cases that cite this headnote

[9] **Criminal Law**

🔑 Waiver of rights

The State must show by a preponderance of the evidence that the defendant made a knowing and intelligent waiver of his *Miranda* rights and that his statement was voluntary.

Cases that cite this headnote

[10] **Infants**

🔑 Interrogation and Investigatory Questioning

Burden upon the State to ensure that a juvenile's rights are protected during a custodial interrogation is greater than in the criminal prosecution of an adult.

Cases that cite this headnote

[11] **Criminal Law**

🔑 Form and sufficiency in general

Infants

🔑 Warnings and counsel;waivers

The totality of the circumstances must be carefully scrutinized when determining if a youthful defendant has legitimately waived his *Miranda* rights.

Cases that cite this headnote

[12] **Infants**

🔑 Warnings and counsel;waivers

Infants

🔑 Presence, availability, or consultation of parent or guardian

Juvenile defendant did not knowingly, willingly, and understandingly waive his *Miranda* rights and his rights under statute that governed interrogation of juveniles, where juvenile defendant was 16 years old at time he was interviewed by police and had only obtained eighth grade education, juvenile defendant was not familiar with criminal justice system, juvenile defendant was unable to contact his mother prior to questioning, and although detective read juvenile defendant his rights and asked whether he understood them, and juvenile defendant ultimately signed English version of juvenile waiver of rights form, juvenile defendant's primary language was Spanish and he had difficulty reading English and understanding spoken English. *N.C. Gen. Stat. Ann. § 7B-2101(a)*.

Cases that cite this headnote

*34 On remand from the Supreme Court of North Carolina in accordance with their opinion, 369 *N.C. 401, 794 S.E.2d 474* (2016). Previously heard by this Court on 2 June 2015, 242 *N.C.App. 347, 775 S.E.2d 326* (2015), from appeal by defendant from order entered 20 February 2014 by Judge Forrest D. Bridges and judgment entered 4 June 2014 by Judge Jesse B. Caldwell in Mecklenburg County Superior Court. The issue addressed on remand is the validity of defendant's waiver of his statutory and constitutional rights. Mecklenburg County, Nos. 13 CRS 201161, 201164, 202210, 202213.

Attorneys and Law Firms

Attorney General Roy Cooper, by Assistant Attorney General [Jennifer St. Clair Watson](#), for the State.

Goodman Carr, PLLC, Charlotte, by [W. Rob Heroy](#), for defendant.

Opinion

[BRYANT](#), Judge.

Where the totality of the circumstances shows that the juvenile defendant did not knowingly, willingly, and understandingly waive his rights pursuant to the State and federal constitutions or [N.C. Gen. Stat. § 7B-2101\(d\)](#), the trial court erred in denying defendant's motion to suppress his statement made to an interrogating officer, and we reverse, vacate, and remand.

Juvenile defendant Felix Ricardo Saldierna was arrested on 9 January 2013 at his home in South Carolina in connection with incidents involving several homes around Charlotte that had been broken into on 17 and 18 December 2012.¹ Before questioning, the detective read defendant his rights and asked whether he understood them. Defendant ultimately signed a Juvenile Waiver of Rights form, of which defendant had been given two copies—one in English and one in Spanish. After initialing and signing the English language form, Felix, who was sixteen years old at the time, asked to call his mother before undergoing custodial questioning by Detective Kelly of the Charlotte-Mecklenburg Police Department. The call was allowed, but defendant could not reach his mother. The custodial interrogation then began. Over the course of the interrogation, defendant confessed his involvement in the incidents in Charlotte on 17 and 18 December 2012.

On 22 January 2013,

[d]efendant was indicted ... for two counts of felony breaking and entering, conspiracy to commit breaking and entering, and conspiracy to commit common law larceny after breaking and entering. On 9 October 2013, defendant moved to suppress his confession, arguing that it was illegally obtained in violation both of his rights as a juvenile under [N.C.G.S. § 7B-2101](#) and of his rights under the United States Constitution. After conducting an evidentiary hearing, the trial court

denied the motion in an order entered on 20 February 2014, finding as facts that defendant was advised of his juvenile rights and, after receiving forms setting out these rights both in English and Spanish and having the rights read to him in English by [Detective] Kelly, indicated that he understood them. In addition, the trial court found that defendant informed [Detective] Kelly that he wished to waive his juvenile *35 rights and signed the form memorializing that wish.

....

On 4 June 2014, defendant entered pleas of guilty to two counts of felony breaking and entering and two counts of conspiracy to commit breaking and entering, while reserving his right to appeal from the denial of his motion to suppress. The court sentenced defendant to a term of six to seventeen months, suspended for thirty-six months subject to supervised probation.

The Court of Appeals reversed the trial court's order denying defendant's motion to suppress, vacated the judgments entered upon defendant's guilty pleas, and remanded the case to the trial court for further proceedings. The Court of Appeals recognized that the trial court correctly found that defendant's statement asking to telephone his mother was ambiguous at best.... [but it] held that when a juvenile between the ages of fourteen and eighteen makes an ambiguous statement that potentially pertains to the right to have a parent present, an interviewing officer must clarify the juvenile's meaning before proceeding with questioning.

[Saldierna](#), 369 N.C. at —, 794 S.E.2d at 476–77 (footnote omitted) (citations omitted). The Supreme Court of North Carolina granted the State's petition for discretionary review. *Id.* at —, 794 S.E.2d at 477.

In reviewing this Court's opinion in [Saldierna](#), the Supreme Court reasoned that “[a]lthough defendant asked to call his mother, he never gave any indication that he wanted to have her present for his interrogation, nor did he condition his interview on first speaking with her.” *Id.* at —, 794 S.E.2d at 479. As a result, the Supreme Court reversed the decision of the Court of Appeals “[b]ecause defendant's juvenile statutory rights were not violated [.]” *Id.* However, in doing so, the Supreme Court noted that “[e]ven though we have determined that defendant's [N.C.G.S. § 7B-2101\(a\)\(3\)](#) right [(to have a parent present during questioning)] was not

violated, defendant's confession is not admissible unless he knowingly, willingly, and understandingly waived his rights." *Id.* (citing N.C.G.S. § 7B-2101(d)). Thus, the case was remanded to this Court "for consideration of the validity of defendant's waiver of his statutory and constitutional rights." *Id.*

[1] [2] [3] As the Supreme Court of North Carolina has determined that defendant's N.C.G.S. § 7B-2101(a) (3) right was not violated as "defendant's request to call his mother was not a clear invocation of his right to consult a parent or guardian before proceeding with the questioning[.]" *Saldierna*, —N.C. at —, 794 S.E.2d at 475, the question before us now on remand is whether defendant knowingly, willingly, and understandingly waived his rights under section 7B-2101 of the North Carolina General Statutes and under the constitutions of North Carolina and the United States, so as to make his confession admissible. We conclude that he did not.

"The standard of review in evaluating the denial of a motion to suppress is whether competent evidence supports the trial court's findings of fact and whether the findings of fact support the conclusions of law." *State v. Biber*, 365 N.C. 162, 167–68, 712 S.E.2d 874, 878 (2011) (citing *State v. Brooks*, 337 N.C. 132, 140–41, 446 S.E.2d 579, 585 (1994)). Findings of fact [as to whether a waiver of rights was made knowingly, willingly, and understandingly] are binding on appeal if [they are] supported by competent evidence, *State v. Cooke*, 306 N.C. 132, 134, 291 S.E.2d 618, 619 (1982) (citations omitted), while conclusions of law [regarding whether a waiver of rights was valid and a subsequent confession voluntary,] are reviewed de novo, *State v. Ortiz-Zape*, 367 N.C. 1, 5, 743 S.E.2d 156, 159 (2013) (citing *Biber*, 365 N.C. at 168, 712 S.E.2d at 878), *cert. denied*, — U.S. —, 134 S.Ct. 2660, 189 L.Ed.2d 208 (2014).

Id. at —, 794 S.E.2d at 477.

[4] [5] "In order to protect the Fifth Amendment right against compelled self-incrimination, suspects, including juveniles, are entitled to the warnings set forth in *Miranda v. Arizona*, prior to police questioning." *In re K.D.L.*, 207 N.C.App. 453, 457, 700 S.E.2d 766, 770 (2010) (citing

*36 384 U.S. 436, 478–79, 86 S.Ct. 1602, 1630–1631, 16 L.Ed.2d 694, 726 (1966)). Thus,

[t]he North Carolina Juvenile Code provides additional protection for juveniles. Juveniles who are "in custody" must be advised of the following before questioning begins:

- (1) That the juvenile has the right to remain silent;
- (2) That any statement the juvenile does make can be and may be used against the juvenile;
- (3) That the juvenile has a right to have a parent, guardian, or custodian present during questioning; and
- (4) That the juvenile has a right to consult with an attorney and that one will be appointed for the juvenile if the juvenile is not represented and wants representation.

Id. at 457–58, 700 S.E.2d at 770 (quoting N.C. Gen. Stat. § 7B-2101(a)(1)–(4) (2009)). "Previous decisions by our appellate division indicate the general *Miranda* custodial interrogation framework is applicable to section 7B-2101." *Id.* at 458, 700 S.E.2d at 770 (citing *In re W.R.*, 363 N.C. 244, 247, 675 S.E.2d 342, 344 (2009)); *see id.* at 459, 700 S.E.2d at 771 ("[W]e cannot forget that police interrogation is inherently coercive—particularly for young people." (citations omitted)).

"Before admitting into evidence any statement resulting from custodial interrogation, [2] the court shall find that the juvenile knowingly, willingly, and understandingly waived the juvenile's rights." N.C. Gen. Stat. § 7B-2101(d) (2015); *State v. Oglesby*, 361 N.C. 550, 555, 648 S.E.2d 819, 822 (2007) ("Before allowing evidence to be admitted from a juvenile's custodial interrogation, a trial court is required to 'find that the juvenile knowingly, willingly, and understandingly waived the juvenile's rights.'" (quoting N.C.G.S. § 7B-2101(d))).³

[6] [7] [8] "Whether a waiver is knowingly and intelligently made depends on the specific facts and circumstances of each case, including the background, experience, and conduct of the accused." *State v. Simpson*, 314 N.C. 359, 367, 334 S.E.2d 53, 59 (1985) (citations omitted). "When determining the voluntariness of a confession, we examine the 'totality of the circumstances

surrounding the confession.’ ” *State v. Hicks*, 333 N.C. 467, 482, 428 S.E.2d 167, 176 (1993) (quoting *State v. Barlow*, 330 N.C. 133, 140–41, 409 S.E.2d 906, 911 (1991)), abrogated by *State v. Buchanan*, 353 N.C. 332, 543 S.E.2d 823 (2001). Furthermore, “an express *written* waiver, while strong proof of the validity of the waiver, is not inevitably sufficient to establish a *valid* waiver.” *Simpson*, 314 N.C. at 367, 334 S.E.2d at 59 (emphasis added) (citation omitted).

[9] [10] “The State must show by a preponderance of the evidence that the defendant made a knowing and intelligent waiver of his rights and that his statement was voluntary.” *State v. Flowers*, 128 N.C.App. 697, 701, 497 S.E.2d 94, 97 (1998) (citing *State v. Thibodeaux*, 341 N.C. 53, 58, 459 S.E.2d 501, 505 (1995)). Indeed, “the burden upon the State to ensure a juvenile’s rights are protected is greater than in the criminal prosecution of an adult.” *In re M.L.T.H.*, 200 N.C.App. 476, 489, 685 S.E.2d 117, 126 (2009) (citing *In re T.E.F.*, 359 N.C. 570, 575, 614 S.E.2d 296, 299 (2005)); see also *Simpson*, 314 N.C. at 367, 334 S.E.2d at 59 (“The prosecution bears the burden of demonstrating that the waiver was knowingly and intelligently made[.]” (citation omitted)).

Here, in denying defendant’s motion to suppress his confession, the trial court found and concluded in relevant part as follows *37 regarding defendant’s waiver of his juvenile rights:

FINDINGS OF FACT

1. That Defendant was in custody.
2. That Defendant was advised of his juvenile rights pursuant to [North Carolina General Statute § 7B-2101](#).
3. That Detective Kelly of the Charlotte-Mecklenburg Police Department advised Defendant of his juvenile rights.
4. That Defendant was advised of his juvenile rights in three manners. Defendant was advised of his juvenile rights in spoken English, in written English, and in written Spanish.
5. That Defendant indicated that he understood his juvenile rights as given to him by Detective Kelly.

6. That Defendant indicated he understood his rights after being given and reviewing a form enumerating those rights in Spanish.
7. That Defendant indicated he understood that he had the right to remain silent. Defendant understood that to mean that he did not have to say anything or answer any questions. Defendant initialed next to this right at number 1 on the English rights form provided to him by Detective Kelly to signify his understanding.
8. That Defendant indicated he understood that anything he said could be used against him. Defendant initialed next to this right at number 2 on the English rights form provided to him by Detective Kelly to signify his understanding.
9. That Defendant indicated he understood that he had the right to have a parent, guardian, or custodian there with him during questioning. Defendant understood the word parent meant his mother, father, stepmother, or stepfather. Defendant understood the word guardian meant the person responsible for taking care of him. Defendant understood the word custodian meant the person in charge of him where he was living. Defendant initialed next to this right at number 3 on the English rights form provided to him by Detective Kelly to signify his understanding.
10. That Defendant indicated he understood that he had the right to have a lawyer and that he had the right to have a lawyer there with him at the time to advise and help him during questioning. Defendant initialed next to this right at number 4 on the English rights form provided to him by Detective Kelly to signify his understanding.
11. That Defendant indicated he understood that if he wanted a lawyer there with him during questioning, a lawyer would be provided to him at no cost prior to questioning. Defendant initialed next to this right at number 5 on the English rights form provided to him by Detective Kelly to signify his understanding.
12. That Defendant initialed a space below the enumerated rights on the English rights form then stated the following: “I am 14 years old or more and I understand my rights as explained by Detective

Kelly. I DO with [sic] to answer questions now, WITHOUT a lawyer, parent, guardian, or custodian here with me. My decision to answer questions now is made freely and is my own choice. No one has threatened me in any way or promised me special treatment. Because I have decided to answer questions now, I am signing my name below.”

13. That Defendant's signature appears on the English rights form below the initialed portions of the form. Defendant's signature appears next to the date, 1-9-13, and the time, 12:10. Detective Kelly signed her name as a witness below Defendant's signature.

14. That after being informed of his rights, informing Detective Kelly he wished to waive those rights, and signing the rights form, Defendant communicated to Detective Kelly that he wished to contact his mother by phone....

*38

CONCLUSIONS OF LAW

1. That the State carried its burden by a preponderance of the evidence that Defendant knowingly, willingly, and understandingly waived his juvenile rights.
2. That the interview process in this case was consistent with the interrogation procedures as set forth in [North Carolina General Statute § 7B-2101](#).
3. That none of Defendant's State or Federal rights were violated during the interview conducted of Defendant.
4. That statements made by Defendant were not gathered as a result of any State or Federal rights violation.^[4]

In the instant case, defendant was sixteen years of age at the time he was interviewed by Detective Kelly and had only obtained an eighth grade education. Defendant indicated Spanish was his primary language. He stated he could write in English, but that he had difficulty reading English and difficulty in understanding English as spoken. The interrogation took place in the booking area of the Justice Center, and defendant was at all times in the presence of three law enforcement officers.⁵ The transcript of the audio recording of Detective Kelly's conversation with defendant in which defendant was

said to have “knowingly, willingly, and understandingly” waived his rights and agreed to speak with the detective reads, in full, as follows:

K: You understand I'm a police officer, right?

F: Yes maam.

K: Ok, and that I would like to talk to you about this. And this officer has also explained to me and I understand that I have the right to remain silent, that means that I don't have to say anything or answer any questions. Should be right there number 1 right on there. Do you understand that?

F: *[unintelligible]* questions?

K: Yes, that is your right? So do you understand that? If you understand that, put your initials right there showing that you understand that. On this sheet. On this one. You can put it on both. Anything I say can be used against me. Do you understand that?

F: Yes maam.

K: I have the right to have a parent guardian or custodian here with me now during questioning. Parent means my mother, father, stepmother, or stepfather. Guardian means the person responsible for taking care of me. Custodian means the person in charge of me where I am living. Do you understand that? Do you want to read that?

F: Yeah.^[6]

*39 K: Do you understand that?

F: *[no response]*

K: I have the right to talk to a lawyer and to have a lawyer here with me now to advise and help during questioning. Do you understand that?

F: *[unintelligible]*

K: If I want to have a lawyer with me during questioning one will be provided to me at no cost before any questioning. Do you understand that?

F: Yes maam.

K: Ok. Now I want to talk to you about some stuff that's happened in Charlotte. And um, I will tell you this.

There's been some friends of yours that have already been questioned about these items and these issues. And they've been locked up. And that's what I want to talk to you about. Do you want to help me out and help me understand what's been going on with some of these cases and talk to me about this now here?

F: Uh

K: Are you willing to talk to me is what I'm asking.

F: Yes maam.

K: Ok. So I am 14 years or more. Let me see that pen. And I understand my rights as they've been explained by [D]etective Kelly. I do wish to answer questions now without a lawyer, parent, guardian or custodian here with me? My decision to answer questions now is made freely and is my own choice. No one has threatened me in any way or has promised me any special treatment because I have decided to answer questions now. I am signing my name below. Do you understand this? Initial, sign, date and time. ^[7]

[noise]

K: *it is 1/9/13. It is 12:10PM. [unintelligible background talking among officers]*

F: *Um, Can I call my mom?*

K: *Call your mom now?*

F: *She's on her um. I think she is on her lunch now.*

K: *You want to call her now before we talk?*

K [to other officers]: *He wants to call his mom.*

F: *Cause she's on, I think she's on her lunch.*

Other officer: *[unintelligible] He left her a message on her phone.*

F: *But she doesn't speak English.*

[conversation among officers]

K: I have mine. Can he dial it from a landline you think?

[more unintelligible conversation among officers]

[other officer]: step back outside and we'll let you call your mom outside. [unintelligible]. You're going to have to talk to her. Neither one of us speak Spanish, ok.

[more unintelligible conversation among officers].

9:50: [[defendant] can be heard on phone. Call is not intelligible.]

10:40 F [Phone can be heard making a phone call in Spanish]

[Sound of door closing].

K: 12:20: Alright Felix, so, let's talk about this thing going on. Like I said a lot of your friends have been locked up and everybody's talking. They're telling me about what's going on and what you've been up to. I'm not saying you're the ringleader of this here thing and some kind of mastermind right but I think you've gone along with these guys and gotten yourself into a little bit of trouble here. This is not something that's going to end your life. You know what I'm saying. This is not a huge deal. I know you guys were going into houses when nobody was home. You weren't looking to hurt anybody or anything like that. I just want to hear your side of the story. We can start off. I'm going to ask you questions I know the answer to. A lot of these questions are to tell if you're being truthful to me ...

(emphasis added).

While our Supreme Court has held that defendant's question "Um, Can I call my mom?" was not sufficient to clearly invoke his statutory right to have his mother present, ^{*40} see *Saldierna*, — N.C. at —, 794 S.E.2d at 475, this transcript nevertheless contains several "[unintelligible]" remarks or non-responses by defendant, mostly used to indicate defendant's "answers" to Detective Kelly's questions regarding whether or not he understood his statutory and constitutional rights. Cf. *Fare v. Michael C.*, 442 U.S. 707, 726–27, 99 S.Ct. 2560, 2572–2573, 61 L.Ed.2d 197, 213 (1979) (concluding that a 16 ½-year-old juvenile "voluntarily and knowingly waived his Fifth Amendment rights" where "[t]here [was] no indication in the record that [the juvenile] failed to understand what the officers told him[.]" "no special factors indicate[d] that [the juvenile] was unable to understand the nature of his actions[.]" and the juvenile had "considerable experience with the police"). But see N.C.G.S. § 7B-2101(c) ("If the

juvenile indicates in any manner and at any stage of questioning pursuant to this section that the juvenile does not wish to be questioned further, the officer shall cease questioning.”).

Although decided almost twenty years before *In re Gault*, and with much more egregious facts regarding the coercion of a confession from a juvenile, the United States Supreme Court in *Haley v. State of Ohio*, reasoned as follows:

The age of petitioner, the hours when he was grilled, the duration of his quizzing, the fact that he had no friend or counsel to advise him, the callous attitude of the police towards his rights combine to convince us that this was a confession wrung from a child by means which the law should not sanction. Neither man nor child can be allowed to stand condemned by methods which flout constitutional requirements of due process of law.

But we are told that this boy was advised of his constitutional rights before he signed the confession and that, knowing them, he nevertheless confessed.^[8] That assumes, however, that a boy of fifteen, without aid of counsel, would have a full appreciation of that advice and that on the facts of this record he had a freedom of choice. We cannot indulge those assumptions. *Moreover, we cannot give any weight to recitals which merely formalize constitutional requirements. Formulas of respect for constitutional safeguards cannot prevail over the facts of life which contradict them.* They may not become a cloak for inquisitorial practices and make an empty form of the due process of law for which free men fought and died to obtain.

332 U.S. 596, 600–01, 68 S.Ct. 302, 304–305, 92 L.Ed. 224, 229 (1948) (emphasis added) (reversing a fifteen-year-old boy's conviction for murder where his confession was obtained after a five-hour-long interrogation, which began at midnight, and where the boy was not advised of his rights and was not permitted to have counsel or a parent or family member present).

[11] “The totality of the circumstances *must be carefully scrutinized* when determining if a youthful defendant has legitimately waived his *Miranda* rights.” *State v. Reid*, 335 N.C. 647, 663, 440 S.E.2d 776, 785 (1994) (emphasis added) (citing *State v. Fincher*, 309 N.C. 1, 19, 305 S.E.2d 685, 697 (1983)). The circumstances to consider

in determining whether a waiver is voluntary (knowingly, willingly, and understandingly made) “includ[e] the background, experience, and conduct of the accused.” See *Simpson*, 314 N.C. at 367, 334 S.E.2d at 59 (citation omitted).

In the instant case, there is no indication that defendant had any familiarity with the criminal justice system. Unlike the defendant in *Fare v. Michael C.*, there is no indication of “considerable experience with the police,” 442 U.S. at 726, 99 S.Ct. at 2572, 61 L.Ed.2d at 213, and, unlike in *Fare*, there are factors in the record in the instant case which indicate defendant did not fully understand (or might not have fully understood) Detective *41 Kelly's questions such that he freely and intelligently waived his rights. See *id.*; cf. *Gallegos v. Colorado*, 370 U.S. 49, 54, 82 S.Ct. 1209, 1212–1213, 8 L.Ed.2d 325, 328 (1962) (“The prosecution says that the boy was advised of his right to counsel, but that he did not ask either for a lawyer or for his parents. But a 14-year-old boy, *no matter how sophisticated*, is unlikely to have any conception of what will confront him when he is made accessible only to the police. That is to say, we deal with a person who is not equal to the police in knowledge and understanding of the consequences of the questions and answers being recorded and who is unable to know how to protect his own interests or how to get the benefits of his constitutional rights.” (emphasis added)). Because the evidence does not support the trial court's findings of fact in the instant case that defendant “understood” Detective's Kelly's questions and statements regarding his rights, we conclude that he did not “legitimately waive[] his *Miranda* rights.” See *Fare*, 442 U.S. at 726–27, 99 S.Ct. at 2572–73, 61 L.Ed.2d at 213. As a result, we decline to “give any weight to recitals,” like the juvenile rights waiver form signed by defendant, “which merely formalize[d] constitutional requirements.” *Haley*, at 601, 68 S.Ct. at 304–05, 92 L.Ed. at 229; see also *Simpson*, 314 N.C. at 367, 334 S.E.2d at 59.

To be valid, a waiver should be voluntary, not just on its face, i.e., the paper it is written on, but *in fact*. It should be unequivocal and unassailable when the subject is a juvenile. The fact that the North Carolina legislature recently raised the age that juveniles can be questioned without the presence of a parent from age fourteen to age sixteen is evidence the legislature acknowledges juveniles' inability to fully and voluntarily waive essential constitutional and statutory rights.⁹ Here, despite the trial court's many findings of fact that

defendant “indicated he understood” Detective Kelly’s questions and statements regarding his rights, the evidence as recorded contemporaneously during the questioning and as noted in testimony from the hearing, does not support those findings. Further, the findings do not reflect the scrutiny that a trial court is required to give in juvenile cases. At the very least, the evidence supporting the findings made by the trial court in the instant case was not substantial under the totality of the circumstances. *See Reid*, 335 N.C. at 663, 440 S.E.2d at 785.

Indeed, during voir dire and in response to the question “Did [defendant] also state that he might have some issues understanding English as it is spoken as well?” Detective Kelly answered, “I believe he did.” Detective Kelly also testified that defendant told her “he wasn’t very good at reading English.” Thus, even if defendant did sign the English version of the Juvenile Waiver of Rights form, the evidence in the record simply does not fully support that defendant knew or understood the implications of what he was signing when he was signing it. *See Simpson*, 314 N.C. at 367, 334 S.E.2d at 59 (“[A]n express written waiver, while strong proof of the validity of the waiver, is not inevitably sufficient to establish a valid waiver.” (citation omitted)).

Furthermore, when Detective Kelly tells defendant “I am signing my name below,” she then asks, “Do you understand this? Initial, sign, date and time,” presumably instructing defendant to initial, sign, and date the English version of the form, which he does. But no response is recorded that he “understood” what was being asked by Detective Kelly—indeed, the next intelligible utterance made by defendant is “Um, can I call my mom now?” In fact, no copy of the Spanish version of the Juvenile Waiver of Rights form, purportedly given to defendant contemporaneously with the English version which he signed, exists in the record; defendant was instructed to initial the English version of the form, which is in the record. Thus, Finding of Fact No. 4—“[t]hat [d]efendant was advised of his juvenile rights ... in written Spanish,” is not supported by competent *documentary* evidence in the record. Accordingly, despite defendant’s “express written waiver,” *see id.*, the evidence does not support the trial court’s ultimate conclusion that defendant executed a valid waiver.

*42 In addition, before beginning her questioning of defendant about multiple felony charges, Detective Kelly

said, “This is not something that is going to end your life. You know what I am saying? This is not a huge deal [.]” Arguably, this statement mischaracterized the gravity of the situation in an attempt to extract information from a juvenile defendant.

Although there may be no duty for an interrogating official to explain a defendant’s juvenile rights in any greater detail than what is required by statute, *see Flowers*, 128 N.C.App. at 700, 497 S.E.2d at 97, “[i]t is well established that juveniles differ from adults in significant ways and that these differences are especially relevant in the context of custodial interrogation.” *Saldierna*, — N.C. at —, 794 S.E.2d at 483 (Beasley, J., dissenting) (citations omitted). Such a mischaracterization by an interrogating official, then, surely cuts squarely against our legislature’s “well-founded policy of special protections for juveniles,” especially where, as here, nothing in the record indicates that defendant had any prior experience with law enforcement officers such that he would have been aware of criminal procedure generally or the consequences of speaking with the police. *Cf. Fare*, 442 U.S. at 726–27, 99 S.Ct. at 2572–73, 61 L.Ed.2d at 213 (concluding that a 16½-year-old juvenile “voluntarily and knowingly waived his Fifth Amendment rights” where, *inter alia*, the juvenile had “considerable experience with the police”); *Simpson*, 314 N.C. at 367, 334 S.E.2d at 59 (considering the “background” and “experience” of the accused in determining the voluntariness of waiver); *see also* Cara A. Gardner, *Failing to Serve and Protect: A Proposal for an Amendment to a Juvenile’s Right to a Parent, Guardian, or Custodian During a Police Interrogation After State v. Oglesby*, 86 N.C. L. Rev. 1685, 1698 (2008) (“[The] policy of special protection [for juvenile defendants] is well-founded because of juveniles’ unique vulnerabilities. Juveniles are uniquely vulnerable for two reasons: (1) *they are less likely than adults to understand their rights*; and (2) *they are distinctly susceptible to police interrogation techniques*.” (emphasis added)).

Generally, we accept that the trial court resolves conflicts in the evidence and weighs the credibility of evidence and witnesses. *See State v. O’Connor*, 222 N.C.App. 235, 241, 730 S.E.2d 248, 252 (2012). However, as we have noted, juvenile cases require special attention. *See Reid*, 335 N.C. at 663, 440 S.E.2d at 785.

Our Supreme Court has determined that this juvenile's request to call his mother after signing a waiver form was not an invocation of his right to have a parent present. *Saldierna*, — N.C. at —, 794 S.E.2d at 475. However, defendant's act of requesting to call his mother immediately after he ostensibly executed a form stating he was giving up his rights, including his right to have a parent present, shows enough uncertainty, enough anxiety on the juvenile's behalf, so as to call into question whether, under all the circumstances present in this case, the waiver was (unequivocally) valid.

Here, the waiver was signed in English only, and defendant's unintelligible answers to questions such as, “Do you understand these rights?” do not show a clear understanding and a voluntary waiver of those rights.¹⁰ Defendant stated firmly to the officer that he wanted to call his mother, even after the officer asked (unnecessarily), “Now, before you talk to us?” Further, defendant reiterated this desire, even in spite of the officer's aside to other officers in the room: “He wants to call his mom.” Such actions would show a reasonable person that this juvenile defendant did not knowingly, willingly, and understandingly waive his rights. Rather, his last ditch effort to call his mother (for help), after his prior attempt to call her had been unsuccessful, was a strong indication that he did not want to waive his rights at all. Yet, after a second unsuccessful attempt to reach his working parent failed, this juvenile, who had just turned sixteen years old, probably felt that he had no choice but to talk to the officers. It appears, based on this record, that defendant did not realize he had the choice to refuse to waive his rights, as the actions he took were not consistent with *43 a voluntary waiver. As a result, any “choice” defendant had to waive or not waive his rights is meaningless where the record does not indicate that defendant truly understood that he had a choice at all.

Furthermore, the totality of the circumstances set forth in this record ultimately do not fully support the trial court's conclusions of law, namely, “[t]hat the State carried its burden by a preponderance of the evidence that [d]efendant knowingly, willingly, and understandingly waived his juvenile rights.” See *Ortiz-Zape*, 367 N.C. at 5, 743 S.E.2d at 159 (citing *Biber*, 365 N.C. at 168, 712 S.E.2d at 878) (“[C]onclusions of law are reviewed de novo and are subject to full review.”). Here, too much evidence contradicts the English language written waiver signed by defendant, which, in any event, is merely a “recital” of

defendant's purported decision to waive his rights. See *Haley*, 332 U.S. at 601, 68 S.Ct. at 304–305, 92 L.Ed. at 229 (“[W]e cannot give any weight to recitals which merely formalize constitutional requirements.”). Accordingly, it should not be considered as significant evidence of a valid waiver. See *Simpson*, 314 N.C. at 367, 334 S.E.2d at 59 (“[A]n express *written* waiver, while strong proof of the validity of the waiver, is not inevitably sufficient to establish a *valid* waiver.” (emphasis added) (citation omitted)).

“Our criminal justice system recognizes that [juveniles'] immaturity and vulnerability sometimes warrant protections well beyond those afforded adults. It is primarily for that reason that a separate juvenile code with separate juvenile procedures exists.” *In re Stallings*, 318 N.C. 565, 576, 350 S.E.2d 327, 333 (1986) (Martin, J., dissenting). Indeed, “at least two empirical studies show that the vast majority of juveniles are *simply incapable of understanding* their *Miranda* rights and the meaning of waiving those rights.” *Oglesby*, 361 N.C. at 559 n.3, 648 S.E.2d at 824 n.3 (Timmons-Goodson, J., dissenting) (emphasis added) (citation omitted).

Even for an adult, the physical and psychological isolation of custodial interrogation can undermine the individual's will to resist and ... compel him to speak where he would not otherwise do so freely. Indeed, the pressure of custodial interrogation is so immense that it can induce a frighteningly high percentage of people to confess to crimes they never committed. That risk is all the more troubling—and recent studies suggest, all the more acute—when the subject of custodial interrogation is a juvenile.

J.D.B. v. North Carolina, 564 U.S. 261, 269, 131 S.Ct. 2394, 2401, 180 L.Ed.2d 310, 321 (2011) (alteration in original) (internal citations omitted).

[12] In conclusion, based on the totality of the circumstances, we hold the trial court erred in concluding that defendant knowingly, willingly, and understandingly waived his statutory and constitutional rights, and therefore, the trial court erred in denying defendant's motion to suppress. Accordingly, we reverse the order

of the trial court, vacate the judgments entered upon defendant's guilty pleas, and remand to the trial court with instructions to grant the motion to suppress and for any further proceedings it deems necessary.

Chief Judge [MCGEE](#) and Judge [DIETZ](#) concur.

All Citations

VACATED, REVERSED, AND REMANDED.

803 S.E.2d 33

Footnotes

- 1 See *State v. Saldierna*, 242 N.C.App. 347, 348, 775 S.E.2d 326, 327–30 (2015) and *State v. Saldierna*, 369 N.C. 401, 794 S.E.2d 474, 477–76 (2016) for more comprehensive statements of the facts.
- 2 The parties do not dispute that defendant was in custody at the time of questioning.
- 3 Notably, in 2015, the General Assembly amended subsection (b) of [N.C.G.S. § 7B-2101](#) to raise the age from 14 to 16 with regard to the admissibility of juveniles' in-custody admissions where a parent is not present: "When the juvenile is less than 16 years of age, no in-custody admission or confession resulting from interrogation may be admitted into evidence unless the confession or admission was made in the presence of the juvenile's parent, guardian, custodian, or attorney." N.C. Sess. Laws 2015-58, § 1.1, eff. Dec. 1, 2015. At the time of his custodial interrogation on 9 October 2013, defendant in the instant case had turned 16 on 19 August 2013, less than two months before.
- 4 "With respect to juveniles, both common observation and expert opinion emphasize that the distrust of confessions made in certain situations ... is imperative in the case of children from an early age through adolescence." *In re Gault*, 387 U.S. 1, 48, 87 S.Ct. 1428, 1454–1455, 18 L.Ed.2d 527, 557 (1967) (internal citation omitted); see also *In re J.D.B.*, 564 U.S. 261, 269, 131 S.Ct. 2394, 2401, 180 L.Ed.2d 310, 321 (2011) ("[The] risk [of false confessions] is all the more troubling—and recent studies suggest, all the more acute—when the subject of custodial interrogation is a juvenile. See Brief for Center on Wrongful Convictions of Youth et al. as *Amici Curiae* 21–22 (collecting empirical studies that 'illustrate the heightened risk of false confessions from youth')."). Indeed, even Justice Alito, in his dissenting opinion, acknowledged the "particular care" that must be taken with juveniles to ensure against involuntary confessions:
[W]here the suspect is much younger than the typical juvenile defendant, courts should be instructed to take particular care to ensure that incriminating statements were not obtained involuntarily. The voluntariness inquiry is flexible and accommodating by nature, and the Court's precedents already make clear that "special care" must be exercised in applying the voluntariness test where the confession of a "mere child" is at issue. If *Miranda's* rigid, one-size-fits-all standards fail to account for the unique needs of juveniles, the response should be to rigorously apply the constitutional rule against coercion to ensure the rights of minors are protected.
Id. at 297–98, 131 S.Ct. at 2418, 180 L.Ed.2d at 340 (Alito, J., dissenting) (internal citations omitted).
- 5 Four officers were involved in defendant's arrest, including Detective Kelly.
- 6 It is unclear whether defendant's response—"Yeah"—is a response to the first question, "Do you understand that?" or a response to the second question, "Do you want to read that?"
- 7 Notably, there is no recorded affirmative response by defendant to this question.
- 8 By stating "we are told that this boy was advised of his constitutional rights before he signed the confession," *Haley*, 332 U.S. at 601, 68 S.Ct. 302 at 304–305, 92 L.Ed. at 229, the Supreme Court was acknowledging that contrary to the police officers' testimony otherwise, the juvenile was not, in fact, advised of his right to counsel at any time, but was only given a typed version of his confession to sign, which included language at the beginning purporting to advise the juvenile of his "constitutional rights." *Id.* at 598, 68 S.Ct. at 303, 92 L.Ed. at 228.
- 9 See *supra* note 3.
- 10 See *supra* notes 6 and 7 and accompanying text.

369 N.C. 401
Supreme Court of North Carolina.

STATE of North Carolina
v.
Felix Ricardo SALDIERNA

No. 271PA15

|
Filed December 21, 2016

Synopsis

Background: Following denial of motion to suppress, juvenile defendant pleaded guilty in the Superior Court, Mecklenburg County, [Jesse B. Caldwell, J.](#), to felony breaking and entering and conspiracy to commit breaking and entering. Juvenile defendant appealed, and the Court of Appeals, [775 S.E.2d 326](#), reversed, vacated and remanded. The Supreme Court accepted discretionary review.

[Holding:] The Supreme Court, [Edmunds, J.](#), held that statement, “Um, can I call my mom?” was not a clear and unambiguous invocation of juvenile defendant's right to have his parent or guardian present during questioning.

Reversed and remanded.

[Beasley, J.](#), dissented with opinion.

West Headnotes (4)

[1] **I rif inal t a2**

🔑 [Illegally obtained evidence](#)

I rif inal t a2

🔑 [Evidence wrongfully obtained](#)

The standard of review in evaluating the denial of a motion to suppress is whether competent evidence supports the trial court's findings of fact and whether the findings of fact support the conclusions of law.

[Cases that cite this headnote](#)

[3] **I rif inal t a2**

🔑 [Review De Novo](#)

I rif inal t a2

🔑 [Questions of Fact and Findings](#)

Findings of fact are binding on appeal if supported by competent evidence, while conclusions of law are reviewed de novo.

[Cases that cite this headnote](#)

[4] **I rif inal t a2**

🔑 [Warnings](#)

5n6an7s

🔑 [Warnings and counsel;waivers](#)

A juvenile defendant's constitutional rights under [Miranda](#) and statutory advisement rights specific to juveniles are of equal weight and given equal consideration. [U.S. Const. Amends. 5, 6; N.C. Gen. Stat. Ann. § 7B-2101\(a\)](#).

[Cases that cite this headnote](#)

[8] **5n6an7s**

🔑 [Presence, availability, or consultation of parent or guardian](#)

Juvenile defendant's statement, “Um, can I call my mom?” was not a clear and unambiguous invocation of his right to have his parent or guardian present during questioning; defendant did not give any indication that he wanted to have his mom present for his interrogation or condition his interview on first speaking with her, officer immediately loaned defendant her personal cellular telephone so that he could make the call, but defendant did not say why he wanted to make the call, and defendant had just signed the portion of the juvenile rights form expressing his desire to proceed on his own. [U.S. Const. Amend. 6; N.C. Gen. Stat. Ann. § 7B-2101\(a\)\(3\)](#).

[1 Cases that cite this headnote](#)

9980A On discretionary review pursuant to [N.C.G.S. § 7A-31](#) of a unanimous decision of the Court of Appeals, — N.C. App. —, 775 S.E.2d 326 (2015), reversing an order denying defendant's motion to suppress entered on 20 February 2014 by Judge Forrest D. Bridges, vacating a judgment entered on 4 June 2014 by Judge Jesse B. Caldwell, both in Superior Court, Mecklenburg County, and remanding the case for further proceedings. Heard in the Supreme Court on 16 February 2016.

e 7ornLys and t a2 wirf s

Roy Cooper, Attorney General, by [Kimberly N. Callahan](#), Assistant Attorney General, for the State-appellant.

Goodman Carr, PLLC, Charlotte, by [W. Rob Heroy](#), for defendant-appellee.

Opinion

[EDMUNDS](#), Justice.

98n3 Defendant, a juvenile, asked to telephone his mother while undergoing custodial questioning by police investigators. The call was allowed, after which the interrogation continued. The trial court denied defendant's motion to suppress the statements he made following the call. We conclude that defendant's request to call his mother was not a clear invocation of his right to consult a parent or guardian before proceeding with the questioning. Accordingly, we reverse the decision of the Court of Appeals that reversed the trial court's order denying the motion to suppress.

After several homes around Charlotte were broken into on 17 and 18 December 2012, Charlotte-Mecklenburg Police arrested defendant on 9 January 2013. At the time, defendant was sixteen and one-half years old. The arresting officers took defendant to a local police station where Detective Kelly (Kelly) interrogated him. Before beginning her interrogation, Kelly provided defendant with both English and Spanish versions of the Juvenile Waiver of Rights Form routinely used by the Charlotte-Mecklenburg Police Department to explain the protections afforded juveniles under [N.C.G.S. § 7B-2101](#). These forms advised defendant that he had the right to remain silent; that anything he said could be used against him; that he had the right to have a parent, guardian, or custodian present during the interview; that

he had the right to speak to a lawyer and to have a lawyer present to help him during questioning; and that a lawyer would be provided at no cost prior to questioning if he so desired. Kelly also read these rights in English to defendant, pausing after each to ask if defendant understood. Defendant **98n4** initialed the English form beside each enumerated right and the section that noted:

I am 14 years old or more and I understand my rights as explained by Officer/Detective Kely [sic]. I DO wish to answer questions now, WITHOUT a lawyer, parent, guardian, or custodian here with me. My decision to answer questions now is made freely and is my own choice. No one has threatened me in any way or promised me special treatment. Because I have decided to answer questions now, I am signing my name below.

The words “I DO wish to answer questions now” on the form are circled. Only after defendant signed the form did Detective Kelly begin the interrogation.

9980* Kelly had gone no further than noting the time and date for the audio recording when defendant asked, “Um, can I call my mom?” Detective Kelly offered her cellular telephone to defendant and allowed him to step out of the booking room to make the call. Detective Kelly could hear defendant but was not sure if he placed one call or two. Defendant did not reach his mother but did speak to someone else. However, because defendant spoke Spanish while on the phone, Kelly could not provide any details concerning the nature of the conversation. Upon defendant's return to the booking area, Kelly resumed her questioning. Defendant did not object and made no further request to contact anyone. During the ensuing interview, defendant confessed that he had been involved in the break-ins.

Defendant was indicted, *inter alia*, for two counts of felony breaking and entering, conspiracy to commit breaking and entering, and conspiracy to commit common law larceny after breaking and entering. On 9 October 2013, defendant moved to suppress his confession, arguing that it was illegally obtained in violation both of his rights as a juvenile under [N.C.G.S. § 7B-2101](#) and of his rights under the United States Constitution. After conducting an evidentiary hearing, the trial court denied the motion in an order entered on 20 February 2014, finding as facts that defendant was advised of his juvenile rights and, after receiving forms setting out these rights both in English and Spanish and having the rights read to him in English

by Kelly, indicated that he understood them. In addition, the trial court found that defendant informed Kelly that he wished to waive his juvenile rights and signed the form memorializing that wish. Although defendant then unsuccessfully sought to contact his mother, the court found:

98n8 17. That Defendant did not at that time or any other time indicate that he changed his mind regarding his desire to speak to Detective Kelly. That Defendant did not at that time or any other time indicate that he revoked his waiver.

18. That Defendant only asked to speak to his mother.

19. That Defendant did not make his interview conditional on having his mother present or conditional on speaking to his mother.

20. That Defendant did not ask to have his mother present at the interview site.

21. That, upon review of the totality of the circumstances, the Court finds that Defendant's request to speak to his mother was at best an ambiguous request to speak to his mother.

22. That at no time did Defendant make an unambiguous request to have his mother present during questioning.

23. That Defendant never indicated that his mother was on the way or could be present during questioning.

24. That Defendant made no request for a delay of questioning.

Based on those findings, the trial court determined that the interview was conducted in a manner consistent with N.C.G.S. § 7B-2101 and did not violate any of defendant's state or federal rights. The court concluded as a matter of law that the State met its burden of establishing by a preponderance of the evidence that defendant "knowingly, willingly, and understandingly waived his juvenile rights."

On 4 June 2014, defendant entered pleas of guilty to two counts of felony breaking and entering and two counts of conspiracy to commit breaking and entering, while reserving his right to appeal from the denial of his motion to suppress. The court sentenced defendant to a term of

six to seventeen months, suspended for thirty-six months subject to supervised probation.

The Court of Appeals reversed the trial court's order denying defendant's motion to suppress, vacated the judgments entered upon defendant's guilty pleas, and remanded the case to the trial court for further proceedings. **98mA** *State v. Saldierna*, — N.C.App. —, —, 775 S.E.2d 326, 334 (2015). The Court of Appeals recognized that the trial court correctly found that defendant's statement asking to telephone his mother was ambiguous at best. *Id.* at —, 775 S.E.2d at 331. However, it went on to conclude that, **99800** unlike the invocation of *Miranda* rights by an adult, a juvenile need not make a clear and unequivocal request in order to exercise his or her right to have a parent present during questioning. *Id.* at —, 775 S.E.2d at 333–34. Instead, the Court of Appeals held that when a juvenile between the ages of fourteen and eighteen¹ makes an ambiguous statement that potentially pertains to the right to have a parent present, an interviewing officer must clarify the juvenile's meaning before proceeding with questioning. *Id.* at —, 775 S.E.2d at 334. The Court of Appeals based this distinction on the fact that *Miranda* rights are rooted in the United States Constitution, while the right to have a parent present during custodial interrogations is an additional statutory protection for juveniles who, by virtue of their age, lack the life experience and judgment of an adult. *Id.* at —, 775 S.E.2d at 333.

[1] [3] This Court granted the State's petition for discretionary review. We review an opinion of the Court of Appeals for errors of law. N.C. R. App. P. (16)(a). "The standard of review in evaluating the denial of a motion to suppress is whether competent evidence supports the trial court's findings of fact and whether the findings of fact support the conclusions of law." *State v. Biber*, 365 N.C. 162, 167–68, 712 S.E.2d 874, 878 (2011) (citing *State v. Brooks*, 337 N.C. 132, 140–41, 446 S.E.2d 579, 585 (1994)). Findings of fact are binding on appeal if supported by competent evidence, *State v. Cooke*, 306 N.C. 132, 134, 291 S.E.2d 618, 619 (1982) (citations omitted), while conclusions of law are reviewed de novo, *State v. Ortiz-Zape*, 367 N.C. 1, 5, 743 S.E.2d 156, 159 (2013) (citing *Biber*, 365 N.C. at 168, 712 S.E.2d at 878), *cert. denied*, — U.S. —, 134 S.Ct. 2660, 189 L.Ed. 2d 208 (2014).

In evaluating whether the trial court correctly denied defendant's motion to suppress, we first must consider the

threshold question of whether defendant invoked his right to have his mother present during the custodial interview. We must also consider whether defendant knowingly and voluntarily waived his rights under 98n^f section 7B–2101 of the North Carolina General Statutes and under the constitutions of North Carolina and the United States, thus making his confession admissible. We begin with the former inquiry.

The State argues that defendant's request to call his mother was not an invocation of his right to have a parent present under N.C.G.S. § 7B–2101(a)(3). The State points out that defendant simply asked to call his mother, which the detective readily permitted. He never requested his mother's presence or indicated that he wished to suspend the interview until he could reach her. The State contends that when a juvenile's statement is ambiguous, law enforcement officers have no additional duty to ascertain whether the juvenile is invoking his statutory rights or whether they may continue questioning the minor.

In response, defendant argues that, according to the plain language of N.C.G.S. § 7B–2101, the interview should have ceased until defendant spoke with his mother or indicated his desire to proceed without her, even though the precise import of his question to the detective was unclear. Should we disagree with this statutory interpretation, defendant makes an argument under the United States Constitution that we should extend the rationale in *J.D.B. v. North Carolina*, 564 U.S. 261, 264–65, 131 S.Ct. 2394, 2398–99, 180 L.Ed.2d 310, 318–19 (2011), which held that the age of a juvenile is a factor in determining whether he or she was in police custody for purposes of *Miranda*, and hold that reviewing courts must take into account the juvenile's age and maturity level when determining the admissibility of juvenile confessions.

As to defendant's statutory argument, N.C.G.S. § 7B–2101(a) establishes that juveniles must be advised of certain rights prior 99800 to a custodial interrogation. The statute codifies the juvenile's *Miranda* rights and adds the additional protection that the juvenile has the right to have a parent, guardian, or custodian present during questioning. N.C.G.S. § 7B–2101(a) (2015). A statement made during custodial interrogation is admissible only if the juvenile knowingly, willingly, and understandingly has

waived his constitutional and statutory rights. *Id.* § 7B–2101(d) (2015).

[4] This Court has recognized that a juvenile's statutory right to have a parent present during custodial interrogation is analogous to the constitutional right to counsel and therefore is entitled to the same protection. *State v. Smith*, 317 N.C. 100, 106, 343 S.E.2d 518, 521 (1986), *abrogated in part on other grounds by State v. Buchanan*, 353 N.C. 332, 543 S.E.2d 823 (2001). In *Smith*, we noted that the Supreme Court of the United States held in *Edwards v. Arizona*, 451 U.S. 477, 101 S.Ct. 1880, 68 L.Ed.2d 378 (1981), that after a defendant expresses a desire to deal with 98n0 police only through counsel, he or she may not be questioned further until counsel is present or the defendant reinitiates communication with law enforcement. 317 N.C. at 106, 343 S.E.2d at 521. This Court in *Smith* applied that same principle in the context of juvenile law to hold that, when a juvenile unambiguously requested that his mother be brought to the police station, officers were required to cease all questioning until the mother arrived or the juvenile reinitiated discussions. *Id.* at 107, 343 S.E.2d at 522. These cases leave no doubt that a juvenile's constitutional rights under *Miranda* and statutory rights under N.C.G.S. § 7B–2101(a) are of equal weight and given equal consideration.

Nevertheless, the Supreme Court of the United States also has held that, when an individual under interrogation mentions an attorney with such vagueness that law enforcement investigators are left unsure whether the comment is an invocation of the right to counsel, police have no duty to ask clarifying questions and may continue with the interrogation. *Davis v. United States*, 512 U.S. 452, 459, 114 S.Ct. 2350, 2355, 129 L.Ed.2d 362, 371 (1994) (holding that invocation of the right to counsel “requires, at a minimum, some statement that can reasonably be construed to be an expression of a desire for the assistance of an attorney” (quoting *McNeil v. Wisconsin*, 501 U.S. 171, 178, 111 S.Ct. 2204, 2209, 115 L.Ed.2d 158, 169 (1991))). In other words, the objective test set out in *Davis* considers whether a reasonable officer under the circumstances would have understood the defendant's statement to be an invocation of his or her right to have an attorney present. *Davis*, *id.* at 459, 114 S.Ct. at 2355, 129 L.Ed.2d at 371.

This Court has adopted the analytical framework found in *Davis* when determining whether a defendant has invoked

his or her constitutional rights. For instance, in *State v. Boggess*, 358 N.C. 676, 600 S.E.2d 453 (2004), we held that the defendant's statement to police that "[i]f y'all going to treat me this way, then I probably would want a lawyer" did not constitute an invocation of the defendant's right to an attorney. *Id.* at 687, 600 S.E.2d at 460; *see also State v. Hyatt*, 355 N.C. 642, 655–56, 566 S.E.2d 61, 70–71 (2002) (holding that the defendant did not invoke his right to counsel when a nearby officer "could have heard" the defendant whisper to his father that "I want you to get me a lawyer"), *cert. denied*, 537 U.S. 1133, 123 S.Ct. 916, 154 L.Ed.2d 823 (2003). Similarly, in *State v. Waring*, 364 N.C. 443, 701 S.E.2d 615 (2010), *cert. denied*, 565 U.S. 832, 132 S.Ct. 132, 181 L.Ed. 2d 53 (2011), we held that the defendant's statement that he "was not going to snitch" when questioned about his accomplice's name was not an unambiguous invocation of his right to remain silent. *Id.* at 473, 701 S.E.2d at 635.

98nO We have also applied *Davis* when the suspect under interrogation is a juvenile. *State v. Golphin*, 352 N.C. 364, 533 S.E.2d 168 (2000), *cert. denied*, 532 U.S. 931, 121 S.Ct. 1379, 149 L.Ed.2d 305 (2001). In *Golphin*, the juvenile defendant was apprehended after he and his brother committed an armed robbery, stole a vehicle, and murdered two police officers. *Id.* at 380, 386–87, 533 S.E.2d at 183, 187. After he was detained, the defendant waived his juvenile rights under [section 7B–2101](#) and gave a statement to an agent of the State Bureau of Investigation. *Id.* at 449, 533 S.E.2d at 224. When the agent specifically **9980C** asked the defendant whether he was aware of an incident involving a Jeep, the defendant responded that "he didn't want to say anything about the [J]eep. He did not know who it was or he would have told us." *Id.* at 451, 533 S.E.2d at 225. Upon further questioning, however, the defendant admitted that his brother shot at a Jeep that was following them. *Id.* at 387, 449, 533 S.E.2d at 187, 224.

On appeal, the defendant argued that the agent violated his constitutional right to silence by continuing to question him after he requested not to discuss the Jeep. *Id.* at 448–49, 533 S.E.2d at 224. In rejecting the defendant's argument, we applied the *Davis* analysis and concluded that the defendant's statement was not an unambiguous request to remain silent. *Id.* at 450–51, 533 S.E.2d at 225. Instead, the statement appeared to be an acknowledgment that, had he known who was involved, the defendant would have shared that information freely. *Id.* at 451,

533 S.E.2d at 225. As a result, it was reasonable for the agent to continue the questioning because the defendant failed clearly to invoke any of his rights. *Id.* at 451–52, 533 S.E.2d at 225. In reaching this conclusion, we confirmed both that the *Davis* analysis applies when evaluating whether a juvenile defendant has invoked his or her juvenile rights during a custodial interrogation and that law enforcement officers are not required to seek clarification of ambiguous statements made by juvenile defendants under interrogation. *See id.* at 451, 533 S.E.2d at 225.

[8] Because a juvenile's statutory right to have a parent or guardian present during questioning is entitled to the same protection as the constitutional right to counsel, we must apply *Davis* in determining whether defendant's statement—"Um, can I call my mom?"—was a clear and unambiguous invocation of his right to have his parent or guardian present during questioning. We conclude that it was not.

Although defendant asked to call his mother, he never gave any indication that he wanted to have her present for his interrogation, nor did he condition his interview on first speaking with her. Instead, defendant simply asked to call her. When the request was made, Kelly immediately **98nC** loaned defendant her personal cellular telephone so that he could make the call. Defendant's purpose for making the call was never established. Whatever his reasons, defendant did not "articulate his desire to have [a parent] present sufficiently clearly that a reasonable police officer in the circumstances would understand the statement to be a request for [a parent]," especially in light of the fact that defendant had just signed the portion of the juvenile rights form expressing his desire to proceed on his own. *Davis*, 512 U.S. at 459, 114 S.Ct. at 2355, 129 L.Ed.2d at 371. As the trial court pointed out, defendant's statement was at best an ambiguous invocation of his right to have his mother present. As in *Davis*, without an unambiguous, unequivocal invocation of defendant's right under N.C.G.S. § 7B–2101(a)(3), law enforcement officers had no duty to ask clarifying questions or to cease questioning. Because defendant's juvenile statutory rights were not violated, we reverse the decision of the Court of Appeals to the contrary.

Nevertheless, the admissibility of defendant's confession is a two-pronged inquiry, as noted above. Even though we have determined that defendant's N.C.G.S. § 7B–

2101(a)(3) right was not violated, defendant's confession is not admissible unless he knowingly, willingly, and understandingly waived his rights. *N.C.G.S. § 7B-2101(d)*. The Court of Appeals did not reach this question and instead erroneously resolved the case upon the first prong. *Saldierna*, — N.C.App. at —, 775 S.E.2d at 334. Because we have concluded that defendant's right under subdivision 7B-2101(a)(3) was not violated, we remand this case to the Court of Appeals for consideration of the validity of defendant's waiver of his statutory and constitutional rights.

REVERSED AND REMANDED.

Justice **BEASLEY** dissenting.

I disagree with the majority and would hold that defendant's statement, "Um, Can I call my mom?" was an unambiguous invocation of his statutory right to have a parent present during custodial interrogation. Assuming **998On** *arguendo* that defendant's statement was ambiguous, I also disagree with the majority's conclusion that because defendant's request was ambiguous his statutory rights under *N.C.G.S. § 7B-2101* were not violated. Because I would affirm the Court of Appeals' holding that law enforcement officers are required to ask questions to clarify the desire and intent of a juvenile who makes an ambiguous statement relating to his statutory right to have a parent present, I respectfully dissent.

981m Subsection 7B-2101(a) of the North Carolina General Statutes provides that juveniles must be advised of certain enumerated rights before being subjected to custodial interrogation. As explained by the majority, "The statute codifies the juvenile's *Miranda* rights and adds the additional protection that the juvenile has the right to have a parent, guardian, or custodian present during questioning." See *N.C.G.S. § 7B-2101(a)* (2015).² As such, the right to have a parent, guardian, or custodian present, *id.* § 7B-2101(a)(3), "is *not* the codification of a federal constitutional right, but rather our General Assembly's grant to the juveniles of North Carolina of a purely statutory protection *in addition* to those identified in *Miranda*." *State v. Saldierna*, — N.C.App. —, —, 775 S.E.2d 326, 332 (2015) (citing, *inter alia*, *State v. Fincher*, 309 N.C. 1, 12, 305 S.E.2d 685, 692 (1983) (stating, for purposes of determining the appropriate prejudice standard, that "[t]he failure to advise [a juvenile] defendant of his right to have a

parent, custodian or guardian present during questioning is not an error of constitutional magnitude because this privilege is statutory in origin and does not emanate from the Constitution")). The statute also establishes that a juvenile's statement cannot be admitted into evidence unless the court "find[s] that the juvenile knowingly, willingly, and understandingly waived" his constitutional and statutory rights. *N.C.G.S. § 7B-2101(d)* (2015).

As the Court of Appeals stated, "[W]ith regard to a defendant's *Miranda* rights to remain silent and to have an attorney present during a custodial interrogation, the law is clear." *Saldierna*, — N.C.App. at —, 775 S.E.2d at 332. A defendant must unambiguously invoke his or her *Miranda* rights, and law enforcement officers have no obligation to clarify a defendant's ambiguous statements. See *Davis v. United States*, 512 U.S. 452, 459, 461–62, 114 S.Ct. 2350, 2355–56, 129 L.Ed.2d 362 (1994) ("[T]he suspect **9811** must unambiguously request counsel," and law enforcement officers are not required to ask clarifying questions when a suspect's statement regarding counsel is ambiguous); *Edwards v. Arizona*, 451 U.S. 477, 484–85, 101 S.Ct. 1880, 1885, 68 L.Ed.2d 378 (1981) (holding that law enforcement officers must immediately cease questioning upon a suspect's unambiguous request for counsel and cannot reinitiate interrogation until counsel arrives or the suspect "initiates further communication"). In *State v. Golphin*, 352 N.C. 364, 533 S.E.2d 168 (2000), *cert. denied*, 532 U.S. 931, 121 S.Ct. 1379, 149 L.Ed.2d 305 (2001), this Court extended this rule to juveniles, holding that a juvenile defendant's right to remain silent must be unambiguously invoked.³ *Id.* at 451–52, 533 S.E.2d at 225.

To determine whether a defendant unambiguously invoked his *Miranda* rights, this Court applies the standard set forth in *Davis*: "Invocation of the *Miranda* right to counsel 'requires, at a minimum, some statement that can reasonably be construed to be an expression of a desire for the assistance of an attorney.'" *Davis*, 512 U.S. at 459, 114 S.Ct. at 2355 (quoting **998Q1** *McNeil v. Wisconsin*, 501 U.S. 171, 178, 111 S.Ct. 2204, 2209, 115 L.Ed.2d 158 (1991)). The Court goes on to say that the inquiry is based on what a "reasonable officer in light of the circumstances" would believe the statement to mean. *Id.* at 459, 114 S.Ct. at 2355 (citations omitted). Here defendant asked to speak to his mother prior to questioning.⁴ I agree with the Court of Appeals that Detective Kelly's question, "You want to call her *now*

before we talk?” is telling. See *Saldierna*, — N.C.App. at —, n.6, 775 S.E.2d at 334 n.6 (“Kelly’s question indicates that she believed [defendant] *might be* asking to delay the interview, at least until he had a chance to speak to his mother.”). Implicit in the protections afforded by subdivision 7B-2101(a)(3) is that law enforcement officers understand whether a juvenile intends to invoke the statutory rights. The 9813 majority states that defendant “never gave any indication that he wanted to have [his mom] present for his interrogation.... Instead, defendant simply asked to call her.” Thus, according to the majority, “Defendant’s purpose for making the call was never established.” Despite the majority’s contention, the reasonable conclusion under the circumstances is that defendant wanted his mother present. Why else would defendant want to call his mom “now before [he] talked” if not to seek her advice and protection? The majority and the Court of Appeals agree that defendant’s statement was not an unambiguous invocation of his statutory right to have a parent present.⁵ However, defendant’s statement was “sufficiently clear[] that a reasonable police officer in the circumstances would understand the statement to be a request” to have his mother present before questioning. *Davis*, 512 U.S. at 459, 114 S.Ct. at 2355. In light of this unambiguous request, all questions should have immediately ceased until defendant’s mother was present or defendant reinitiated the conversation. See *Edwards*, 451 U.S. at 484–85, 101 S.Ct. at 1885.

The cases discussed above only address a defendant’s constitutional *Miranda* rights, not his statutory rights. In regard to a juvenile’s statutory right to have a parent present, this Court has only addressed a juvenile’s *unambiguous* invocation of the right. See *State v. Smith*, 317 N.C. 100, 343 S.E.2d 518 (1986), *abrogated in part on other grounds by State v. Buchanan*, 353 N.C. 332, 340, 543 S.E.2d 823, 828 (2001). In *Smith* this Court stated that law enforcement officers must cease questioning when a juvenile unambiguously invokes his statutory right to have a parent present. *Id.* at 108, 343 S.E.2d at 522; see *State v. Branham*, 153 N.C.App. 91, 95, 569 S.E.2d 24, 27 (2002). This Court has not, however, “considered the implications of a juvenile’s *ambiguous* reference” to his statutory right to have a parent present. *Saldierna*, — N.C.App. at —, 775 S.E.2d at 333. The legislature intended to afford juveniles greater 9814 protection in subdivision (a)(3) than those afforded by a juvenile’s constitutional *Miranda* rights codified in N.C.G.S. § 7B-2101(a)(1), (2), and (4). See *The Final Report of the Juvenile Code Revision*

Committee 183 (Jan. 1979) (commenting 9980B that the Committee added “[subdivision] (3) ... to assure that the juvenile may have his parent present during questioning if he desires and [stating that subdivision (3)] is an addition to case law requirements” found in N.C.G.S. § 7B-2101(a)(1), (2), and (4)). Moreover, when viewed in its entirety, section 7B-2101 demonstrates our General Assembly’s acknowledgement that juveniles are especially vulnerable when subjected to custodial interrogation. See N.C.G.S. § 7B-2101(b) (providing that, in essence, a juvenile under the age of sixteen cannot waive his right to have a parent or attorney present); see also Act of May 26, 2015, ch. 58, sec. 1.1, 2015 N.C. Sess. Laws 126, 126 (increasing the age of juveniles protected by subsection (b) from less than fourteen to less than sixteen years).

According to the majority, this Court’s decision in *Smith*—applying the *Miranda* framework set forth in *Davis*, 512 U.S. at 459, 114 S.Ct. at 2355, to a juvenile’s *unambiguous* invocation of his right to have a parent present—indicates that a juvenile’s statutory right under subdivision (a)(3) can only be afforded as much protection as a juvenile’s constitutional *Miranda* rights. As such, the majority concludes that the *Miranda* rules also apply to juveniles who make *ambiguous* statements regarding their right to have a parent present. I disagree. I agree with the Court of Appeals that by enacting N.C.G.S. § 7B-2101(a)(3), the legislature demonstrated its intent to afford a juvenile greater protection when attempting to invoke his or her right to have a parent present than when attempting to invoke his or her *Miranda* rights. *Saldierna*, — N.C.App. at —, 775 S.E.2d at 333 (“[R]eview of the provisions of section 7B-2101 reveals an understanding by our General Assembly that the special right guaranteed by subsection (a)(3) is different from those rights discussed in *Miranda* and, in turn, reflects the legislature’s intent that law enforcement officers proceed with great caution in determining whether a juvenile is attempting to invoke this right.”).

Although this Court has held that a “juvenile’s right ... to have a parent present during custodial interrogation[] is entitled to similar protection [as an adult’s right to have an attorney present],” *Smith*, 317 N.C. at 106, 343 S.E.2d at 521, it does not follow that the protections afforded to juveniles under subdivision 7B-2101(a)(3) are capped at, and therefore cannot exceed, those provided under *Miranda*. As previously discussed, *Smith* involved a situation in which a juvenile defendant unambiguously

requested that his mother be brought to the police station before he was **9818** questioned. *Id.* at 102, 343 S.E.2d at 519. This Court held that in such circumstances, the *Miranda* framework of *Davis* applied and required law enforcement officers to immediately cease questioning. *Id.* at 106–07, 343 S.E.2d at 521–22. This Court applied principles established under the Fifth and Sixth Amendments to the “resumption of custodial interrogation” under section 7B–2101.⁶ *Id.* at 106, 343 S.E.2d at 521 (noting that the *Miranda* cases “are not controlling”). The “resumption of custodial interrogation” principles apply in the context of an unambiguous invocation of rights. *See Davis*, 512 U.S. at 459–61, 114 S.Ct. at 2355–56 (holding that law enforcement officers must cease questioning after an unambiguous invocation of the right to counsel and *cannot resume questioning* until counsel is present or the defendant reinitiates communication). This Court did not address ambiguous statements, nor did it affirmatively hold that the protections afforded by subdivision (a)(3) are capped at those afforded to adults under *Miranda*. Therefore, I agree with the Court of Appeals' conclusion that the “case law regarding invocation of the *Miranda* rights guaranteed by the federal Constitution and codified in subsections 7B–2101(a)(1), (2), and (4) does *not* control our analysis of a juvenile's ambiguous statement possibly invoking the purely statutory right granted by our State's General Assembly in section 7B–2101(a)(3).” *Saldierna*, — N.C.App. at —, 775 S.E.2d at 332.

9980 It is well established that juveniles differ from adults in significant ways and that these differences are especially relevant in the context of custodial interrogation. *See, e.g., Thompson v. Oklahoma*, 487 U.S. 815, 835, 108 S.Ct. 2687, 2699, 101 L.Ed.2d 702 (1988) (plurality opinion) (“Inexperience, less education, and less intelligence make the teenager less able to evaluate the consequences of his or her conduct while at the same time he or she is much more apt to be motivated by mere emotion or peer pressure than is an adult.”); *Gallegos v. Colorado*, 370 U.S. 49, 54, 82 S.Ct. 1209, 1212, 8 L.Ed.2d 325 (1962) (stating that juveniles are “not equal to the police in knowledge and understanding of the consequences of the questions and answers being recorded and ... [are] unable to know how to protect [their] own interests or *how to get the benefits of [their] constitutional rights*” (emphasis added)); *Haley v. Ohio*, 332 U.S. 596, 599–600, 68 S.Ct. 302, 304, 92 L.Ed. 224 (1948) (plurality opinion) (“[W]e cannot believe that a lad of tender years is

a match for the police in such a contest [as custodial **981A** interrogation].... He needs someone on whom to lean lest the overpowering presence of the law, as he knows it, crush him.”). As discussed by the United States Supreme Court

[a] child's age is far more than a chronological fact. It is a fact that generates commonsense conclusions about behavior and perception. Such conclusions apply broadly to children as a class. And, they are self-evident to anyone who was a child once himself, including any police officer or judge.

Time and again, this Court has drawn these commonsense conclusions for itself. We have observed that children generally are less mature and responsible than adults, that they often lack the experience, perspective, and judgment to recognize and avoid choices that could be detrimental to them, that they are more vulnerable or susceptible to ... outside pressures than adults, and so on. Addressing the specific context of police interrogation, we have observed that events that would leave a man cold and unimpressed can overawe and overwhelm a lad in his early teens. Describing no one child in particular, these observations restate what any parent knows—indeed, what any person knows—about children generally.

Our various statements to this effect are far from unique. The law has historically reflected the same assumption that children characteristically lack the capacity to exercise mature judgment and possess only an incomplete ability to understand the world around them.

J.D.B. v. North Carolina, 564 U.S. 261, 272–73, 131 S.Ct. 2394, 2403, 180 L.Ed.2d 310 (2011) (citations and internal quotation marks omitted).

North Carolina courts have also acknowledged that “[j]uveniles are awarded special consideration in light of their youth and limited life experience.” *State v. Oglesby*, 361 N.C. 550, 557, 648 S.E.2d 819, 823 (2007) (Timmons-Goodson, J., dissenting) (citing *In re Stallings*, 318 N.C. 565, 576, 350 S.E.2d 327, 333 (1986) (Martin, J., dissenting)); *see In re K.D.L.*, 207 N.C.App. 453, 459, 700 S.E.2d 766, 771 (2010) (“[W]e cannot forget that police interrogation is inherently coercive—particularly for young people.” (citations omitted)), *disc. rev. denied*, 365 N.C. 90, 706 S.E.2d 478 (2011). As discussed by Justice Harry C. Martin in his dissent to this Court's

decision in *In re Stallings*, “Juveniles are not, after all miniature adults. Our criminal justice system recognizes that **981*** their immaturity and vulnerability sometimes warrant protections well beyond those afforded adults. It is primarily for that reason that a separate juvenile code with separate juvenile procedures exists.” **318 N.C. at 576, 350 S.E.2d at 333** (Martin, J., dissenting). Justice H. Martin goes on to explain that the Juvenile Code demonstrates “legislative intent to provide broader protections to juveniles.” See *id.* at 577, **350 S.E.2d at 333**. Furthermore, “at least two empirical studies show that ‘the vast majority of juveniles are simply incapable of understanding their *Miranda* rights and the meaning of waiving those rights.’ ” *Oglesby*, **361 N.C. at 559 n.3, 648 S.E.2d at 824 n.3** (citation omitted); see Cara A. Gardner, Recent Developments, *Failing to Serve and Protect: A Proposal for an Amendment to a Juvenile's Right to a Parent, Guardian, or Custodian During a Police Interrogation after State v. Oglesby*, **86 N.C. L. Rev. 1685, 1698-99 (2008)** [hereinafter *Failing to Serve and Protect*] (“[R]esearch has revealed that **99808** only 20.9% of juveniles understand the standard *Miranda* warnings.... [and] many d[o] not understand that [their right to an attorney means that] the attorney could actually be present during police questioning rather than at some later time. ... This may indicate that juveniles in North Carolina also have difficulty understanding that they have the right to have a parent ... present during an interrogation rather than at some later time.” (footnotes omitted)). Therefore, it is reasonable to believe that juveniles should be afforded greater protections when seeking to have a parent present. See *Failing to Serve and Protect* at 1695 (“The reason a juvenile in a custodial interrogation has a right to the presence of a parent, guardian, or custodian is presumably so that the adult may assist in protecting the juvenile's rights.”).

For these reasons, I would hold that when a juvenile makes an ambiguous statement relating to his or her statutory right to have a parent present during a custodial interrogation, law enforcement officers are required to ask clarifying questions to determine whether the juvenile desires to have his or her parent present before the juvenile answers any questions. Specifically, *Miranda* precedent is not binding on a juvenile's statutory rights under **N.C.G.S. § 7B-2101(a)(3)**, and I believe that a juvenile can be afforded greater protection than that afforded under *Miranda* when attempting to invoke his or her statutory

right. Additionally, as discussed above, juveniles are not able to fully understand the consequences of their actions and are more likely to submit to pressure. Most adults are nervous and apprehensive when stopped by a uniformed officer even in relatively trivial situations such as routine traffic stops. Imagine then the apprehension, fear, and confusion of a teenager who finds himself under the power and authority of a law enforcement officer. Faced with this pressure, it stands to **9810** reason that many juveniles will be unable to unequivocally and unambiguously articulate their desire to have a parent present before police interrogation begins and will certainly lack the ability to appreciate the legal significance of this statutory protection. According to the majority, defendant “never gave any indication that he wanted to have [his mother] present for his interrogation, *nor did he condition his interview on first speaking with her*. Instead, defendant simply asked to call her.” This standard expects far too much of the typical juvenile being held in police custody and does not comport with our legislature's intent to protect juveniles' rights.

I also disagree with the State's argument that requiring law enforcement officers to ask clarifying questions would place an unreasonable burden on them. The burden, if any, would be slight. In this case, Detective Kelly could have asked a simple question to clarify defendant's intent when he said, “Um, Can I call my mom?” or to ascertain his desire after he was unable to contact her, such as “Do you want your mother present before I ask you any questions?” Defendant's response of “no” would leave the detective free to continue the custodial interrogation, whereas the response of “yes” would be considered an unambiguous invocation of his right, and the interrogation must therefore immediately cease. Regardless, “the structure of the juvenile code” is “persuasive evidence ... that the legislature intended to favor juvenile protections *over law enforcement expediency*.” *In re Stallings*, **318 N.C. at 576, 350 S.E.2d at 333** (emphasis added). Thus, because the majority's holding fails to take into account the significant differences between juveniles and adults and improperly caps the protection of juveniles' statutory rights under **section 7B-2101**, I respectfully dissent.

e l l i a 7 o n s

369 N.C. 401, 794 S.E.2d 474

Footnotes

- 1 Before 2015, the pertinent part of the statute read: “When the juvenile is less than 14 years of age, no in-custody admission or confession resulting from interrogation may be admitted into evidence unless the confession or admission was made in the presence of the juvenile’s parent, guardian, custodian, or attorney.” [N.C.G.S. § 7B–2101\(b\) \(2013\)](#). In 2015, the General Assembly amended subsection 7B–2101(b) to raise the relevant age limit to “less than 16 years of age.” Act of May 26, 2015, ch. 58, sec. 1.1, 2015 N.C. Sess. Laws 126, 126.
- 2 Subsection 7B–2101(a) states that prior to being questioned “[a]ny juvenile in custody must be advised”:
- (1) That the juvenile has a right to remain silent;
 - (2) That any statement the juvenile does make can be and may be used against the juvenile;
 - (3) That the juvenile has a right to have a parent, guardian, or custodian present during questioning; and
 - (4) That the juvenile has a right to consult with an attorney and that one will be appointed for the juvenile if the juvenile is not represented and wants representation.
- [N.C.G.S. § 7B–2101\(a\) \(2015\)](#).
- 3 [Golphin](#) did not address a juvenile defendant’s right to have a parent present under [N.C.G.S. § 7B–2101\(a\)\(3\)](#).
- 4 The following conversation occurred after Detective Kelly advised defendant of his rights:
- [Defendant]: Um, Can I call my mom?
- [Det. Kelly]: Call your mom *now*?
- [Defendant]: She’s on her um. I think she is on her lunch now.
- [Det. Kelly]: *You want to call her now before we talk?*
- [Det. Kelly to other officers]: He wants to call his mom.
- (Emphases added.)
- 5 Under the law as it currently stands, I understand how the majority and the Court of Appeals reached the conclusion that defendant’s statement was ambiguous. See [State v. Branham](#), 153 N.C.App. 91, 98–99, 569 S.E.2d 24, 28–29 (2002) (concluding that the juvenile defendant unambiguously invoked his right when he had officers write on the juvenile rights form that he wanted his mother present before questioning); see also [State v. Smith](#), 317 N.C. 100, 106, 343 S.E.2d 518, 521 (1986) (finding that the juvenile defendant unambiguously invoked his right when he requested that his mom be brought to the station), *abrogated in part on other grounds by* [State v. Buchanan](#), 353 N.C. 332, 543 S.E.2d 823 (2001). But see [State v. Oglesby](#), 361 N.C. 550, 558–59, 648 S.E.2d 819, 824 (2007) (Timmons-Goodson, J., dissenting) (stating, in regards to a juvenile defendant’s request to call his aunt, that “it is uncontested that ... the juvenile’s confession in this case would be inadmissible if the individual requested had fallen into the requisite category”). For the reasons stated more thoroughly below, however, juvenile defendants are provided greater protections than their adult counterparts, especially in regards to a juvenile’s statutory right and protection to have a parent present.
- 6 [Smith](#) discussed a juvenile’s rights under to [N.C.G.S. § 7A–595](#), which is the original codification of the rights afforded to juveniles in [section 7B–2101](#). [Section 7A–595](#) was repealed in 1999 and recodified as part of the Juvenile Code. See Act of Oct. 22, 1998, ch. 202, secs. 5, 6, 1997 N.C. Sess. Laws (Reg. Sess. 1998) 695, 742, 809. The two sections are substantively the same.



KeyCite Red Flag - Severe Negative Treatment

Reversed by [State v. Saldierna](#), N.C., December 21, 2016

242 N.C.App. 347

Court of Appeals of North Carolina.

STATE of North Carolina

v.

Felix Ricardo SALDIERNA.

No. COA14-1345.

|

July 21, 2015.

Synopsis

Background: Juvenile defendant pleaded guilty in the Superior Court, Mecklenburg County, [Jesse B. Caldwell](#), J., to felony breaking and entering and conspiracy to commit breaking and entering. He appealed.

Holdings: The Court of Appeals, [Stephens](#), J., held that:

[1] defendant's request to call his mother was not an unambiguous invocation of statutory right of juvenile to have parent present during police questioning, and

[2] defendant's request to call his mother was an ambiguous statement that possibly implicated his statutory right to have a parent present during custodial interrogation, such that officer interviewing defendant was required to clarify meaning of statement before continuing with questioning.

Vacated, reversed, and remanded.

West Headnotes (7)

11 I rif inaH a2

Illegally obtained evidence

I rif inaH a2

Evidence wrongfully obtained

Appellate review of a trial court's denial of a motion to suppress is strictly limited to determining whether the trial judge's underlying findings of fact are supported by

competent evidence, in which event they are conclusively binding on appeal, and whether those factual findings in turn support the judge's ultimate conclusions of law.

[1 Cases that cite this headnote](#)

131 I rif inaH a2

Scope of Inquiry

The trial court's conclusions of law are fully reviewable on appeal.

[Cases that cite this headnote](#)

141 I rif inaH a2

Statements, confessions, and admissions

I rif inaH a2

Admission, statements, and confessions

To determine whether an interrogation has violated a defendant's rights, the appellate court reviews the findings and conclusions of the trial court.

[Cases that cite this headnote](#)

151 6n7an8

Presence, availability, or consultation of parent or guardian

Juvenile suspect's request to call his mother was not an unambiguous invocation of statutory right to have parent present during police questioning; juvenile made no unequivocal request to have mother present during questioning, nor did he make any written notation of that request on waiver form he signed. West's [N.C.G.S.A. § 7B-2101\(b\)](#).

[1 Cases that cite this headnote](#)

191 I rif inaH a2

Invocation of Rights

Invocation of one's *Miranda* rights must be clear and unequivocal.

[Cases that cite this headnote](#)

101 I rif inaH a2 **Counsel**

A suspect must unambiguously request counsel to obtain such a right under *Miranda*; although a suspect need not speak with the discrimination of an Oxford don, he must articulate his desire to have counsel present sufficiently clearly that a reasonable police officer in the circumstances would understand the statement to be a request for an attorney.

[Cases that cite this headnote](#)

1A1 6n7an8s **Presence, availability, or consultation of parent or guardian**

Juvenile suspect's request to call his mother was an ambiguous statement that possibly implicated juvenile's statutory right to have a parent present during custodial interrogation, such that officer interviewing juvenile was required to clarify meaning of juvenile's statement before continuing with questioning. West's N.C.G.S.A. §§ 7B-2101(a)(3), (b).

[3 Cases that cite this headnote](#)

ee43A Appeal by Defendant from order entered 20 February 2014 by Judge Forrest D. Bridges and judgment entered 4 June 2014 by Judge Jesse B. Caldwell in Mecklenburg County Superior Court. Heard in the Court of Appeals 2 June 2015.

L88ornwys and t a2 Firf s

Attorney General, [Roy Cooper](#), by Assistant Attorney General, Jennifer St. Clair Watson, for the State.

Goodman Carr, PLLC, Charlotte, by W. Rob Heroy, for Defendant.

mpinion

STEPHENS, Judge.

ee45A In this appeal, we consider a matter of first impression: Whether an ambiguous statement made by

a juvenile which implicates his statutory right to have a parent present during a custodial interrogation requires that the law enforcement officer conducting the interview clarify the meaning of the juvenile's statement before continuing her questioning. For the reasons discussed herein, we conclude that it does.

ee45* Factual and Procedural Background

This appeal arises from Defendant Felix Ricardo Saldierna's attempt to suppress a confession he gave to police officers while in custody. On 17 and 18 December 2012, several homes in Charlotte were broken into, burglarized, and vandalized. Saldierna was arrested at his home in Fort Mill, South Carolina on 9 January 2013 in connection with those crimes. Saldierna, who was then 16 years old, was transported to Moss Justice Center in York County, South Carolina, where he was questioned by Detective Aimee¹ Kelly of the Charlotte–Mecklenburg Police Department (“CMPD”). Kelly conducted an interview with Saldierna in the booking area of the justice center. Audio of the entire interview was recorded (“the recording”). The recording reveals the following: Saldierna stated that he was bilingual, **ee43*** but read Spanish better than English. At the start of the interview, Saldierna told Kelly that his English was “good,” but that he might ask her to explain some things more slowly. However, after this remark, Saldierna never clearly indicated that he did not understand Kelly's questions or statements.

Before asking Saldierna any questions about the crimes, Kelly read him his rights and asked him whether he understood them. During the interview, Kelly gave Saldierna written Juvenile Waiver of Rights forms in both English and Spanish. Kelly read each part of the English language form to Saldierna as he followed along on the forms in both languages. After reading each paragraph, Kelly asked Saldierna if he understood the right discussed in that paragraph and had him initial the copy of the form in English to indicate that he did. Kelly also asked Saldierna to confirm verbally that he understood each right as she read them to him. Saldierna answered “yeah” or “yes ma’am” to all but one of Kelly's inquiries. Due to the poor quality of the audio recording, Saldierna's response to Kelly's informing him of his right to have an attorney present during the interview is unintelligible, but he responded “yes ma’am” to Kelly's next statement

and question, “If I want to have a lawyer with me during questioning one will be provided to me at no cost before any questioning. Do you understand that?”

Saldierna initialed each statement of rights on the form and the option “I DO wish to answer questions now WITHOUT a lawyer, parent, guardian, or custodian here with me” and signed the form. The transcript of the recording reveals the following exchange then occurred:

e450 K[jelly]: It is 1/9/13. It is 12:10PM. [unintelligible background talking among officers]

[Saldierna]: Um, Can I call my mom?

K[jelly]: Call your mom now?

[Saldierna]: She's on her um. I think she is on her lunch now.

K[jelly]: You want to call her now before we talk?

K[jelly] [to other officers]: He wants to call his mom.

[Saldierna]: Cause she's on, I think she's on her lunch.

[Other officer]: [unintelligible] He left her a message on her phone.

[Saldierna]: But she doesn't speak English.

[conversation among officers]

K[jelly]: I have mine. Can he dial it from a landline you think?

[more unintelligible conversation among officers]

[Other officer]: [S]tep back outside and we'll let you call your mom outside. [unintelligible]. You're going to have to talk to her. Neither one of us speak Spanish, ok.

[more unintelligible conversation among officers]

[Saldierna can be heard on phone. Call is not intelligible.]

[Sound of door closing].

K[jelly]: 12:20: Alright Felix, so, let's talk about this thing going on....

e49C At this point, Kelly continued her interview with Saldierna, and, over the course of the next hour, he confessed his involvement in the incidents in Charlotte the previous December.

On 22 January 2013, Saldierna was indicted on two counts of felony breaking and entering and one count each of conspiracy to commit breaking and entering and conspiracy to commit common law larceny after breaking and entering.² On 9 October 2013, Saldierna moved to suppress his confession. The trial court, the Honorable Forrest D. Bridges, Judge presiding, heard the motion on 31 January 2014, and, at the conclusion of the hearing, orally denied Saldierna's motion. The court entered a written order memorializing that ruling on 20 February 2014 that contained the following findings of fact:

ee430 1. That Defendant was in custody.

2. That Defendant was advised of his juvenile rights pursuant to [North Carolina General Statute § 7B-2101](#).

3. That Detective Kelly of the Charlotte–Mecklenburg Police Department advised Defendant of his juvenile rights.

4. That Defendant was advised of his juvenile rights in three manners. Defendant was advised of his juvenile rights in spoken English, in written English, and in written Spanish.

5. That Defendant indicated that he understood his juvenile rights as given to him by Detective Kelly.

6. That Defendant indicated he understood his rights after being given and reviewing a form enumerating those rights in Spanish.

7. That Defendant indicated he understood that he had the right to remain silent. Defendant understood that to mean that he did not have to say anything or answer any questions. Defendant initialed next to this right at number 1 on the English rights form provided to him by Detective Kelly to signify his understanding.

e49I 8. That Defendant indicated he understood that anything he said could be used against him.

Defendant initialed next to this right at number 2 on the English rights form provided to him by Detective Kelly to signify his understanding.

9. That Defendant indicated he understood that he had the right to have a parent, guardian, or custodian there with him during questioning. Defendant understood the word parent meant his mother, father, stepmother, or stepfather. Defendant understood the word guardian meant the person responsible for taking care of him. Defendant understood the word custodian meant the person in charge of him where he was living. Defendant initialed next to this right at number 3 on the English rights form provided to him by Detective Kelly to signify his understanding.

10. That Defendant indicated he understood that he had the right to have a lawyer and that he had the right to have a lawyer there with him at the time to advise and help him during questioning. Defendant initialed next to this right at number 4 on the English rights form provided to him by Detective Kelly to signify his understanding.

11. That Defendant indicated he understood that if he wanted a lawyer there with him during questioning, a lawyer would be provided to him at no cost prior to questioning. Defendant initialed next to this right at number 5 on the English rights form provided to him by Detective Kelly to signify his understanding.

12. That Defendant initialed a space below the enumerated rights on the English rights form that stated the following: "I am 14 years old or more and I understand my rights as explained by Detective Kelly. I DO wish to answer questions now, WITHOUT a lawyer, parent, guardian, or custodian here with me. My decision to answer questions now is made freely and is my own choice. No one has threatened me in any way or promised me special treatment. Because I have decided to answer questions now, I am signing my name below."

13. That Defendant's signature appears on the English rights form below the initialed portions of the form. Defendant's signature appears next to the date, 1-9-13, and e493 the time, 12:10. Detective Kelly signed her name as a witness below Defendant's signature.

14. That after being informed of his rights, informing Detective Kelly he wished to waive those rights, and signing the rights form, Defendant communicated to Detective Kelly that he wished to contact his mother by phone. Defendant was given permission to do so.

15. That Defendant attempted to call his mother, but was unable to speak to her.

16. That Defendant indicated that his mother was on her lunch break at the time he tried to contact her.

17. That Defendant did not at that time or any other time indicate that he changed his mind regarding his desire to speak to Detective Kelly. That Defendant did not ee44C at that time or any other time indicate that he revoked his waiver.

18. That Defendant only asked to speak to his mother.

19. That Defendant did not make his interview conditional on having his mother present or conditional on speaking to his mother.

20. That Defendant did not ask to have his mother present at the interview site.

21. That, upon review of the totality of the circumstances, the [c]ourt finds that Defendant's request to speak to his mother was at best an ambiguous request to speak to his mother.

22. That at no time did Defendant make an unambiguous request to have his mother present during questioning.

23. That Defendant never indicated that his mother was on the way or could be present during questioning.

24. That Defendant made no request for a delay of questioning.

Based upon those findings, the trial court made the following conclusions of law:

1. That the State carried its burden by a preponderance of the evidence that Defendant knowingly, willingly, and understandingly waived his juvenile rights.

e494 2. That the interview process in this case was consistent with the interrogation procedures as set forth in [North Carolina General Statute § 7B-2101](#).

3. That none of Defendant's State or Federal rights were violated during the interview conducted of Defendant.

4. That statements made by Defendant were not gathered as a result of any State or Federal rights violation.

On 4 June 2014, Saldierna came back before the trial court, the Honorable Jesse B. Caldwell, Judge presiding, and entered guilty pleas to two charges each of felony breaking and entering and conspiracy to commit breaking and entering, specifically reserving his right to appeal the denial of his motion to suppress. The court imposed a sentence of 6–17 months, suspended that sentence, and placed Saldierna on 36 months of supervised probation. Saldierna gave notice of appeal in open court.

Discussion

Saldierna argues that the trial court erred in denying his motion to suppress the confession he gave to Kelly. Specifically, Saldierna contends that: (1) his request to call his mother was an unambiguous invocation of his right to have a parent present during a custodial interrogation, and that, in the alternative, (2) if his request was ambiguous, due to Saldierna's status as a juvenile, Kelly was required to make further inquiries to clarify whether he actually meant that he was invoking his right to end the interrogation until his mother was present.

I. Standard of review

¶1 131 141 Our review of a trial court's denial of a motion to suppress is “strictly limited to determining whether the trial judge's underlying findings of fact are supported by competent evidence, in which event they are conclusively binding on appeal, and whether those factual findings in turn support the judge's ultimate conclusions of law.” [State v. Cooke](#), 306 N.C. 132, 134, 291 S.E.2d 618, 619 (1982) (citations omitted). “The trial court's conclusions of law ... are fully reviewable on appeal.” [State v. Hughes](#), 353 N.C. 200, 208, 539 S.E.2d 625, 631 (2000). Likewise, “[t]o determine whether the interrogation has

violated [the] defendant's rights, we review the findings and conclusions of the trial court.” [State v. Branham](#), 153 N.C.App. 91, 95, 569 S.E.2d 24, 27 (2002).

Here, Saldierna fails to specify which findings of fact he challenges as unsupported by competent evidence, but he does assert that his request to call his mother “was not ambiguous[] and that he directly e495 sought to have a parent present [during the interview].” Accordingly, we consider whether competent evidence before the trial court supported findings of fact 18–22, which address that factual issue.

Saldierna alternatively contends that, if his request to call his mother was ambiguous, Kelly was required to clarify whether Saldierna was invoking his right to have a parent present during a custodial interrogation as guaranteed by section 7B2101. Finally, Saldierna ee44] argues that the trial court did not appropriately consider his juvenile status in determining that his waiver of rights was knowing and voluntary. As with his arguments regarding the trial court's findings of fact, Saldierna's challenges to the trial court's conclusions of law are not clearly identified and delineated. However, his arguments appear to implicate both conclusions of law 1 and 2, and thus, we further consider whether each is supported by the trial court's findings of fact.

II. Findings of fact 18–22: clarity of request to have a parent present during interview

Saldierna first contends that his question—“Can I call my mom?”—is similar to the unambiguous requests to have a parent present made by the juvenile defendants in [Branham](#) and [State v. Smith](#), 317 N.C. 100, 343 S.E.2d 518 (1986), overruled in part on other grounds by [State v. Buchanan](#), 353 N.C. 332, 543 S.E.2d 823 (2001). We find both cases distinguishable and hold that the trial court's findings of fact, specifically that Saldierna's request to speak to his mother was “at best an ambiguous request” and that Saldierna never made an “unambiguous request to have his mother present during questioning [.]” are supported by competent evidence.

In [Branham](#), “[a]fter being advised of his juvenile rights, [the] defendant indicated and had the officers write on the form that he wanted his mother present. Although she was in the building at the time of the interrogation, the officers did not bring her to [the] defendant, but told him he could continue with his statement anyway.” 153 N.C.App. at

93, 569 S.E.2d at 25. The defendant subsequently gave the officers a confession that was later admitted against him at trial. *Id.* This Court held that, “[b]ecause [the] defendant invoked his right to have a parent present during interrogation, all interrogation should have ceased. Since it did not, the trial court erred by denying [the] defendant's motion to suppress his statement, which was elicited in violation of [section] 7B–2101.” *Id.* at 99, 569 S.E.2d at 29.

Similarly, in *Smith*, the “defendant, after being advised of his statutory right to have a parent present during police questioning, requested e499 that his mother be brought to the station.” 317 N.C. at 107, 343 S.E.2d at 522. Despite a clear and undisputed request to wait until his mother arrived before the interrogation resumed, various police officers continued to provide the defendant information about what his co-defendant was claiming and to ask the defendant whether he wanted give his side of the story. *Id.* It was that ongoing engagement with the juvenile defendant following his clear request to have a parent present that resulted in a new trial for the defendant. *Id.* at 108, 343 S.E.2d at 522.

151 Here, in contrast, Saldierna made a request to call his mother, but made no unequivocal verbal request to have his mother present during questioning, as in *Smith*, nor did he make any written notation of that request on the waiver form he signed, as in *Branham*. A careful reading of Saldierna's arguments to this Court shows an alternative contention that his ambiguous request to call his mother should be interpreted in the totality of the circumstances as an invocation of his right to have a parent present during the interview. While we decline Saldierna's invitation to reach that interpretation, our discussion in Part III manifests our concern that this ambiguous statement calls into question the trial court's conclusion of law that no violation of his rights occurred.

III. Conclusion of law 2: compliance with section 7B–2101
Saldierna's primary argument on appeal is that, if his request to call his mother was an ambiguous statement possibly implicating his right under section 7B–2101 to have a parent present during the custodial interrogation, Kelly was required to “clarify[his] desire to proceed without his mother” before she continued questioning him. We find Saldierna's contentions on this point persuasive.

In recognition of the special status of persons under the age of eighteen, our State's Juvenile Code provides specific interrogation procedures for juveniles:

ee443 Any juvenile in custody must be advised prior to questioning:

- (1) That the juvenile has a right to remain silent;
- (2) That any statement the juvenile does make can be and may be used against the juvenile;
- (3) That the juvenile has a right to have a parent, guardian, or custodian present during questioning; and
- e490 (4) That the juvenile has a right to consult with an attorney and that one will be appointed for the juvenile if the juvenile is not represented and wants representation.

N.C. Gen.Stat. § 7B–2101(a) (2013).³ Subsections (a)(1), (2), and (4) of this statute simply codify the so-called *Miranda* rights guaranteed to both adults and juveniles by the Fifth Amendment to the United States Constitution. See *Miranda v. Arizona*, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966) (holding that all persons subjected to custodial police interrogations must be advised of their rights to remain silent and to counsel and informed that any statements they make may be used against them in a later legal proceeding). However, subsection (a)(3) is *not* the codification of a federal constitutional right, but rather our General Assembly's grant to the juveniles of North Carolina of a purely statutory protection *in addition* to those identified in *Miranda*. See, e.g., *State v. Fincher*, 309 N.C. 1, 12, 305 S.E.2d 685, 692 (1983) (“The failure to advise [the juvenile] defendant of his right to have a parent, custodian or guardian present during questioning is not an error of constitutional magnitude because this privilege is statutory in origin and does not emanate from the Constitution.”); see also *State v. Yancey*, 221 N.C.App. 397, 399, 727 S.E.2d 382, 385 (2012). This distinction is critical to our resolution of the issue raised by Saldierna.

191 101 As both Saldierna and the State note in their appellate arguments, precedent firmly establishes that invocation of one's *Miranda* rights must be clear and unequivocal. Thus, a “suspect must unambiguously request counsel.... Although a suspect need not speak with the discrimination of an Oxford don, he must articulate his desire to have counsel present sufficiently clearly that a reasonable police officer in the circumstances

would understand the statement to be a request for an attorney.” *Davis v. United States*, 512 U.S. 452, 459, 114 S.Ct. 2350, 129 L.Ed.2d 362, 371 (1994) (citations and internal quotation marks omitted). Accordingly, the Court explicitly “decline[d] to adopt a rule requiring officers to ask clarifying questions” when a suspect’s statement regarding counsel is ambiguous. *Id.* at 461, 114 S.Ct. at 2356, 129 L.Ed.2d at 373. Likewise, our Supreme Court has held that a juvenile defendant must make an unambiguous statement in order to invoke his right to remain silent. *State v. Golphin*, 352 N.C. 364, 451–52, 533 S.E.2d 168, 225 (2000) (citing, *inter alia*, *Davis*), *cert. denied*, **e49A** 532 U.S. 931, 121 S.Ct. 1380, 149 L.Ed.2d 305 (2001). In that case, the Court found no error in the admission of the juvenile defendant’s inculpatory statement made after his equivocal comment that “he didn’t want to say anything about the jeep [connected to a murder].” *Id.* In sum, with regard to a defendant’s *Miranda* rights to remain silent and to have an attorney present during a custodial interrogation, the law is clear: Such rights must be unequivocally invoked and, where a defendant makes an ambiguous statement touching on those rights, law enforcement officials have no obligation to clarify the defendant’s intent or desire. Further, under *Golphin*, this rule applies with equal force to juvenile defendants. *See id.*

IAI However, this case law regarding invocation of the *Miranda* rights guaranteed by the federal Constitution and codified in subsections 7B–2101(a)(1), (2), and (4) does *not* control our analysis of a juvenile’s ambiguous statement possibly invoking the purely statutory right granted by our State’s General Assembly in section 7B–2101(a)(3). Further, while our appellate courts have addressed **ee444** the effect of a juvenile’s unambiguous invocation of his right to have a parent present during a custodial interrogation, *see, e.g., Smith*, 317 N.C. at 107, 343 S.E.2d at 522; *Branham*, 153 N.C.App. at 93, 569 S.E.2d at 25, we are aware of no case in this State which has considered the implications of a juvenile’s *ambiguous* reference to that protection.

The State urges this Court to apply the same analysis and rule regarding ambiguity to a juvenile’s right to have a parent present during questioning as we must apply to the *Miranda* rights codified in section 7B–2101(a). However, our review of the provisions of section 7B–2101 reveals an understanding by our General Assembly that the special right guaranteed by subsection (a)(3) is different from

those rights discussed in *Miranda* and, in turn, reflects the legislature’s intent that law enforcement officers proceed with great caution in determining whether a juvenile is attempting to invoke this right.⁴

First, and most obviously, the right to have a parent present during custodial interrogations is not a constitutional right provided to all suspects of whatever age. Instead, it is an *additional* protection specifically granted through our Juvenile Code to the children of our State, a right which goes beyond the protections offered to adult suspects during **e49*** interrogations. *See, e.g., N.C. Gen.Stat. § 7B–2101; Fincher*, 309 N.C. at 12, 305 S.E.2d at 692. That our legislature would choose to extend such a special protection to the children of this State is neither surprising nor unique to the circumstance of police interrogations. As the United States Supreme Court has recently observed,

[a] child’s age is far more than a chronological fact. It is a fact that generates commonsense conclusions about behavior and perception. Such conclusions apply broadly to children as a class. And, they are self-evident to anyone who was a child once himself, including any police officer or judge.

Time and again, this Court has drawn these commonsense conclusions for itself. We have observed that children generally are less mature and responsible than adults; that they often lack the experience, perspective, and judgment to recognize and avoid choices that could be detrimental to them; that they are more vulnerable or susceptible to outside pressures than adults; and so on. Addressing the specific context of police interrogation, we have observed that events that would leave a man cold and unimpressed can overawe and overwhelm a lad in his early teens. Describing no one child in particular, these observations restate what any parent knows—indeed, what any person knows—about children generally.

Our various statements to this effect are far from unique. The law has historically reflected the same assumption that children characteristically lack the capacity to exercise mature judgment and possess only an incomplete ability to understand the world around them. Like this Court’s own generalizations, the legal disqualifications placed on children as a class—*e.g.,* limitations on their ability to alienate property, enter a binding contract enforceable against them, and

marry without parental consent—exhibit the settled understanding that the differentiating characteristics of youth are universal.

J.D.B., — U.S. at —, 131 S.Ct. at 2403–04, 180 L.Ed.2d at 323–24 (citations, internal quotation marks, and ellipses omitted).⁵

ee445 e490 Indeed, [section 7B–2101\(b\)](#) recognizes that such “differentiating characteristics of youth” render certain juveniles particularly dependent on their parents (or other responsible adults) when faced with custodial interrogations:

When the juvenile is less than 14 years of age, no in-custody admission or confession resulting from interrogation may be admitted into evidence unless the confession or admission was made in the presence of the juvenile's parent, guardian, custodian, or attorney. If an attorney is not present, the parent, guardian, or custodian as well as the juvenile must be advised of the juvenile's rights as set out in subsection (a) of this section; however, a parent, guardian, or custodian may not waive any right on behalf of the juvenile.

[N.C. Gen.Stat. § 7B–2101\(b\)](#). In other words, juveniles under the age of 14 *cannot waive* their rights to have either a parental figure or an attorney present when making an inculpatory statement while in custody, an additional protection not available to adults in a like situation. *See id.* We also take notice that our General Assembly, like the United States Supreme Court, appears to have found persuasive concerns about the special vulnerability of juveniles subject to custodial interrogations: In May 2015, it amended this statute, applicable to offenses committed

on or after 1 December 2015 to extend the special protections of subsection 7B–2101(b) to any juvenile “less than 16 years of age[.]” *See* 2015 N.C. Sess. Laws 58. While we recognize that this amendment would not have applied to Saldierna, even had it been in effect at the time of the then–16-year-old's custodial interrogation, we find it instructive that the lawmakers elected by the citizens of our State have determined that children only months younger than Saldierna *can never waive* the right to have a parental figure or attorney present during such a high-stakes and potentially life-altering procedure. This determination by our legislative branch lends significant additional support to our holding: That an ambiguous statement touching on a juvenile's right to have a parent **e40C** present during an interrogation triggers a requirement for the interviewing officer to clarify the juvenile's meaning.⁶

In sum, in reviewing the trial court's order denying Saldierna's motion to suppress his confession, we conclude that the findings of fact regarding the ambiguous nature of Saldierna's statement, “Can I call my mom[.]” are supported by competent evidence. However, because we conclude that Saldierna's ambiguous statement required Kelly to clarify whether he was invoking his right to have a parent present during the interview, we hold that the trial court erred in concluding that Kelly complied with the provisions of [section 7B–2101](#). Accordingly, we reverse the trial court's order, vacate the judgments entered upon Saldierna's guilty pleas, and remand to the trial court with instructions to grant the motion to suppress and for further proceedings.

VACATED, REVERSED, and REMANDED.

Judges [BRYANT](#) and [DIETZ](#) concur.

LHH i&a&ons

242 N.C.App. 347, 775 S.E.2d 326

Footnotes

- 1** Kelly's first name is spelled “Aimee” in the hearing transcript, but the briefs of both parties and some other documents in the record on appeal spell her name “Amy.”
- 2** Only these four indictments are included in the record on appeal. However, the transcript of plea lists five additional offenses, including breaking and entering, conspiracy, and larceny, which were dismissed by the State pursuant to the plea agreement. The file numbers of those offenses suggest that they arose from the events of December 2012.

- 3 The rights now guaranteed to juveniles pursuant to [section 7B–2101](#) were originally codified in [N.C. Gen.Stat. § 7A–595](#), which was repealed effective 1 July 1999 and then re-codified as part of our Juvenile Code. See 1998 N.C. Sess. Laws 202. Although the wording differed slightly in section 7A595, the substance of its subsections (a)(1)–(4) are indistinguishable from that in [subsections \(a\)\(1\)–\(4\) of section 7B–2101](#).
- 4 We offer no opinion regarding Saldierna's assertion that a logical extension of the recent holding in *J.D.B. v. North Carolina*, —U.S. —, 131 S.Ct. 2394, 180 L.Ed.2d 310 (2011), would require that law enforcement officers clarify ambiguous statements by juveniles which could implicate the *Miranda* rights included in [section 7B–2101](#), and that, in turn *Golphin* must be overruled. That issue is not before us in the instant appeal.
- 5 Because it is undisputed that Saldierna was in custody and thus entitled to the protections of [section 7B–2101](#) at the time of his interview with Kelly, the United States Supreme Court's decision in *J.D.B.* is not directly applicable to Saldierna's argument on appeal. See *J.D.B.*, —U.S. at —, 131 S.Ct. at 2399, 180 L.Ed.2d at 318 (holding that “the age of a child subjected to police questioning is relevant to the custody analysis of *Miranda*”). Nonetheless, this discussion of the well-recognized distinctions between children and adults in various everyday and legal contexts provides a useful framework for understanding the provisions of [section 7B–2101](#) and resolving the issues before us in this case.
- 6 We find telling Kelly's response when, just after asking to call his mother, Saldierna explained that he believed she was on her lunch break at that time: “You want to call her *now before we talk* ?” (Emphasis added). Kelly's question indicates that she believed Saldierna *might be* asking to delay the interview, at least until he had a chance to speak to his mother. The trial court's unchallenged finding of fact establishes that Saldierna was not able to reach his mother before Kelly resumed her questioning.

STATE OF NORTH CAROLINA IN THE GENERAL COURT OF JUSTICE
COUNTY OF MECKLENBURG SUPERIOR COURT DIVISION
FILE NO.: 13-CRS-201161
-62
-64 - 67
13-CRS-202210
-11, -13

STATE OF NORTH CAROLINA

vs.

FELIX RICARDO SALDIERNA,

Defendant.

TRANSCRIPT OF HEARING

Taken in the General Court of Justice, Superior
Court Division, Mecklenburg County, North Carolina,
at the January 31, 2014, Criminal Session before the
Honorable JESSE B. CALDWELL, III, Judge Presiding.

KYMBERLEE A. HANSON, RPR
OFFICIAL COURT REPORTER
832 EAST FOURTH STREET
SUITE 6001
CHARLOTTE, NC 28202
704-686-0181

A P P E A R A N C E S

REPRESENTING THE STATE OF NORTH CAROLINA:

JOSH MAHAN, ESQ.
Assistant District Attorney
State of North Carolina
700 East Trade Street
Charlotte, North Carolina 28202

REPRESENTING THE DEFENDANT:

ROB HEROY, ESQ.
301 MCDOWELL STREET
Suite 602
Charlotte, North Carolina 28204

1	I N D E X	
2	ITEM	PAGE
3	PROCEEDINGS	4
4	WITNESS: AIMEE KELLY	
	Voir Dire Examination (H)	6
5	Voir Dire Examination (M)	14
	Voir Dire Examination (H)	18
6	END OF PROCEEDINGS	32
7	CERTIFICATE OF REPORTER	33
	CERTIFICATE OF DELIVERY	34
8		
9		
10		
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		

1 FRIDAY JANUARY 31, 2014

2 CHARLOTTE, NORTH CAROLINA

3 * * *

4 PROCEEDINGS

5 * * *

6 (Whereupon, the following proceedings were
7 held in open court. The defendant was
8 present with his attorney, along with
9 counsel for the State.)

10 MR. MAHAN: Since this is a defense
11 motion, I will let defense counsel get
12 started.

13 THE COURT: All right. Very first
14 thing. Please swear the interpreter, and I will
15 take a moment to review the motion.

16 * * *

17 DAVID MILLER,

18 called as a Spanish speaking interpreter by
19 and on behalf of the State to testify, being
20 first duly sworn was examined and interpreted
21 English to Spanish as follows:

22 * * *

23 THE COURT: All right. What says the
24 defendant?

25 MR. HERROY: Your Honor, the defense would

1 like to begin by calling Detective Kelly to the
2 witness stand.

3 MR. MAHAN: Your Honor, in an effort to
4 speed things along, we do have a recording of this
5 incident. The State will stipulate to the
6 authenticity of this. It is a record. The defense
7 won't have a problem with that.

8 MR. HEROY: If they are okay to
9 stipulating that she was licensed, sworn, on duty
10 and in Mecklenburg County, all those things, then I
11 have no objection.

12 MR. MAHAN: She was working as a
13 detective with CMPD.

14 (Interruption in proceedings.)

15 THE COURT: Okay. Let's go and pick up
16 where we left off.

17 Okay. Ready to proceed?

18 MR. HEROY: Yes, Your Honor.

19 THE COURT: Okay.

20 * * *

21 AIMEE KELLY,
22 called as a witness by and on behalf of
23 the State to testify, being first duly
24 sworn was examined and testified as follows:

25 * * *

1 VOIR DIRE EXAMINATION

2 BY MR. HEROY:

3 Q Detective Kelly, were you with the
4 Charlotte-Mecklenburg Police Department as a
5 detective on January 9, 2013?

6 A Yes, I was.

7 Q On that date did you arrest Mr. Saldierna,
8 the defendant?

9 A No. He was arrested in York County.

10 Q Is the defendant the individual seated
11 beside me?

12 A Yes.

13 Q Point to him for the record.

14 MR. HEROY: Ask that the record reflect
15 that.

16 Q Did you arrest -- did you participate in
17 his arrest pursuant to felony warrants that were
18 obtained against him?

19 A That's correct.

20 Q Do you know how old he is?

21 A He was 16 at the time.

22 Q Was his birthday August 19, 1996?

23 A I would have to look, but that sounds
24 correct.

25 Q How many officers did you arrest him with?

1 A I believe there was three York County
2 deputies and myself.

3 Q What did you do after you placed him
4 under arrest?

5 A They transported him to the justice center
6 in York County.

7 Q What happened there after the booking?

8 A I accompanied him to interview him
9 regarding my case.

10 Q How many officers were there for the
11 interview including yourself?

12 A The officers who made the arrest left.
13 There was booking deputies at the justice center.

14 Q How many booking deputies were in there
15 with you?

16 A Maybe two.

17 Q Prior to the start of the interview, did
18 Mr. Saldierna make any attempts to contact any
19 family members?

20 A I was told that one of the York County
21 detectives tried to call on his behalf.

22 Q Do you know what happened with that phone
23 call?

24 A I believe they got a voice mail.

25 Q Did you at some point begin interviewing

1 Mr. Saldierna?

2 A Yes, I did.

3 Q Just to let you know where I am going. I
4 will briefly cover that and then go back and play
5 the audio recording of it.

6 A Sure.

7 Q There was an audio recording made of the
8 interview; correct?

9 A That's correct.

10 Q You have reviewed that?

11 A I have.

12 Q When you started the interview, did
13 Mr. Saldierna make any statements to you about what
14 level of comprehension he has with regard to the
15 English language?

16 A He spoke English clearly and understood
17 what I was saying. He said he wasn't very good at
18 reading English.

19 Q Did he also state that he might have some
20 issues understanding English as it is spoken as
21 well?

22 A I believe he did. He seemed to very
23 clearly understand what I was asking him.

24 Q He did make statements to you regarding
25 that his English was not particularly good?

1 A I found it to be fine.

2 Q The question is, did he make a statement
3 to you to that effect?

4 A He may have. I recall the part about the
5 written English.

6 Q Did you read him a waiver of juvenile
7 rights?

8 A I did.

9 Q Did he indicate to you what level of
10 education he completed?

11 A I want to say it was 9th grade. He
12 finished or he was in the 9th grade.

13 Q You did read his juvenile waiver of
14 rights to him?

15 A I did.

16 Q Did he indicate that he understood those
17 rights?

18 A Yes.

19 Q After you finished reading the juvenile
20 waiver of right to him, did he make any statements?

21 A He asked to call his mom.

22 Q Was he allowed to call his mother?

23 A Yes. Inside the booking room, they don't
24 allow cell phones, so he had to step outside.

25 Q Did he use your cell phone to make the

1 phone call?

2 A He did.

3 Q Did he make one phone call, or did he make
4 several phone calls?

5 A I don't know how many he made. I don't
6 know if it was one or two. He apparently didn't
7 reach his mom, but he reached someone else. Maybe
8 it was an aunt or someone at that home.

9 Q Were those calls in English or in Spanish?

10 A In Spanish.

11 Q You don't understand Spanish?

12 A No, I don't. I understand very little.

13 Q You don't know what was said during those
14 phone calls?

15 A I don't.

16 Q After the phone call, Mr. Saldierna came
17 back into the interview room; correct?

18 A Yes. It was not a room. It was just a
19 booking area sitting on the bench.

20 Q Did he initiate conversation after that,
21 or did you?

22 A I did.

23 Q As soon as he came back in, did you say,
24 "All right, Felix. Let's get talk about this thing
25 going on" or "let's talk about things going on"?

1 A Something to that effect, yes.

2 Q Did you tell him, "This is not something
3 that is going to end your life. You know what I am
4 saying? This is not a huge deal"?

5 A That sounds right.

6 Q Then you started the questioning as far as
7 the breaking and entering; correct?

8 A That's correct.

9 Q Did you read any waiver of rights to him
10 to make sure that if he wanted to have a parent
11 present with him after that, he could?

12 A I did not. He never said he wanted his
13 mother there.

14 Q As soon as he made the phone call trying
15 to contact his mother, you didn't go over any of
16 that, as far as whether or not he was ready to
17 proceed or not, did you?

18 A No, I didn't.

19 Q You just started questioning him?

20 A That's correct.

21 Q The audio that we discussed, you turned
22 that in to the District Attorney's office with the
23 discovery?

24 A That's correct.

25 Q That is the statement or that -- I will

1 just go ahead and start playing it, and you tell me
2 if this is the correct statement, if that works for
3 you.

4 A Sure.

5 MR. HEROY: Very quickly, if I may confer
6 with the DA.

7 MR. MAHAN: I would rather just start.
8 Keep playing from there.

9 BY MR. HEROY:

10 Q Before we get going with it, is that the
11 correct body of tapes that we are playing here?

12 A Yes, it is.

13 Q I am going to hand you a transcript,
14 ma'am. It starts once you start reading him the
15 rights.

16 Once we are done with that, if it's
17 incorrect in any way aside from a typo or anything
18 like that, please let me know.

19 Ma'am, does that accurately reflect the
20 interview as it took place?

21 A Yes.

22 MR. HEROY: At this time I would move to
23 admit the interview as Defendant's Exhibit A.

24 THE COURT: Received.

25 (The aforementioned document was marked as

1 Defendant's Exhibit A for identification
2 and was admitted into evidence.)

3 BY MR. HEROY:

4 Q Ma'am, is that transcript that I provided
5 you accurate?

6 A Yes.

7 MR. HEROY: I move at this time to admit
8 that as Defendant's Exhibit B, Your Honor.

9 THE COURT: Received.

10 (The aforementioned document was marked as
11 Defendant's Exhibit B for identification
12 and was admitted into evidence.)

13 BY MR. HEROY:

14 Q Very briefly, ma'am.

15 You did have him sign a Juvenile Waiver of
16 Rights as well?

17 A That's correct.

18 Q Is this document marked as State's
19 Exhibit A the Juvenile Waiver of Rights that you had
20 Mr. Saldierna sign?

21 A Yes, it is.

22 Q It has his signature at the bottom?

23 A Yes.

24 Q And his initials?

25 A Yes.

1 Q Was that signed before or after he stated
2 that he wanted to make a phone call to his mother?

3 A Before.

4 MR. HEROY: I don't have any further
5 questions. This is marked as State's Exhibit A. I
6 don't have any further questions. I may decide to
7 introduce it later.

8 THE COURT: All right.

9 Questions?

10 MR. MAHAN: Yes, Your Honor. Briefly.

11 * * *

12 VOIR DIRE EXAMINATION

13 BY MR. MAHAN:

14 Q Detective Kelly, how long have you been
15 with CMPD?

16 A Eighteen years.

17 Q How long have you been a detective?

18 A Three.

19 Q During your time as a detective and a
20 CMPD officer, roughly how many in-custody interviews
21 would you say you have done?

22 A Dozens. More than that.

23 Q Prior to interacting with Mr. Saldierna,
24 had you ever done an interview with a juvenile
25 defendant before?

1 A Yes.

2 Q You have done that also multiple times?

3 A Yes, I have.

4 Q In this instance, I just want to be
5 clear. This happened in York County. That is in
6 South Carolina; right?

7 A That's correct.

8 Q Why was it that he was arrested in
9 South Carolina?

10 A That is where he lived.

11 Q When you were interacting with
12 Mr. Saldierna, could you understand him?

13 A Yes, I did.

14 Q Later in the interview after this phase,
15 did he tell you in understandable terms about
16 events?

17 A Yes, he did.

18 Q Did he relay that information to you in
19 English or in Spanish?

20 A English.

21 Q Did you have any difficulty understanding
22 him?

23 A No. I did not.

24 Q About how long did you talk to him.
25 Do you remember?

1 A Forty-five minutes to an hour at most.

2 Q We just heard the first 12 minutes of
3 that; right?

4 A Yes.

5 Q At no time during that time did you have
6 any trouble understanding what he was speaking to
7 you?

8 A No.

9 Q Did he always seem to understand your
10 questions?

11 A Yes.

12 Q When you were going over his rights with
13 him, did you provide him with both an English copy
14 and a Spanish copy of his rights?

15 A I did.

16 Q Did he follow along on that sheet of paper
17 as you were explaining his rights to him?

18 A He did.

19 Q After following along and you reading his
20 rights to him and letting him review both of those
21 copies, is that when he signed?

22 A That's correct.

23 Q That is when he signed that understood his
24 rights?

25 A Yes. He followed along and initialed as

1 we were reading them and then signed at the bottom
2 after we were finished reading the thing.

3 Q Then you said you were going to ask him
4 some questions?

5 A That's correct.

6 Q He told you he wanted to call his mom?

7 A Yes.

8 Q Why did he tell you he wanted to call his
9 mom?

10 A My understanding is that he just wanted
11 to let her know where he was and that he was
12 arrested.

13 Q Did he tell you where he thought his mom
14 was at that time, where he felt he could reach her?

15 A At work he felt he could catch her. Then
16 on her lunch break.

17 Q Did he ever ask to have his mother present
18 there?

19 A He did not.

20 Q Did you explain to him that it was his
21 right to have his mother there if he wanted her to
22 be there?

23 A I did.

24 Q But he never made that request?

25 A No. He did not.

1 Q Did you understand or did you interpret
2 his request to telephone his mother as a request to
3 have his mother there present?

4 A No, I did not.

5 Q In fact, you provided him with your own
6 cell phone to call?

7 A That's correct.

8 MR. MAHAN: I don't have any further
9 questions for this witness, Your Honor.

10 At the appropriate time, the State would
11 move State's Exhibit A into evidence.

12 MR. HEROY: No objection.

13 THE COURT: Let that be received.

14 (The aforementioned document was marked as
15 State's Exhibit A for identification
16 and was admitted into evidence.)

17 Further questions, Mr. Heroy?

18 * * *

19 VOIR DIRE EXAMINATION

20 BY MR. HEROY:

21 Q Was there any part of that interview that
22 occurred outside of the microphone?

23 A No.

24 MR. HEROY: I don't have any further
25 questions.

1 THE COURT: Thank you, ma'am. You may
2 step down.

3 Further witnesses?

4 MR. HEROY: No further witnesses for the
5 defense, Your Honor.

6 THE COURT: All right. I will hear from
7 you.

8 MR. HEROY: Thank you, Your Honor.
9 Briefly, I would like to address first some
10 questions that were asked on cross-examination by
11 the State. The officer stated that it was her
12 understanding that the defendant just wanted to let
13 his mom know where he was. There is no basis in the
14 transcript for that.

15 If you look through the transcript, he
16 just says, "I would like to call my mom. Can I
17 please call my mom?"

18 There is no basis for the State to say he
19 was saying, "Here is where I am. You know where to
20 pick me up."

21 What is actually clear from the transcript
22 is that he tried to call his mother before on
23 another occasion, and the officer is aware of that.

24 Once the rights are read, the defendant
25 says, "I want to call my mom." He goes outside. He

1 tries to call his mom. It's pretty clear he can't
2 get in touch with her.

3 When he comes back in, the officer,
4 instead of warning the defendant, saying, "Are you
5 sure you understand these rights? Are you sure you
6 want to go to court," She says, "Let's get moving.
7 I want to start with my questions."

8 Not only that, Your Honor, you can see
9 that the statements she makes afterward are designed
10 to lower the defendant's guard. It's not really a
11 big deal. Let's talk about this. Nobody is trying
12 to hurt anybody. You are not looking at any real
13 big trouble here. Let's just answer these
14 questions.

15 What should have happened is, "Are you
16 sure you are okay doing this? We know you tried to
17 call your mom. You can't get in touch with her.

18 "The reason that needed to happen is that
19 it's the State's burden to make sure that the
20 juvenile's rights are waived knowingly and
21 voluntarily and fully. At best, we have an
22 ambiguous waiver here.

23 The statute clearly states the State has
24 to show a juvenile's confession is admissible
25 beforehand. Mr. Saldierna is barely 16 years old.

1 There is some questions about his English
2 comprehension.

3 Instead of clearing things up, we just get
4 moving. Also, Your Honor, if you notice in the
5 transcript, when he comes to a number of those
6 questions -- you can go back and listen to the CD
7 again if you care to, if you think that there might
8 be some issues in the transcript. I have prepared
9 it as opposed to a neutral witness.

10 The officer asked, "Do you understand
11 that? Do you understand that?" You actually don't
12 hear a verbal response to that, which calls into
13 question whether or not there is understanding. We
14 heard that the Spanish waiver was used.

15 The defendant introduced it into English.
16 I do not think this is dispositive or the most
17 important focus. The most important focus is on the
18 waiver of rights. In going through the cases, I
19 cited a few cases, Your Honor, Branham (phonetic).

20 Branham pretty much echoes the other cases
21 that are cited, as well. Just briefly going through
22 the cases that are cited by the State.

23 The first one is State v. Smith. In that
24 case, the confession was suppressed when the
25 defendant asked for his mother to be there for

1 questioning. Officers came back and reread him his
2 rights afterwards. He said he wanted to have his
3 mother there. The Court ordered the statement
4 suppressed.

5 The next case, Supreme Court, Davis v.
6 United States. In this case we have an ambiguous
7 statement where the defendant stated, "Maybe I want
8 a lawyer." It's not the same as what we have here.
9 Your Honor, that more or less sets the ground for
10 what the Court needs to look at for the North
11 Carolina cases.

12 They have put a ceiling here as opposed to
13 the ground floor of what the officers need to do,
14 North Carolina officers need to do. State v.
15 Grovin. In that case the issue is booking
16 questions, whether or not that constitutes
17 interrogation. I don't think that is really on
18 point.

19 We have State v. Flowers. The rights were
20 read. In that case the defendant comes back
21 afterwards and said, "I don't understand the
22 rights," whereas on the scene he said he understood
23 them.

24 Lastly, we have State v. Finter. In that
25 case the Court actually held that it was error to

1 admit the statements but held that there was no
2 prejudice. When you look at the totality of the
3 circumstances in that case, the evidence is
4 overwhelming enough, with or without the confession
5 that it wouldn't have made a difference.

6 I would ask you to grant the Defendant's
7 motion to suppress the statement.

8 Thank you, Your Honor.

9 THE COURT: What says the State?

10 MR. MAHAN: Yes, Your Honor.

11 THE COURT: I looked over the State's
12 brief. The State's argument is essentially that
13 there is not an unequivocal request to have the
14 mother present.

15 MR. MAHAN: That is the crux of the
16 State's argument, Your Honor.

17 THE COURT: You are saying there is a
18 difference between asking to speak to his mother and
19 asking to have his mother present?

20 MR. MAHAN: I think there is a difference
21 in asking to telephone someone. Some of the cases
22 have said that -- I know there is a case -- well, I
23 can't even say that.

24 There is a difference the State would
25 distinguish, even asking to step out of the room to

1 speak to his mother while she was on site to make a
2 telephone call. That is a different thing. The
3 crux of the State's argument is that was an
4 ambiguous request. The officer testified that she
5 did not understand this to be an unambiguous request
6 to have the defendant's mother there.

7 The United States Supreme Court has failed
8 to adopt a rule that requires the officer to reask
9 any of those sorts of questions.

10 I would point out too, Your Honor, just a
11 couple of things in response to Mr. Heroy.

12 He indicated that the State cited
13 State v. Smith in my brief. I did do that in my
14 memorandum of law, Your Honor. However, I would
15 point to the bottom of the first page of the
16 defense's argument. It devotes a page to
17 State v. Smith.

18 There is a paragraph of State v. Smith
19 there is nearly identical scenario to the incident.
20 That is just not the case, Your Honor. In that case
21 the defendant asked to have his mother there. They
22 went out looking for her, actively searching for her
23 to bring her back there.

24 Another officer went in and resumed
25 questioning. That is a different scenario

1 entirely. With regard to Gulf, it is not just
2 booking questions, Your Honor. I believe on
3 Lexis -- I think it's Page 33 of Your Honor's copy.
4 The defendant in that instance talks for a little
5 while and then says, "I am not sure that I want to
6 talk about this other event" while in the midst of
7 the interrogation.

8 The North Carolina Court held that was an
9 ambiguous request, and it needed to be an
10 unambiguous request.

11 THE COURT: Mr. Heroy, what do say about
12 that, about the -- certainly, if he had said, "I
13 want to have my mother present," then that is a
14 pretty clear situation. The State is saying that he
15 didn't say, "I want to have my mother present."

16 He said, "I want to make a telephone call
17 to my mother."

18 What did you say about that?

19 MR. HERROY: Your Honor, I would argue that
20 is the benefit of us not having to present the
21 burden, Your Honor. The State has got to get this
22 in. When we are talking about it's ambiguous, it
23 doesn't cut it with them for us to meet their
24 burden. If the burden had been on us to show the
25 other way around, it would be a little tougher

1 scenario. The ambiguity falls on the State here,
2 Your Honor.

3 Additionally, Your Honor, there is nothing
4 in the transcript to suggest that he just wanted to
5 let her know that he is there instead -- because we
6 don't know that he is waiving these rights. We have
7 got an ambiguous circumstance and given that the
8 burden is on the State here, I think they would have
9 to come to some sort of a case that says when a
10 juvenile defendant makes an ambiguous statement in
11 that scenario that may suggest this or that, that
12 that is enough for the State to overcome its
13 burden.

14 THE COURT: One more question.

15 On the waiver form, am I understanding
16 correctly -- or maybe this was addressed, maybe it
17 wasn't. The portions of the waiver form that are
18 completed, did all of that occur before the request
19 to speak to his mother and then he stepped outside
20 and made the telephone call?

21 MR. HEROY: Your Honor, I asked the
22 officer when I handed her that form when he asked to
23 make the phone call, and she stated it was all
24 signed before he asked to make the telephone call.

25 THE COURT: None of that was executed

1 after he came back from the phone call?

2 MR. HEROY: No, Your Honor.

3 THE COURT: Anything else?

4 MR. MAHAN: I would take issue with the
5 fact that the ambiguity or lack thereof is the
6 burden of the State. The State has to prove by a
7 preponderance of the evidence that there was an
8 unequivocal waiver or a valid waiver that the
9 defense would have.

10 THE COURT: In this case, I find that the
11 defendant was in custody. He was advised of his
12 juvenile rights pursuant to the statute. He was
13 advise in English and in Spanish.

14 If I understand correctly, the three
15 methods were that he was advised orally in English,
16 he was advised in writing in English, and he was
17 advised in writing in Spanish. Those were the three
18 methods; right?

19 MR. HEROY: That is what was testified to,
20 Your Honor.

21 THE COURT: There was not an interpreter?

22 MR. HEROY: No, Your Honor.

23 THE COURT: That the defendant indicated
24 that he understood those rights, and in response to
25 questions that were posed to him and after being

1 provided with a Spanish language copy of the
2 juvenile waiver of rights indicated on the English
3 language juvenile waiver of rights that he
4 understood the rights; that he had been explained
5 Rights 1 through 5, including the right to remain
6 silent. Anything I say can be used against me.

7 I have the right to have a parent or
8 guardian or custodian here with me now during
9 questioning. The guardian means the person
10 responsible for taking care of me. Custodian means
11 the person in charge of me where I am living or
12 staying.

13 I have the right to talk to a lawyer and
14 to have a lawyer here with me now to advise and help
15 me during questioning.

16 If I want to have a lawyer with me during
17 questioning, one will be provided to me at no cost
18 before I am questioned. He also initialed a space
19 saying, "I am 14 years old or more, and I understand
20 my rights as explained by Detective Kelly.

21 "I do wish to answer questions now without
22 a lawyer, parent, guardian, or custodian here with
23 me. My decision to answer questions now is made
24 freely and is my own choice. No one has threatened
25 me in any way or promised me special treatment

1 because I have decided to answer questions now. I
2 am signing my name below."

3 There appear his signature, the date, the
4 time of 12:10, together with witnessed by
5 Detective Kelly. After being informed of those
6 rights, after initialing that form to indicate the
7 waiver of those rights, the defendant communicated
8 to Detective Kelly that he wished to contact his
9 mother, and he was given permission to do so.

10 The defendant stepped outside the
11 interview room and placed a telephone call. He
12 placed one or more telephone calls. After doing so,
13 he returned to the interview room and indicated he
14 was unable to speak with his mother.

15 He had mentioned at some point that he
16 thought that his mother was on her lunch break at
17 work. Apparently, he was unable to reach her by
18 telephone.

19 The defendant did not indicate at that
20 time or any other time that he had changed his mind;
21 that he had withdrawn his waiver of his rights or
22 that he wished to have his mother present before
23 answering questions.

24 The defendant did indicate that he wished
25 to speak with his mother. He did not say or

1 otherwise communicate that his agreement to answer
2 questions posed by the officers was conditioned upon
3 being able to speak with his mother or having her
4 present.

5 Once the defendant returned to the
6 interview room and Detective Kelly indicated to the
7 defendant that she wished to proceed with an
8 interview concerning the alleged events.

9 The defendant did not again mention any
10 desire to communicate with or have his mother
11 present. The totality of these circumstances causes
12 this Court to find and conclude, first, that the
13 defendant's mention of his desire to contact his
14 mother by telephone was at best an ambiguous
15 reference or an ambiguous request to speak with his
16 mother.

17 At no time did the defendant make an
18 unambiguous request to have his mother present
19 during questioning or to suspend or delay
20 questioning until his mother could arrive, nor did
21 he indicate at any time that his mother either was
22 on her way or could be present for questioning.

23 The defendant did not request any delay of
24 the questioning to procure the presence of his
25 mother.

1 Consequently, based upon the totality of
2 the circumstances, the Court concludes that the
3 State carried its burden of proof by a preponderance
4 of the evidence. That there was a knowing -- that
5 the waiver of juvenile rights by this defendant was
6 made knowingly, understandingly and voluntarily;
7 that the defendant did not make a request for the
8 presence of his mother or the suspension of
9 questioning until his mother would have an
10 opportunity arrive for an interview.

11 The Court concludes that the interview
12 process in this case was consistent with
13 requirements of the North Carolina statute under
14 GS-7B 101, and that none of this defendant's State
15 or Federal Constitutional Rights were violated by
16 any statement obtained from him with respect to his
17 culpability in the matters under investigation.

18 Mr. Mahan, if you would prepare an order
19 to that effect, and I will sign it.

20 MR. MAHAN: Yes, sir.

21 THE COURT: Are there other matters to be
22 addressed?

23 MR. MAHAN: There are no other matters to
24 be addressed from the State.

25 MR. HEROY: I would ask if I could

1 approach with the District Attorney.

2 THE COURT: Yes, sir.

3 THE COURT: All right. Sounds like the
4 parties are going to engage in further discussions
5 about this. There are some details to be worked out
6 before a plea is presented. As I said, I will be
7 happy to make myself available if the State and the
8 defendant do work out the terms of any plea,
9 including the possibility of a plea that would
10 preserve his right to appeal.

11 All right. That being the case, any other
12 matters to address this morning?

13 MR. MAHAN: We don't have any other
14 matters or business for the Court today, Your Honor.

15 THE COURT: All right. Adjourn court sine
16 die.

17 (Whereupon, at 11:52 a.m., the proceedings
18 were concluded.)

19 * * *

20 END OF TRANSCRIPT

21 * * *

22

23

24

25

STATE OF NORTH CAROLINA IN THE GENERAL COURT OF JUSTICE
COUNTY OF MECKLENBURG SUPERIOR COURT DIVISION
FILE NO.: 13-CRS-201161
-62
-64 - 67
13-CRS-202210
-11, -13

STATE OF NORTH CAROLINA

vs.

C E R T I F I C A T E

FELIX RICARDO SALDIERNA,

Defendant.

I, KYMBERLEE A. HANSON, Official Court Reporter, Registered Professional Reporter, do hereby certify that the foregoing Superior Court hearing was taken and transcribed by me, and that the foregoing 34 pages constitute a verbatim transcription of the testimony of the said proceedings.

I DO FURTHER CERTIFY that the persons were present as stated.

I DO FURTHER CERTIFY that I am not of counsel for or in the employment of any of the parties to this action, nor do I have any interest in the result thereof.

IN WITNESS WHEREOF, I have hereunto subscribed my name, this 20th day of August, 2014.

A handwritten signature in blue ink that reads "Kimberlee A. Hanson". The signature is fluid and cursive, with a long horizontal stroke at the end.

KYMBERLEE A. HANSON, RPR
OFFICIAL COURT REPORTER

STATE OF NORTH CAROLINA	IN THE GENERAL COURT OF JUSTICE
	SUPERIOR COURT DIVISION
COUNTY OF MECKLENBURG	FILE NO.: 13-CRS-201161
	-62
	-64 - 67
	13-CRS-202210
	-11, -13

STATE OF NORTH CAROLINA

vs.

CERTIFICATE OF DELIVERY

FELIX RICARDO SALDIERNA,

Defendant.

* * * * *

THIS IS TO CERTIFY that the transcription in the above-entitled case was heard before the Honorable JESSE B. CALDWELL, III, Judge Presiding, on January 31, 2014, consisting of 34 pages, was requested of KYMBERLEE A. HANSON, Official Court Reporter for the 26th Judicial District, on or about June 5, 2014, and was delivered electronically and/or mailed to the person(s) indicated below on August 20, 2014.



KYMBERLEE A. HANSON, RPR
OFFICIAL COURT REPORTER

TRANSCRIPT DELIVERED TO THE FOLLOWING:

ROB HEROY, ESQ.
301 South McDowell Street
Suite 602
Charlotte, North Carolina 28204

ELAINE BOYLES
TRANSCRIPT COORDINATOR
720 East Fourth Street
Charlotte, North Carolina 28202

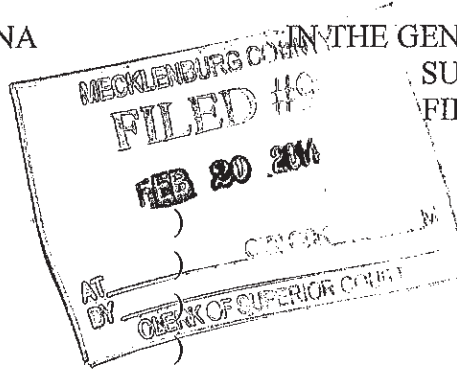
STATE OF NORTH CAROLINA
MECKLENBURG COUNTY

State of North Carolina

v.

Felix Saldierna,

Defendant.



IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
FILE NO. 13CRS201161, 62, 64
13CRS201165, 66, 67
13CRS202210, 11, 13

ORDER

THIS CAUSE COMING before the undersigned Superior Court Judge pursuant to Defendant's Motion to Suppress. This Court, having observed the witnesses, considered the evidence presented, and heard arguments of counsel, makes the following findings of fact and conclusions of law:

FINDINGS OF FACT

1. That Defendant was in custody.
2. That Defendant was advised of his juvenile rights pursuant to North Carolina General Statute § 7B-2101.
3. That Detective Kelly of the Charlotte-Mecklenburg Police Department advised Defendant of his juvenile rights.
4. That Defendant was advised of his juvenile rights in three manners. Defendant was advised of his juvenile rights in spoken English, in written English, and in written Spanish.
5. That Defendant indicated that he understood his juvenile rights as given to him by Detective Kelly.
6. That Defendant indicated he understood his rights after being given and reviewing a form enumerating those rights in Spanish.
7. That Defendant indicated he understood that he had the right to remain silent. Defendant understood that to mean that he did not have to say anything or answer any questions. Defendant initialed next to this right at number 1 on the English rights form provided to him by Detective Kelly to signify his understanding.
8. That Defendant indicated he understood that anything he said could be used against him. Defendant initialed next to this right at number 2 on the English rights form provided to him by Detective Kelly to signify his understanding.
9. That Defendant indicated he understood that he had the right to have a parent, guardian, or custodian there with him during questioning. Defendant understood the word parent meant his mother, father, stepmother, or stepfather. Defendant understood the word guardian meant the person responsible for taking care of him. Defendant understood the

word custodian meant the person in charge of him where he was living. Defendant initialed next to this right at number 3 on the English rights form provided to him by Detective Kelly to signify his understanding.

10. That Defendant indicated he understood that he had the right to have a lawyer and that he had the right to have a lawyer there with him at the time to advise and help him during questioning. Defendant initialed next to this right at number 4 on the English rights form provided to him by Detective Kelly to signify his understanding.
11. That Defendant indicated he understood that if he wanted a lawyer there with him during questioning, a lawyer would be provided to him at no cost prior to questioning. Defendant initialed next to this right at number 5 on the English rights form provided to him by Detective Kelly to signify his understanding.
12. That Defendant initialed a space below the enumerated rights on the English rights form that stated the following: "I am 14 years old or more and I understand my rights as explained by Detective Kelly. I DO with to answer questions now, WITHOUT a lawyer, parent, guardian, or custodian here with me. My decision to answer questions now is made freely and is my own choice. No one has threatened me in any way or promised me special treatment. Because I have decided to answer questions now, I am signing my name below."
13. That Defendant's signature appears on the English rights form below the initialed portions of the form. Defendant's signature appears next to the date, 1-9-13, and the time, 12:10. Detective Kelly signed her name as a witness below Defendant's signature.
14. That after being informed of his rights, informing Detective Kelly he wished to waive those rights, and signing the rights form, Defendant communicated to Detective Kelly that he wished to contact his mother by phone. Defendant was given permission to do so.
15. That Defendant attempted to call his mother, but was unable to speak to her.
16. That Defendant indicated that his mother was on her lunch break at the time he tried to contact her.
17. That Defendant did not at that time or any other time indicate that he changed his mind regarding his desire to speak to Detective Kelly. That Defendant did not at that time or any other time indicate that he revoked his waiver.
18. That Defendant only asked to speak to his mother.
19. That Defendant did not make his interview conditional on having his mother present or conditional on speaking to his mother.
20. That Defendant did not ask to have his mother present at the interview site.
21. That, upon review of the totality of the circumstances, the Court finds that Defendant's request to speak to his mother was at best an ambiguous request to speak to his mother.
22. That at no time did Defendant make an unambiguous request to have his mother present during questioning.
23. That Defendant never indicated that his mother was on the way or could be present during questioning.

24. That Defendant made no request for a delay of questioning.

CONCLUSIONS OF LAW

1. That the State carried its burden by a preponderance of the evidence that Defendant knowingly, willingly, and understandingly waived his juvenile rights.
2. That the interview process in this case was consistent with the interrogation procedures as set forth in North Carolina General Statute § 7B-2101.
3. That none of Defendant's State or Federal rights were violated during the interview conducted of Defendant.
4. That statements made by Defendant were not gathered as a result of any State or Federal rights violation.

CONCLUSION

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Defendant's Motion to Suppress shall be denied.

This the 15th day of February, 2014.



Forrest D. Bridges
Superior Court Judge Presiding

No. COA 14-1345

26th Judicial District

North Carolina Court of Appeals

STATE OF NORTH CAROLINA)
 APPELLEE)
 v.) From Mecklenburg County
)
 FELIX SALDIERNA) Nos. 13CRS201161, 64;
 APPELLANT) 13CRS202210, 213

INDEX

Organization of Trial Tribunal	1
Appearance of Counsel.....	2
Arrest Warrants for Defendant.....	3
Indictments	7
Motion to Suppress.....	11
State's Response to Motion to Suppress	18
Exhibit Log and Exhibits from Motion to Suppress	23
Order on Motion to Suppress	29
Transcript of Plea	32
Prior Record Level Worksheets	36
Judgment and Commitments.....	38
Appellate Entries	42
Transcript Documents	43
Defendant-Appellant's Proposed Issues on Appeal.....	44
Motion and Order for Extension of time for preparation of transcript	45
Motion and Order to Extend time to serve the proposed record on appeal	49
Certificate of Settlement of Record on Appeal	51
Identification of Counsel	52
Certificate of Service of the Proposed Record on Appeal	53
Certificate of Service of the Settled Record on Appeal	54

No. COA

26th Judicial District

North Carolina Court of Appeals

STATE OF NORTH CAROLINA)	
APPELLEE)	
v.)	<u>From Mecklenburg County</u>
)	
FELIX SALDIERNA)	Nos. 13CRS201161, 64;
APPELLANT)	13CRS202210, 213

ORGANIZATION OF TRIAL TRIBUNAL

Defendant was charged by arrest warrant with multiple counts of breaking and entering and conspiracy to do the same for offenses alleged to have occurred on multiple offense dates in December, 2012, in Mecklenburg County, North Carolina. The Mecklenburg County Grand Jury subsequently returned indictments in those cases.

Defendant filed a motion to suppress his confession. That motion was heard by the Honorable Forrest Bridges on January 31, 2014. Judge Bridges orally denied the motion to suppress following the hearing, and subsequently issued a written order, filed on February 20, 2014.

Defendant came before the Court on June 4, 2014, where he entered a guilty plea in which he reserved his right to appeal the denial of his motion to suppress. Defendant received a probationary sentence involving an intermediate sanction. He orally entered notice of appeal in open court immediately following his entry of the plea.

The record on appeal was filed in the Court of Appeals on 12-15-14 and was docketed on 12-18-14.

APPEARANCE OF COUNSEL

W. Rob Heroy, Attorney at Law, represented Defendant-Appellant at the trial level.

Joshua Mahan, Assistant District Attorney, Twenty-Sixth Prosecutorial District, represented the State of North Carolina at the trial level.

File No.

REFS DOC#: 13000696

13-201161-01

STATE OF NORTH CAROLINA

SALDIERNA, FELIX RICARDO
7205 WESTERLEIGH RD
FORT MILL SC

VS.
1150B 1-14-13 1:00PM
BOND 10,000

WARRANT FOR ARREST
BREAKING AND/OR ENTERING
(FELONY) - WITH FORCE

1 ISSUED 08 DAY OF JANUARY, 2013

WITNESSES

KELLY, A C

P1803

STATE OF NORTH CAROLINA
RECKENRURG


COMPLAINT # 121218093304
In The General Court Of Justice

SALDIERNA, FELIX RICARDO
7205 WESTERLEIGH RD
FORT MILL SC

DEFENDANT, H N 08-19-96

TO ANY OFFICER WITH AUTHORITY AND TERRITORIAL JURISDICTION
TO EXECUTE A WARRANT FOR ARREST FOR THE OFFENSE CHARGED
BELOW: THE UNDERSIGNED FINDS THAT THERE IS PROBABLE CAUSE
TO BELIEVE THAT ON OR ABOUT THE 18 DAY OF DECEMBER, 2012
IN THE COUNTY NAMED ABOVE, THE DEFENDANT NAMED ABOVE
DID UNLAWFULLY, WILLFULLY, AND FELONIOUSLY
BREAK AND ENTER A BUILDING OCCUPIED BY WILLIAM NUNEZ USED AS A
RESIDENCE LOCATED AT 10401 RANLEIGH LN CHARLOTTE, NC WITH THE INTENT
TO COMMIT A FELONY THEREIN, TO WIT: LARCENY

IN VIOLATION OF THE FOLLOWING LAW: GS 014 -054.000(A)(0)(0)
ISSUED THIS 08 DAY OF JANUARY, 2013, UPON INFORMATION FURNISHED
UNDER OATH BY THE COMPLAINANT OR COMPLAINANTS NAMED BELOW:
YOU ARE DIRECTED TO ARREST THE DEFENDANT NAMED ABOVE AND
BRING HIM WITHOUT UNNECESSARY DELAY BEFORE A JUDICIAL
OFFICIAL TO ANSWER THE CHARGES SET OUT ABOVE.

Location Of Court	Court Date	Court Time	Date Of Issue
KELLY, A C		<input type="checkbox"/> AM <input type="checkbox"/> PM	
Signature			
<input type="checkbox"/> Deputy CSC <input type="checkbox"/> Magistrate			<input type="checkbox"/> Assistant CSC <input type="checkbox"/> District Court Judge
			<input type="checkbox"/> Clerk Of Superior Court <input type="checkbox"/> Superior Court Judge

ORIGINAL
(Over)

File No.

REFOS DOCH: 13000698

13-201164-01

STATE OF NORTH CAROLINA

SALDIERNA, FELIX RICARDO
7205 WESTERLEIGH RD
FORT MILL SC

150B 1-14-13 1:00 PM

BOND 5000
WARRANT FOR ARREST

CONSPIRACY -- FELONY

ISSUED 08 DAY OF JANUARY, 2013

WITNESSES

KELLY, A C

P1903

STATE OF NORTH CAROLINA

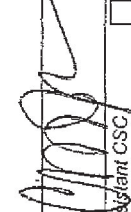
SALDIERNA, FELIX RICARDO
7205 WESTERLEIGH RD
FORT MILL SC

TO ANY OFFICER WITH AUTHORITY AND TERRITORIAL JURISDICTION
TO EXECUTE A WARRANT FOR ARREST FOR THE OFFENSE CHARGED
BELOW: THE UNDERSIGNED FINDS THAT THERE IS PROBABLE CAUSE
TO BELIEVE THAT ON OR ABOUT THE 13 DAY OF DECEMBER, 2012
IN THE COUNTY NAMED ABOVE, THE DEFENDANT NAMED ABOVE
DID UNLAWFULLY, WILLFULLY, AND FELONIOUSLY
CONSPIRE WITH BRIAN MARTINEZ AND STEVEN FONSECA TO COMMIT A BREAKING
ENTERING AND LARCENY AT 10401 RANLEIGH LN CHARLOTTE, NC

IN VIOLATION OF THE FOLLOWING LAW: GS 014 -002.040(0)(0)(0)
ISSUED THIS 08 DAY OF JANUARY, 2013, UPON INFORMATION FURNISHED
UNDER OATH BY THE COMPLAINANT OR COMPLAINANTS NAMED BELOW:
YOU ARE DIRECTED TO ARREST THE DEFENDANT NAMED ABOVE AND
BRING HIM WITHOUT UNNECESSARY DELAY BEFORE A JUDICIAL
OFFICIAL TO ANSWER THE CHARGES SET OUT ABOVE.

In The General Court Of Justice

DEFENDANT, H H 08-19-96

Location Of Court	Court Date	Court Time	Date Of Issue		Signature			
			<input type="checkbox"/> AM	<input type="checkbox"/> PM				
KELLY, A C						<input type="checkbox"/> Deputy CSC	<input type="checkbox"/> Assistant CSC	<input type="checkbox"/> Clerk Of Superior Court
						<input type="checkbox"/> Magistrate	<input type="checkbox"/> District Court Judge	<input type="checkbox"/> Superior Court Judge

ORIGINAL
(Over)

File No.

REPOS DOC#: 13001594

13-202210-01

STATE OF NORTH CAROLINA
VS.

SALDIERNA, FELIX RICARDO
7205 WESTERLEIGH RD
FORT MILL SC

BOND
WARRANT FOR ARREST
BREAKING AND/OR ENTERING
(FELONY)-- WITH FORCE

ISSUED 14 DAY OF JANUARY, 2013

WITNESSES

KELLY, A C

F1803

STATE OF NORTH CAROLINA

MECKLENBURG

SALDIERNA, FELIX RICARDO
7205 WESTERLEIGH RD FORT MILL SC

DEFENDANT, M W 08-19-96

COMPLAINT # 121217204702

In The General Court Of Justice

TO ANY OFFICER WITH AUTHORITY AND TERRITORIAL JURISDICTION
TO EXECUTE A WARRANT FOR ARREST FOR THE OFFENSE CHARGED
BELOW: THE UNDERSIGNED FINDS THAT THERE IS PROBABLE CAUSE
TO BELIEVE THAT ON OR ABOUT THE 17 DAY OF DECEMBER, 2012
IN THE COUNTY NAMED ABOVE, THE DEFENDANT NAMED ABOVE
DID UNLAWFULLY, WILLFULLY, AND FELONIOUSLY
BREAK AND ENTER A BUILDING OCCUPIED BY CHERYL DREW USED AS A DWELLING
LOCATED AT 3002 MORNING MIST LANE, CHARLOTTE, N.C. WITH THE INTENT TO
COMMIT A FELONY THEREIN, TO WIT: LARCENY.

IN VIOLATION OF THE FOLLOWING LAW: GS 014 -054.000(A)(O)(O)
ISSUED THIS 14 DAY OF JANUARY, 2013, UPON INFORMATION FURNISHED
UNDER OATH BY THE COMPLAINANT OR COMPLAINANTS NAMED BELOW:
YOU ARE DIRECTED TO ARREST THE DEFENDANT NAMED ABOVE AND
BRING HIM WITHOUT UNNECESSARY DELAY BEFORE A JUDICIAL
OFFICIAL TO ANSWER THE CHARGES SET OUT ABOVE.

Location Of Court

Court Date

Court Time

Date Of Issue

☐ AM
☐ PM

Signature

KELLY, A C

☐ Deputy CSC
☐ Magistrate
☐ Assistant CSC
☐ District Court Judge
☐ Clerk Of Superior Court
☐ Superior Court Judge

REF ID: A601600

13-202213-01

STATE OF NORTH CAROLINA
VS.

SALDIERNA, FELIX RICARDO
7205 WESTERLEIGH RD
FORT MILL, SC

BOND
WARRANT FOR ARREST
CONSPIRACY -- FELONY

ISSUED 14 DAY OF JANUARY, 2013

WITNESSES
KELLY, A C

P1803

STATE OF NORTH CAROLINA

MECKLENBURG

SALDIERNA, FELIX RICARDO
7205 WESTERLEIGH RD
FORT MILL, SC

DEFENDANT, H M 08-19-96

COMPLAINT # 121217204707

In The General Court Of Justice

TO ANY OFFICER WITH AUTHORITY AND TERRITORIAL JURISDICTION
TO EXECUTE A WARRANT FOR ARREST FOR THE OFFENSE CHARGED
BELOW; THE UNDERSIGNED FINDS THAT THERE IS PROBABLE CAUSE
TO BELIEVE THAT ON OR ABOUT THE 17 DAY OF DECEMBER, 2012
IN THE COUNTY NAMED ABOVE, THE DEFENDANT NAMED ABOVE
DID UNLAWFULLY, WILLFULLY, AND FELONIOUSLY
DID CONSPIRE WITH BRIAN MARTINEZ AND STEVEN FONSECA TO COMMIT THE
CRIME OF BREAKING AND ENTERING; A DWELLING OWNED BY CHERYL DREW AT
3002 MORNING MIST LANE, CHARLOTTE, N.C. AND INTENT TO COMMIT LARCENY

IN VIOLATION OF THE FOLLOWING LAW: GS 014 --CO2.040(0)(0)(0)
ISSUED THIS 14 DAY OF JANUARY, 2013, UPON INFORMATION FURNISHED
UNDER OATH BY THE COMPLAINANT OR COMPLAINANTS NAMED BELOW:
YOU ARE DIRECTED TO ARREST THE DEFENDANT NAMED ABOVE AND
BRING HIM WITHOUT UNNECESSARY DELAY BEFORE A JUDICIAL
OFFICIAL TO ANSWER THE CHARGES SET OUT ABOVE.

Location Of Court	Court Date	Court Time	Date Of Issue		Signature	<input type="checkbox"/> Deputy CSC <input checked="" type="checkbox"/> Magistrate <input type="checkbox"/> Assistant CSC <input type="checkbox"/> District Court Judge <input type="checkbox"/> Clerk Of Superior Court <input type="checkbox"/> Superior Court Judge
			<input type="checkbox"/> AM	<input type="checkbox"/> PM		
KELLY, A C				14	13	

STATE OF NORTH CAROLINA
County of Mecklenburg

File # 13-CRS-201164
Film #

The State of North Carolina

In The General Court of Justice
Superior Court Division

vs.

January 22, 2013

Felix Ricardo Saldierna,
Defendant. ✓

CONSPIRACY TO COMMIT BREAKING,
ENTERING, AND LARCENY - COMMON
LAW ✓

THE JURORS FOR THE STATE UPON THEIR OATH PRESENT that on or about the 18th day ✓
of December, 2012, in Mecklenburg County, Felix Ricardo Saldierna did unlawfully, willfully, and
feloniously conspire with Brian Martinez, Blanca Abigail Espinoza and Steven Fonseca to commit
the felony of breaking, entering and larceny, G.S. 14-54(a), G.S. 14-72; against William Nunez.


Assistant District Attorney

WITNESSES:

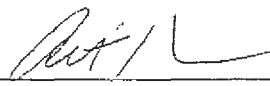
J. J. Johnson, CMPD
D. S. Williams, CMPD

J. A. Sterrett, CMPD
A. Kelly, CMPD ✓

The witnesses marked "X" were sworn by the undersigned foreman and examined before the
grand jury, and the bill was found to be ✓ a true bill by twelve or more grand jurors not a
true bill.

I hereby certify that 15 members of the grand jury concurred in finding this to be a true
bill of indictment.

This 22 day of JAN, 20 13.


Grand Jury Foreman

PENDING P/C
Charge Number: 991801

12-1218-150801
PID: 423391

PRK

STATE OF NORTH CAROLINA
County of Mecklenburg

File # 13-CRS-202213
Film #

The State of North Carolina

In The General Court of Justice
Superior Court Division

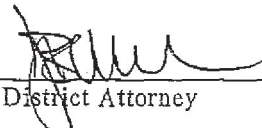
vs.

August 12, 2013

Felix Ricardo Saldierna,
Defendant.

✓ CONSPIRACY TO COMMIT BREAKING
AND ENTERING - COMMON LAW

✓ THE JURORS FOR THE STATE UPON THEIR OATH PRESENT that on or about the 17th day of December, 2012, in Mecklenburg County, Felix Ricardo Saldierna did unlawfully, willfully, and feloniously conspire with Brian Martinez and Steven Fonseca to commit the felony of breaking and entering, G.S. 14-54(a), against Cheryl Drew.


Assistant District Attorney

WITNESSES:

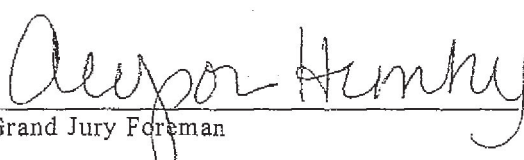
J. J. Johnson, CMPD
D. S. Williams, CMPD

J. A. Sterrett, CMPD
✓ A. C. Kelly, CMPD

The witnesses marked "X" were sworn by the undersigned foreman and examined before the grand jury, and the bill was found to be X a true bill by twelve or more grand jurors not a true bill.

I hereby certify that 16 members of the grand jury concurred in finding this to be a true bill of indictment.

This 15th day of August, 20 13.


Grand Jury Foreman

WAIVED
Charge Number: 9918

12-1217-204702
PID: 423391

PRJ

STATE OF NORTH CAROLINA
County of Mecklenburg

File # 13-CRS-202210
Film #

The State of North Carolina

In The General Court of Justice
Superior Court Division

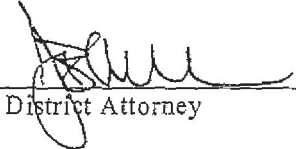
vs.

August 12, 2013

Felix Ricardo Saldierna,
Defendant.

FELONIOUS BREAKING AND ENTERING
G.S. 14-54(a)

THE JURORS FOR THE STATE UPON THEIR OATH PRESENT that on or about the 17th day of December, 2012, in Mecklenburg County, Felix Ricardo Saldierna unlawfully and willfully did feloniously break and enter a building occupied by Cheryl Drew, used as a residence, located at 3002 Morning Mist Lane, Charlotte, North Carolina, with the intent to commit a felony therein, to wit: larceny.


Assistant District Attorney

WITNESSES:

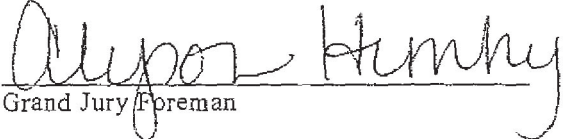
J. J. Johnson, CMPD
D. S. Williams, CMPD

J. A. Sterrett, CMPD
✓ A. C. Kelly, CMPD

The witnesses marked "X" were sworn by the undersigned foreman and examined before the grand jury, and the bill was found to be X a true bill by twelve or more grand jurors ___ not a true bill.

I hereby certify that 16 members of the grand jury concurred in finding this to be a true bill of indictment.

This 12th day of August, 20 13.


Grand Jury Foreman

WAIVED
Charge Number: 2212

12-1217-204702
PID: 423391

PRJ

STATE OF NORTH CAROLINA
County of Mecklenburg

File # 13-CRS-201161
Film #

The State of North Carolina

In The General Court of Justice
Superior Court Division

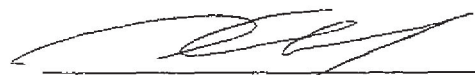
vs.

January 22, 2013

Felix Ricardo Saldierna, ✓
Defendant.

FELONIOUS BREAKING AND ENTERING ✓
G.S. 14-54(a)

THE JURORS FOR THE STATE UPON THEIR OATH PRESENT that on or about the 18th ✓
day of December, 2012, in Mecklenburg County, Felix Ricardo Saldierna unlawfully and willfully did
feloniously break and enter a building occupied by William Nunez, used as a residence, located at
10401 Ranleigh Lane, Charlotte, North Carolina, with the intent to commit a felony therein, to wit:
larceny.


Assistant District Attorney

WITNESSES:

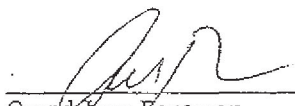
J. J. Johnson, CMPD
D. S. Williams, CMPD

J. A. Sterrett, CMPD
A. Kelly, CMPD ✓

The witnesses marked "X" were sworn by the undersigned foreman and examined before the
grand jury, and the bill was found to be ✓ a true bill by twelve or more grand jurors not a
true bill.

I hereby certify that 15 members of the grand jury concurred in finding this to be a true
bill of indictment.

This 22 day of JAN, 20 13.


Grand Jury Foreman

PENDING P/C
Charge Number: 221201

12-1218-150801
PID: 423391

PRK

STATE OF NORTH CAROLINA
COUNTY OF MECKLENBURG

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

13cls 201161

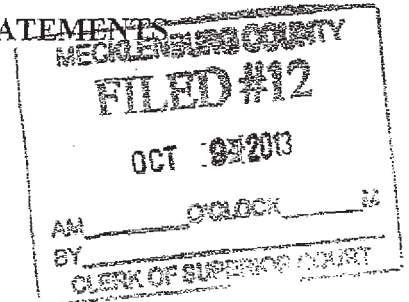
STATE OF NORTH CAROLINA)

v.)

FELIX SALDIERNA,)

DEFENDANT.)

MOTION TO DISMISS CHARGES
AND/OR SUPPRESS STATEMENTS



NOW COMES the above named Defendant by and through his undersigned attorney and pursuant to N.C.G.S. § 15A-977 and hereby moves this court to suppress Defendant's confession and all evidence derivatively obtained from Defendant's confession, which was illegally taken from Defendant by detectives with the Charlotte Mecklenburg Police Department on January 9, 2013, in violation of Defendant's juvenile rights under N.C.G.S. § 7B-2101 and the due process rights afforded juveniles under the U.S. Constitution. *See Also: In re Gault*, 387 U.S. 1 (1987). Defendant shows the following in support of his contentions:

STATEMENT OF FACTS

On January 9, 2013, Detective Kelly, Charlotte-Mecklenburg Police Department, arrested Defendant at his home in Fort Mill, South Carolina, on breaking and entering related charges out of Mecklenburg County, North Carolina. Following Defendant's arrest, Defendant was taken to a local police station by Detective Kelly and interrogated. A video recording of that interrogation was not produced, although an audio recording was made. Defendant made a number of inculpatory statements as a result of that interrogation which the Defense has reason to believe the State intends to introduce at trial. Defendant was just under the age of sixteen and a half at the time of his arrest and interrogation.

Because Defendant was under 18 years of age, Defendant was entitled to the protections of N.C.G.S. § 7B-2101 and was thus presented with the Juvenile Waiver of Rights form used by the Charlotte Mecklenburg Police Department. Upon being read

those rights, Defendant informed Detective Kelly that he wished to speak to his mother before being questioned.¹

Specifically, at approximately the 6:30 mark of the interview, Detective Kelly reads Defendant his juvenile Miranda rights including the right to speak to his parent. Following the reading of the rights, Defendant states, I want to talk to my mom. The Detective resolves any question to Defendant's desire to speak to his mother by asking Defendant multiple times in a displeased tone, "you want to call her now before we talk?" The Defendant responds that he does want to call her. Defendant steps out and calls his mom, but is unable to reach her.

Defendant was permitted to use a cell phone to call his mother. However, Defendant was unable to reach his mother. On the audio he can be heard stating in Spanish that he has been arrested and he wants to talk to her, and for her to call back at the phone number he called from. In lieu of stopping the interview until Defendant was permitted to speak to his mother, or even clarifying whether or not Defendant wanted to proceed given his inability to reach his mother, the Detective told Defendant that it was time to begin the interview and she began her interrogation of Defendant. Specifically, following Defendant's attempts to reach his mother, the first thing Detective Kelly tells Defendant (at the 12:15 mark of the interview) is "Alright Felix, let's talk about this thing." She then encourages the Defendant to continue without talking to his mother or having her present, stating at the 13:00 mark of the interview, "this is not a huge deal. This is not something that is going to end your life. . . I just want to hear your side of the story."

The statements of the other detectives in the background (at the 7:40 mark) indicate that Defendant had also previously attempted to call his mother in the presence of the officers before the interview started.

As an additional relevant factor, at the beginning of the interview, the Defendant prefaces things by stating that he is confused by some of the Detectives questions due to his English-speaking abilities. When the detective asks him if he can read in English, he responds, "kind of, a little bit." He also states that he was not able to pass the ninth grade. Another detective in the background can be overheard stating at the 2:50 mark, "His English is questionable." During the interview, Defendant sounds confused with regard to fairly simple questions, such as at the 5:30 mark, he does not understand when the Detective asks him to sign. Nonetheless, the Detectives also proceed with the interview without an interpreter, much less a parent.

¹ Although Defendant's statement that he desired to speak with his mother and his attempts to call his mother do not appear in the detective's interview summary, both can be clearly heard on the audio recording of his interview.

Based on the subsequent illegal interrogation, officers obtained statements which the Defense reasonably believes the State intends to introduce against Defendant.

ARGUMENT

A. Statement of the Law

The State bears the burden of demonstrating the admissibility of any juvenile confessions. Specifically, N.C.G.S. § 7B-2101 provides:

- a) Any juvenile in custody must be advised prior to questioning:
 - (1) That the juvenile has a right to remain silent;
 - (2) That any statement the juvenile does make can be and may be used against the juvenile;
 - (3) *That the juvenile has a right to have a parent, guardian, or custodian present during questioning;* and
 - (4) That the juvenile has a right to consult with an attorney and that one will be appointed for the juvenile if the juvenile is not represented and wants representation.
- (b) When the juvenile is less than 14 years of age, no in-custody admission or confession resulting from interrogation may be admitted into evidence unless the confession or admission was made in the presence of the juvenile's parent, guardian, custodian, or attorney. If an attorney is not present, the parent, guardian, or custodian as well as the juvenile must be advised of the juvenile's rights as set out in subsection (a) of this section; however, a parent, guardian, or custodian may not waive any right on behalf of the juvenile.
- (c) *If the juvenile indicates in any manner and at any stage of questioning pursuant to this section that the juvenile does not wish to be questioned further, the officer shall cease questioning.*
- (d) *Before admitting into evidence any statement resulting from custodial interrogation, the court shall find that the juvenile knowingly, willingly, and understandingly waived the juvenile's rights.*

emphasis added. See Also: State v. Branham, 153 N.C. App. 91, 99, 569 S.E.2d 24, 29 (2002) (interrogation must cease once a juvenile requests presence of a parent).

A juvenile is defined as a "person who has not reached the person's eighteenth birthday and is not married, emancipated, or a member of the armed forces of the United States." N.C. Gen.Stat. § 7B-101(14)

In *State v. Smith*, 343 S.E.2d 518, 317 N.C. 100 (1986), the Court addressed a nearly identical scenario to the instant one. In that case Defendant Smith was arrested on

charges of murder. Defendant Smith was 16 years old.² When detectives began interrogating Smith, he expressed a desire to speak to his mother. When Defendant's mother was not immediately located, one of the detectives present resumed his interrogation of Smith and obtained a confession which was later used at trial against the Defendant. The Court reversed the decision of the trial court allowing Defendant's statements into evidence and reversed his conviction. *See Also: State v. Branham*, 153 N.C. App. 91, 569 S.E.2d 24 (2002), *In re Ewing*, 83 N.C. App. 535, 537, 350 S.E.2d 887, 888 (1986).

B. Analysis

Any admissions made by Defendant in the instant case are inadmissible for use against him at trial. Defendant was under 18 years of age at the time. By asking to speak to his mother prior to questioning, Defendant invoked his rights under N.C.G.S. § 7B-2101. It is of no moment that Defendant was unable to reach his mother on the phone. Based on his statement that he wished to speak to her prior to questioning, and his attempts to call her, Defendant indicated that he was not ready to be questioned without her. The interview should have ceased at that moment and not continued until Defendant's mother was present, or should have simply ceased.

Based on both the plain reading of N.C.G.S. § 7B-2101 and on case law properly interpreting that statute, suppression of Defendant's statements is mandatory, and their admission would constitute reversible error.

Defendant's interrogation therefore violated both Defendant's constitutional and statutory rights, requiring suppression of any evidence seized pursuant to N.C.G.S. §§ 7B-2101(d) and 15A-977(a).

C. Fruit of the Poison Tree

Under *Wong Sun v. United States*, both direct and indirect products of unlawful police conduct are to be suppressed. 371 U.S. 471, 83 S. Ct. 407 (1963). That Court held,

In order to make effective the fundamental constitutional guarantees of sanctity of the home and inviolability of the person, *Boyd v. United States*, 116 U. S. 616, this Court held nearly half a century ago that evidence seized during an unlawful search could not constitute proof against the victim of the search. *Weeks v. United States*, 232 U. S. 383. The

² The majority opinion concluded that 7B-2101 applies to all proceedings, and is not limited to juvenile delinquency.

exclusionary prohibition extends as well to the indirect as the direct products of such invasions.

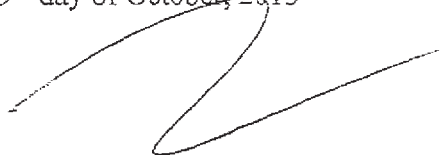
Id. at 484.

In Defendant's case, officers violated Defendant's rights, and any products of that conduct must be suppressed as fruit of the poison tree.

CONCLUSION

WHEREFORE, any evidence directly or derivatively obtained from Defendant's unlawful interrogation should be suppressed.

This the 9th day of October, 2013



W. Rob Heroy
Attorney For Defendant
N.C. Bar # 35339
Goodman, Carr, PLLC
301 S. McDowell St., #602
Charlotte, NC 28204
Ph: (704)372-2770

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing Motion was served on District Attorney's Office by depositing a copy thereof in the District Attorney's pick up box at the Clerk of Superior Court's Office.

This the 9th day of October, 2013

A handwritten signature in black ink, consisting of a large, stylized 'W' followed by a horizontal line.

W. Rob Heroy

AFFIDAVIT IN SUPPORT OF MOTION TO SUPPRESS

The undersigned, being first duly sworn, deposes and says the following:

1. That he is an attorney duly licensed and authorized to practice law in the State of North Carolina;
2. That he is counsel of record for the Defendant;
3. Upon information and belief, based upon conversations with the Defendant and a review of the discovery, Defendant's interrogation violated Defendant's statutory and constitutional rights.

This the 9th day of October, 2013.



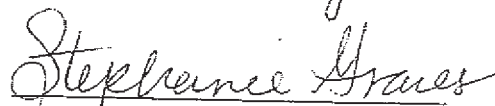
Rob Heroy

Attorney for Defendant

Mecklenburg County, North Carolina

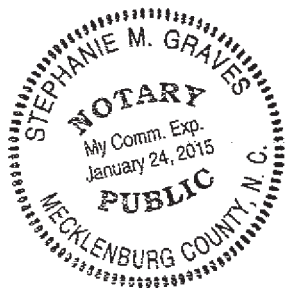
Signed and sworn to before me this day by Rob Heroy.

Date: 10/9/13



Official Signature of Notary

My commission expires: 1.24.15



STATE OF NORTH CAROLINA
MECKLENBURG COUNTY

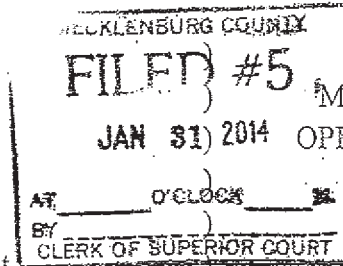
IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
FILE NO. 13CRS201161, 62, 64
13CRS201165, 66, 67
13CRS202210, 11, 13

State of North Carolina

v.

Felix Saldierna,

Defendant.



MEMORANDUM OF LAW IN
OPPOSITION TO DEFENDANT'S
MOTION TO SUPPRESS

NOW COMES the State of North Carolina by and through the undersigned Assistant District Attorney for the 26th Prosecutorial District of North Carolina and respectfully shows unto the Court the following in opposition to Defendant's Motion to Suppress:

FACTS

The matter before the Court arises out of an in custody interview of the defendant, Felix Saldierna, (hereinafter "Defendant"). The Defendant is charged with three counts Felony Breaking and Entering (hereinafter "B/E"), three counts of Felony Larceny After Breaking and Entering (hereinafter "Larceny After") and three counts of Felony Conspiracy (hereinafter "Conspiracy"). Defendant's birthday is August 19, 1996. On January 8, 2013, Detective Amy Kelly of the Charlotte-Mecklenburg Police Department obtained warrants against Defendant for two counts of B/E, two counts of Larceny After and two counts of Conspiracy. Detective Kelly became aware of Defendant's role in those incidents through her investigation of the respective cases and interviews of co-defendants in those cases.

On January 9, 2013, Detective Kelly, along with law enforcement officers from South Carolina, arrested Defendant at his home in Fort Mill, South Carolina. Upon his arrest, Defendant was transported to the Moss Justice Center located in York County, South Carolina and placed into custody. While Defendant was in custody at the Moss Justice Center, Detective Kelly conducted an in custody interview of Defendant. The audio of this interview was recorded by Detective Kelly. Prior to asking Defendant any questions about the charges against him, Detective Kelly read Defendant the rights afforded to him by North Carolina General Statute § 7B-2101 (hereinafter "Rights") and inquired of Defendant whether he understood these Rights as read to him. During this explanation, Detective Kelly simultaneously gave Defendant a Juvenile Waiver of Rights Form (hereinafter "Rights Form"). Because Defendant is bi-lingual, a Spanish copy of the Rights Form was also provided to Defendant. The Rights Form specifically enumerated Defendant's Rights in writing. After Detective Kelly advised Defendant of his Rights, and Defendant had an opportunity to read the Rights Form, Defendant initialed and signed the Rights Form to acknowledge that he understood his Rights. A copy of the signed Rights Form is attached hereto as "Exhibit A".

After Detective Kelly read Defendant his Rights and Defendant acknowledged that he understood those rights, Defendant told Detective Kelly that he was willing to speak to her and submit to questioning. Only after informing Detective Kelly of this decision did Defendant ask to telephone his mother. Defendant can be heard on the recording indicating that he believes his mother to be on her lunch break at that time. Defendant never requests to have his mother present. Detective Kelly complies with Defendant's request to call his mother by allowing him to use her telephone to make the call. Defendant places the call and speaks to someone on the other end of the line, predominantly in Spanish. The deputies at the Moss Justice Center can be heard on the recording informing Defendant that they do not speak Spanish. Defendant does not reach his mother. Upon conclusion of the phone call, Defendant re-enters the interview room and the interview is resumed. Defendant does not object to resuming the interview. Defendant later confesses to all three incidents for which he is charged.

Based on the foregoing facts, Defendant has made a Motion to Suppress alleging that Defendant's Rights were violated when the interview was resumed after Defendant was unable to reach his mother on the telephone.

ARGUMENT

North Carolina General Statute § 7B-2101 outlines interrogation procedures for juveniles. The State does not contest that Defendant, being born on August 19, 1996, is afforded the protections of this statute. Juveniles must be advised prior to questioning that they "... [have] a right to have a parent, guardian, or custodian *present* during questioning." N.C.G.S. § 7B-2101(a)(3)(*emphasis added*). Further, should a juvenile who is being interrogated indicate "... in any manner ... that the juvenile does not wish to be questioned further, the officer shall cease questioning." N.C.G.S. § 7B-2101(c). Finally, any waiver of these rights must be made "knowingly, willingly, and understandingly." See N.C.G.S. § 7B-2101(d).

Defendant was advised prior to questioning that he had a right to have his parent or guardian present. Detective Kelly advised Defendant of this right in three different ways; Defendant was informed via written English, written Spanish and spoken English. Defendant signed the Rights Form (Defendant specifically initialed the Rights Form next to this particular right) to acknowledge his comprehension. Defendant, however, never invoked this right. Defendant argues that his request to telephone his mother amounted to a request to have her present, citing *State v. Smith*, 317 N.C. 100 (1986). The defendant in *Smith*, however, requested to actually have his mother present – and officers understood that request as demonstrated by their efforts of leaving and trying to bring the defendant's mother back to the interrogation to be with the defendant. Asking to speak to someone by telephone and asking to have someone present during questioning are two different things entirely. At best this is an ambiguous request.

Our courts have held that a juvenile's right to have his parents present is akin to the right to counsel afforded by *Miranda v. Arizona*, 384 U.S. 436 (1966), stating that a "... juvenile's right ... to have a parent present during custodial interrogation, is entitled to similar protection." *Smith*, at 106. It follows that this juvenile right to have a parent present is subject to a similar analysis when determining whether the right was invoked or not. *Davis v. United States* held that an invocation of a defendant's right to counsel must be unambiguous, stating that a defendant "... must articulate his desire to have counsel present sufficiently clearly that a reasonable police officer in the circumstances would understand the statement to be a request for an attorney." 512 U.S. 452, 460 (1994). If a defendant makes an ambiguous request, the *Davis* Court "... decline[d] to adopt a rule requiring officers to ask clarifying questions." *Id.* at 461. In fact, "[i]f the suspect's statement is not an unambiguous or unequivocal request ... the officers have no obligation to stop questioning him." *Id.* at 461-462. The North Carolina Supreme Court has utilized such an approach before when determining whether a juvenile invoked a *Miranda* right. *See State v. Golphin*, 352 N.C. 364 (2000) (In determining whether or not juvenile defendant in custodial interrogation invoked right to remain silent, the Court found that invocation of the right needed to be made unambiguously by following the reasoning in *Davis*.).

While the current matter pertains to the right to have a parent present rather than the right to remain silent, the same analysis is applicable. The question becomes whether Defendant *unambiguously* invoked his right to have his parent present in this case. Defendant did not. Defendant's request to call his mother, after waiving his rights and indicating that he wished to answer Detective Kelly's questions, could not have been interpreted as a request to have his mother present prior to questioning, and no reasonable officer in similar circumstances would have interpreted it as such. The only reason Defendant gave for wanting to try to call his mother at that particular time was that he believed his mother was on her lunch break at that time. Once he was given the opportunity to call his mother, Defendant entered the interview room and resumed the interview without pause or question. Defendant did not in any manner indicate that he wished to cease questioning. In fact, after Defendant placed the phone call, the interview continued at length with Defendant offering new information pertaining to a third B/E, a B/E in which his involvement was unknown to Detective Kelly at that point. Because Defendant did not unambiguously request his mother's presence, Detective Kelly had no obligation to cease the interview. Because Defendant did not request the presence of his mother during questioning and did not in any way indicate to Detective Kelly that he wished to terminate the interview, there was no violation of N.C.G.S. § 7B-2101(a)(3) or N.C.G.S. § 7B-2101(c).

Defendant knowingly, willingly and understandingly waived his rights and agreed to talk to Detective Kelly in this instance. "Whether a waiver is knowingly and intelligently made depends on the specific facts and circumstances of each case, including the background, experience, and conduct of the accused." *State v. Miller*, 344 N.C. 658, 668 (1996) (quoting *State v. Simpson*, 314 N.C. 359, 367 (1985)). "The totality of the circumstances must be carefully

scrutinized when determining if a youthful defendant has legitimately waived his *Miranda* rights." *Id.* (citing *State v. Fincher*, 309 N.C. 1, 19 (1983)). Defendant's Rights were explained in essentially three different ways as outlined above (spoken English, written English and written Spanish). Defendant indicated he understood everything. As further indication of his understanding, Defendant signed the Rights Form. He spoke clearly on the recording and could be clearly understood throughout the process. Defendant indicated to Detective Kelly that he was currently taking ninth and tenth grade classes in high school. Though he was only 16 years old, our courts have held that "... youth ... does not necessarily render him incapable of waiving his rights knowingly and voluntarily." *State v. Flowers*, 128 N.C. App. 697, 701 (1998)(citing *State v. Fincher*, 309 N.C. 1, 8 (1983)). Defendant is quick to point out the fact that it is the State's burden to show that Defendant's waiver was valid, but the State need only show by a preponderance of the evidence that such waiver was valid. *Id.* The State has met its burden and shown, by a preponderance of the evidence, that Defendant knowingly, willingly and understandingly waived his Rights; therefore, there was no violation of N.C.G.S. § 7B-2101(d) in this case.

There has been no violation of the rights afforded Defendant under N.C.G.S. § 7B-2101 for the forgoing reasons. Because there has been no violation, suppression of Defendant's statements to Detective Kelly is not warranted in this case.

CONCLUSION

For the foregoing reasons, the State respectfully requests that the Defendant's Motion to Suppress be denied.

This is the 31st day of January, 2014.

STATE OF NORTH CAROLINA

By: 

Joshua D. Mahan
Assistant District Attorney
26th Prosecutorial District
700 E. Trade Street
Charlotte, NC 28202
NC Bar No. 39878

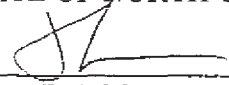
CERTIFICATE OF SERVICE

The undersigned Assistant District Attorney hereby certifies that the forgoing Memorandum of Law in Opposition to Defendant's Motion to Suppress has been served upon the following attorney of record by hand delivery.

Mr. W. Rob Heroy
Attorney for Defendant
Goodman, Carr, PLLC
301 S. McDowell Street, Suite 602
Charlotte, NC 28204

This is the 31st day of January, 2014.

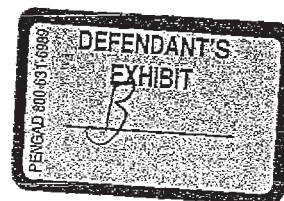
STATE OF NORTH CAROLINA

By: 
Joshua D. Mahan
Assistant District Attorney
26th Prosecutorial District
700 E. Trade Street
Charlotte, NC 28202
NC Bar No. 39878

STATE OF NORTH CAROLINA				File No.		13CRS201161	
MECKLENBURG County				In The General Court Of Justice <input type="checkbox"/> District <input checked="" type="checkbox"/> Superior Court Division			
<input type="checkbox"/> Civil: Plaintiff: _____ <input type="checkbox"/> Criminal: _____		STATE VERSUS		Additional File Numbers			
Name Of Defendant FELIX SALDIERNA <i>Motion to Suppress</i>				EXHIBITS/EVIDENCE LOG <input type="checkbox"/> PLAINTIFF (P) <input type="checkbox"/> DEFENDANT (D) <input type="checkbox"/> STATE (S) <input checked="" type="checkbox"/> BOTH Rule 14, General Rules of Practice for the Superior and District Courts			
Name And Address JOSH MAHAN				Name And Address ROB HERCY			
<input type="checkbox"/> Plaintiff's Attorney		<input type="checkbox"/> Prosecutor		<input type="checkbox"/> Party		<input type="checkbox"/> Defendant's Attorney	
Exhibit No.	Description And Notes, If Applicable	Date Offered (1)	Date Admitted	Biological (2) (✓)	Collecting Agency (3)	Item Received Or Retained By (4)	
SA	JUVENILE WAIVER OF RIGHTS	1/31/14	1/31/14			MJONES	
DA	CD OF DEFENDANT'S INTERVIEW	1/31/14	1/31/14			MJONES	
DB	COPY OF TRANSCRIPT OF INTERVIEW	1/31/14	1/31/14			MJONES	
NOTE: See reverse for additional description.							
Date Stored in Vault After Trial Ends		Signature Of Clerk Storing Exhibits		Appeal Taken <input type="checkbox"/> Yes _____ (Date) <input type="checkbox"/> No _____			
General Rules of Practice, Rule 14: Exhibits received by the Clerk shall be removed by the party offering them (except as otherwise directed by the Court) within thirty (30) days after final judgment if no appeal is taken; if the case is appealed, then, within sixty (60) days after certification of a final decision from the appellate division. If the party offering an exhibit fails to remove such article, the Clerk shall write the attorney of record, calling attention to provisions of this Rule. If the articles are not removed within thirty (30) days after mailing of such notice, they may be disposed of by the Clerk. (NOTE: To give notice the Clerk may use form AOC-G-151. The Clerk may wish to obtain an order of the Court to remove or dispose of exhibits/evidence in criminal cases.)							
RECEIPT FOR REMOVAL				DISPOSITION			
Date Of Final Judgment Or Certification		Date Notified In Writing To Remove Exhibits/Evidence		Date Disposed		Date Of Court Order, If Applicable	
Date Released	Exhibit No.(s) Released	Date Released	Exhibit No.(s) Released	Exhibit No.(s)			
Signature Of Party Removing Exhibits/Evidence		Signature Of Party Removing Exhibits/Evidence		Signature Of Clerk Disposing Of Exhibits/Evidence			
Signature Of Clerk Releasing Exhibits/Evidence		Signature Of Clerk Releasing Exhibits/Evidence		Signature Of Witness			
Additional Documentation Of Disposition							
(1) If item not admitted or retained by counsel or party, Clerk may add any relevant information as a note. (2) If exhibit is found "reasonably likely to contain biological evidence," as provided in G.S. 15A-268(a3), indicate it here. (3) Indicate here the agency identified by the court as the "collecting agency" for biological evidence. (4) Clerk's initials go in this column, or name of counsel or party. (NOTE: This form may be used in both civil and criminal cases.)							
AOC-G-150, Rev. 6/12 © 2012 Administrative Office of the Courts							

(17 years of age and younger)

Printed: A Kelly Printed: 04/02/2013 00047 A



Transcript starting at 4:50:

K: You understand I'm a police officer, right?

F: Yes maam

K: Ok, and that I would like to talk to you about this. And this officer has also explained to me and I understand that I have the right to remain silent, that means that I don't have to say anything or answer any questions. Should be right there number 1 right on there. Do you understand that?

F: [unintelligible] questions?

K: Yes, that is your right? So do you understand that? If you understand that, put your initials right there showing that you understand that. On this sheet. On this one. You can put it on both. Anything I say can be used against me. Do you understand that?

F: Yes maam.

K: I have the right to have a parent guardian or custodian here with me now during questioning. Parent means my mother, father, stepmother, or stepfather. Guardian means the person responsible for taking care of me. Custodian means the person in charge of me where I am living. Do you understand that? Do you want to read that?

F: Yeah.

K: Do you understand that?

F: [no response]

K: I have the right to talk to a lawyer and to have a lawyer here with me now to advise and help during questioning. Do you understand that?

F: [unintelligible]

K: If I want to have a lawyer with me during questioning one will be provided to me at no cost before any questioning. Do you understand that?

F: Yes maam.

K: Ok. Now I want to talk to you about some stuff that's happened in Charlotte. And um, I will tell you this. There's been some friends of yours that have already been questioned about these items and these issues. And they've been locked up. And that's what I want to talk to you about. Do you want to help me out and to help me understand what's been going on with some of these cases and talk to me about this now here?

F: Uh

K: Are you willing to talk to me is what I'm asking.

F: Yes ma'am.

K: Ok. So I am 14 years or more. Let me see that pen. And I understand my rights as they've been explained by detective Kelly. I do wish to answer questions now without a lawyer, parent, guardian or custodian here with me? My decision to answer questions now is made freely and is my own choice. No one has threatened me in any way or has promised me any special treatment because I have decided to answer questions now. I am signing my name below. Do you understand this? Initial, sign, date and time.

[noise]

K: it is 1/9/13. It is 12:10PM. [unintelligible background talking among officers]

F: Um, Can I call my mom?

K: Call your mom now?

F: She's on her um. I think she is on her lunch now.

K: You want to call her now before we talk?

K [to other officers]: He wants to call his mom.

F: Cause she's on, I think she's on her lunch.

Other officer: [unintelligible] He left her a message on her phone.

F: But she doesn't speak English.

[conversation among officers]

K: I have mine. Can he dial it from a landline you think?

[more unintelligible conversation among officers]

[other officer]: step back outside and we'll let you call your mom outside. [unintelligible]. You're going to have to talk to her. Neither one of us speak Spanish, ok.

[more unintelligible conversation among officers].

9:50: [Felix can be heard on phone. Call is not intelligible.]

10:40 F.[Phone can be heard making a phone call in Spanish]

[Sound of door closing].

K: 12:20: Alright Felix, so, let's talk about this thing going on. Like I said a lot of your friends have been locked up and everybody's talking. They're telling me about what's going on and what you've been up to. I'm not saying you're the ringleader of this here thing and some kind of mastermind right but I think you've gone along with these guys and gotten yourself into a little bit of trouble here. This is not something that's going to end your life. You know what I'm saying. This is not a huge deal. I know you guys were going into houses when nobody was home. You weren't looking to hurt anybody or anything like that. I just want to hear your side of the story. We can start off. I'm going to ask you questions I know the answer to. A lot of these questions are to tell if you're being truthful to me...

[end of transcript]

EXHIBITS

Any additional exhibits received into evidence in this case are a necessary part of the Record on Appeal. Upon request, the Mecklenburg County Clerk of Court will forward exhibits to the Clerk of the North Carolina Court of Appeals.

STATE OF NORTH CAROLINA
MECKLENBURG COUNTY

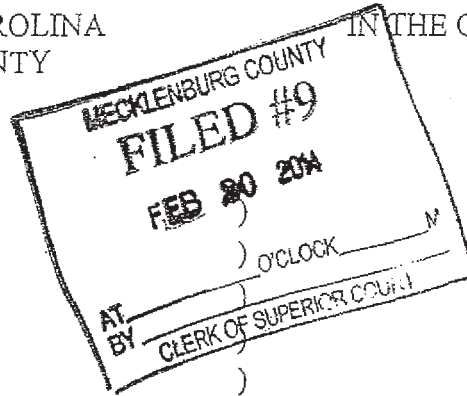
IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
FILE NO. 13CRS201161, 62, 64
13CRS201165, 66, 67
13CRS202210, 11, 13

State of North Carolina

v.

Felix Saldierna,

Defendant.



ORDER

THIS CAUSE COMING before the undersigned Superior Court Judge pursuant to Defendant's Motion to Suppress. This Court, having observed the witnesses, considered the evidence presented, and heard arguments of counsel, makes the following findings of fact and conclusions of law:

FINDINGS OF FACT

1. That Defendant was in custody.
2. That Defendant was advised of his juvenile rights pursuant to North Carolina General Statute § 7B-2101.
3. That Detective Kelly of the Charlotte-Mecklenburg Police Department advised Defendant of his juvenile rights.
4. That Defendant was advised of his juvenile rights in three manners. Defendant was advised of his juvenile rights in spoken English, in written English, and in written Spanish.
5. That Defendant indicated that he understood his juvenile rights as given to him by Detective Kelly.
6. That Defendant indicated he understood his rights after being given and reviewing a form enumerating those rights in Spanish.
7. That Defendant indicated he understood that he had the right to remain silent. Defendant understood that to mean that he did not have to say anything or answer any questions. Defendant initialed next to this right at number 1 on the English rights form provided to him by Detective Kelly to signify his understanding.
8. That Defendant indicated he understood that anything he said could be used against him. Defendant initialed next to this right at number 2 on the English rights form provided to him by Detective Kelly to signify his understanding.
9. That Defendant indicated he understood that he had the right to have a parent, guardian, or custodian there with him during questioning. Defendant understood the word parent meant his mother, father, stepmother, or stepfather. Defendant understood the word guardian meant the person responsible for taking care of him. Defendant understood the

word custodian meant the person in charge of him where he was living. Defendant initialed next to this right at number 3 on the English rights form provided to him by Detective Kelly to signify his understanding.

10. That Defendant indicated he understood that he had the right to have a lawyer and that he had the right to have a lawyer there with him at the time to advise and help him during questioning. Defendant initialed next to this right at number 4 on the English rights form provided to him by Detective Kelly to signify his understanding.
11. That Defendant indicated he understood that if he wanted a lawyer there with him during questioning, a lawyer would be provided to him at no cost prior to questioning. Defendant initialed next to this right at number 5 on the English rights form provided to him by Detective Kelly to signify his understanding.
12. That Defendant initialed a space below the enumerated rights on the English rights form that stated the following: "I am 14 years old or more and I understand my rights as explained by Detective Kelly. I DO with to answer questions now, WITHOUT a lawyer, parent, guardian, or custodian here with me. My decision to answer questions now is made freely and is my own choice. No one has threatened me in any way or promised me special treatment. Because I have decided to answer questions now, I am signing my name below."
13. That Defendant's signature appears on the English rights form below the initialed portions of the form. Defendant's signature appears next to the date, 1-9-13, and the time, 12:10. Detective Kelly signed her name as a witness below Defendant's signature.
14. That after being informed of his rights, informing Detective Kelly he wished to waive those rights, and signing the rights form, Defendant communicated to Detective Kelly that he wished to contact his mother by phone. Defendant was given permission to do so.
15. That Defendant attempted to call his mother, but was unable to speak to her.
16. That Defendant indicated that his mother was on her lunch break at the time he tried to contact her.
17. That Defendant did not at that time or any other time indicate that he changed his mind regarding his desire to speak to Detective Kelly. That Defendant did not at that time or any other time indicate that he revoked his waiver.
18. That Defendant only asked to speak to his mother.
19. That Defendant did not make his interview conditional on having his mother present or conditional on speaking to his mother.
20. That Defendant did not ask to have his mother present at the interview site.
21. That, upon review of the totality of the circumstances, the Court finds that Defendant's request to speak to his mother was at best an ambiguous request to speak to his mother.
22. That at no time did Defendant make an unambiguous request to have his mother present during questioning.
23. That Defendant never indicated that his mother was on the way or could be present during questioning.

24. That Defendant made no request for a delay of questioning.

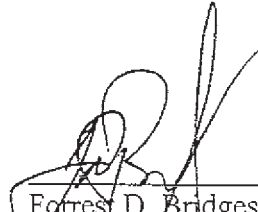
CONCLUSIONS OF LAW

1. That the State carried its burden by a preponderance of the evidence that Defendant knowingly, willingly, and understandingly waived his juvenile rights.
2. That the interview process in this case was consistent with the interrogation procedures as set forth in North Carolina General Statute § 7B-2101.
3. That none of Defendant's State or Federal rights were violated during the interview conducted of Defendant.
4. That statements made by Defendant were not gathered as a result of any State or Federal rights violation.

CONCLUSION

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Defendant's Motion to Suppress shall be denied.

This the 20th day of February, 2014.



Forrest D. Bridges
Superior Court Judge Presiding

STATE OF NORTH CAROLINA

File No.

13CRS201161

Mecklenburg

County

In The General Court Of Justice

☐ District ☒ Superior Court Division

STATE VERSUS

Name Of Defendant

Felix Saldiema

DOB

08/19/1996

Age

17

Highest Level Of Education Completed

4

TRANSCRIPT OF PLEA

G.S. 15A-1022, 15A-1022.1

NOTE: Use this section ONLY when the Court is rejecting the plea arrangement.☐ The plea arrangement set forth within this transcript is hereby rejected and the clerk shall place this form in the case file. (Applies to plea arrangements disclosed on or after December 1, 2009.)

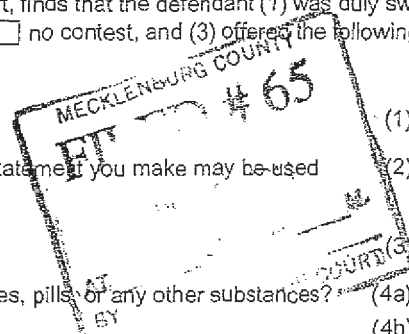
Date

Name Of Presiding Judge (Type Or Print)

Signature Of Presiding Judge

The undersigned judge, having addressed the defendant personally in open court, finds that the defendant (1) was duly sworn or affirmed, (2) entered a plea of ☐ guilty ☒ guilty pursuant to *Alford* decision ☐ no contest, and (3) offered the following answers to the questions set out below:

- Answers
1. Are you able to hear and understand me? (1) Yes
2. Do you understand that you have the right to remain silent and that any statement you make may be used against you? (2) Yes
3. At what grade level can you read and write? (3) 9
4. (a). Are you now under the influence of alcohol, drugs, narcotics, medicines, pills, or any other substances? (4a) No
- (b). When was the last time you used or consumed any such substance? (4b) 6 mos
5. Have the charges been explained to you by your lawyer, and do you understand the nature of the charges, and do you understand every element of each charge? (5) Yes
6. (a). Have you and your lawyer discussed the possible defenses, if any, to the charges? (6a) Yes
- (b). Are you satisfied with your lawyer's legal services? (6b) Yes
7. (a). Do you understand that you have the right to plead not guilty and be tried by a jury? (7a) Yes
- (b). Do you understand that at such trial you have the right to confront and to cross examine witnesses against you? (7b) Yes
- (c). Do you understand that at a jury trial you have the right to have a jury determine the existence of any aggravating factors that may apply to your case (and, if applicable, additional sentencing points not related to prior convictions) beyond a reasonable doubt? (7c) Yes
- (d). Do you understand that by your plea(s) you give up these and other valuable constitutional rights to a jury trial (and, if applicable, rights related to sentencing)? (7d) Yes
8. Do you understand that, if you are not a citizen of the United States of America, your plea(s) of guilty or no contest may result in your deportation from this country, your exclusion from admission to this country, or the denial of your naturalization under federal law? (8) Yes
- ☒ 9. Do you understand that upon conviction of a felony you may forfeit any State licensing privileges you have in the event that you refuse probation or that your probation is revoked? (9) Yes
10. Do you understand that following a plea of guilty or no contest there are limitations on your right to appeal? (10) Yes
11. Do you understand that your plea of guilty may impact how long biological evidence related to your case (for example, blood, hair, skin tissue) will be preserved? (11) Yes



12. Do you understand that you are pleading ☒ guilty ☐ no contest to the charges shown below? (12) Yes
 (Describe charges, total maximum punishments, and applicable mandatory minimums for those charges.)

PLEAS										
✓	Plea*	File Number	Count No.(s)	Offense(s)	Date Of Offense	G.S. No.	F/M	CL	‡Pun. CL	Maximum Punishment
	G	13CRS201161	1	B&E	12/18/2012	14-54(a)	F	H	I	39 mos
	G	13CRS201164	1	Conspire B&E	12/18/2012	14-54(a)	F	I	I	24 mos.
	G	13CRS202210	1	B&E	12/18/2012	14-54(a)	F	H	I	39 mos
	G	13CRS202213	1	Conspire B&E	12/18/2012	14-54(a)	F	I	I	24 mos

☐ See attached AOC-CR-300A, for additional charges.

*G = Guilty

NC = No Contest

TOTAL MAXIMUM PUNISHMENT

126 mos

MANDATORY MINIMUM FINES & SENTENCES (if any)

✓ **NOTE TO CLERK:** If this column is checked this is an added offense or reduced charge.

‡ **NOTE:** Enter punishment class if different from underlying offense class (punishment class represents a status or enhancement).

13. Do you now personally plead ☒ guilty ☐ no contest to the charges I just described? (13) Yes
14. ☐ (a) Are you in fact guilty? (14a) _____
☐ (b) (no contest plea) Do you understand that, upon your plea of no contest, you will be treated as being guilty whether or not you admit that you are in fact guilty? (14b) _____
☒ (c) (Alford guilty plea)
 (1) Do you now consider it to be in your best interest to plead guilty to the charges I just described? (14c1) Yes
 (2) Do you understand that, upon your "Alford guilty plea," you will be treated as being guilty whether or not you admit that you are in fact guilty? (14c2) Yes
- ☐ 15. (Use if aggravating factors are listed below) Have you admitted the existence of the aggravating factors shown below, have you agreed that there is evidence to support these factors beyond a reasonable doubt, have you agreed that the Court may accept your admission to these factors, and do you ☐ understand that you are waiving any notice requirement that the State may have with regard to these aggravating factors ☐ agree that the State has provided you with appropriate notice about these aggravating factors? (If so, review the aggravating factors with the defendant.) (15) _____
- ☐ 16. (Use if sentencing points are listed below) Have you admitted the existence of the sentencing points not related to prior convictions shown below, have you agreed that there is evidence to support these points beyond a reasonable doubt, have you agreed that the Court may accept your admission to these points, and do you ☐ understand that you are waiving any notice requirement that the State may have with regard to these sentencing points ☐ agree that the State has provided you with appropriate notice about these sentencing points? (If so, review the sentencing points with the defendant.) (16) _____
17. Do you understand that you also have the right during a sentencing hearing to prove to the Court the existence of any mitigating factors that may apply to your case? (17) Yes
18. Do you understand that the courts have approved the practice of plea arrangements and you can discuss your plea arrangement with me without fearing my disapproval? (18) Yes

STATE VERSUS

File No.

Name Of Defendant

Felix Saldiema

19. Have you agreed to plead ☒ guilty ☐ no contest as part of a plea arrangement? (If so, review the terms of the plea arrangement as listed in No. 20 below with the defendant.) (19) Yes
20. The prosecutor, your lawyer and you have informed the Court that these are all the terms and conditions of your plea:

PLEA ARRANGEMENT

Defendant will plead guilty. sentencing consolidated under 13CRS 201161 for a sentence of 6-12 months, suspended for 36 mos. probation, with 45 day split and 1 year of intensive. Defendant shall receive credit for time served on the split. Defendant reserves his right to appeal the denial of his motion to suppress.

- ☒ The State dismisses the charge(s) set out on Page Two, Side Two, of this transcript.
- ☐ The defendant stipulates to restitution to the party(ies) in the amounts set out on "Restitution Worksheet, Notice And Order (Initial Sentencing)" (AOC-CR-611).

21. Is the plea arrangement as set forth within this transcript and as I have just described it to you correct as being your full plea arrangement? (21) Yes
22. Do you now personally accept this arrangement? (22) Yes
23. (Other than the plea arrangement between you and the prosecutor) has anyone promised you anything or threatened you in any way to cause you to enter this plea against your wishes? (23) No
24. Do you enter this plea of your own free will, fully understanding what you are doing? (24) Yes
25. Do you agree that there are facts to support your plea ☐ and admission to aggravating factors ☐ and sentencing points not related to prior convictions, and do you consent to the Court hearing a summary of the evidence? (25) Yes
26. Do you have any questions about what has just been said to you or about anything else connected to your case? (26) No

ACKNOWLEDGEMENT BY DEFENDANT

I have read or have heard all of these questions and understand them. The answers shown are the ones I gave in open court and they are true and accurate. No one has told me to give false answers in order to have the Court accept my plea in this case. The terms and conditions of the plea as stated within this transcript, if any, are accurate.

SWORN/AFFIRMED AND SUBSCRIBED TO BEFORE ME

Date

6/3/14

Date

6/4/14

Signature

D McComb

Signature Of Defendant

Felix Saldiema

- ☐ Deputy CSC ☐ Assistant CSC ☐ Clerk Of Superior Court

Name Of Defendant (Type Or Print)

F. Saldiema

CERTIFICATION BY LAWYER FOR DEFENDANT

I hereby certify that the terms and conditions stated within this transcript, if any, upon which the defendant's plea was entered are correct and they are agreed to by the defendant and myself. I further certify that I have fully explained to the defendant the nature and elements of the charges to which the defendant is pleading, and the aggravating and mitigating factors and prior record points for sentencing, if any.

Date

6/3/14

Name Of Lawyer For Defendant (Type Or Print)

H. Croz

Signature Of Lawyer For Defendant

[Signature]

CERTIFICATION BY PROSECUTOR

As prosecutor for this Prosecutorial District, I hereby certify that the conditions stated within this transcript, if any, are the terms and conditions agreed to by the defendant and his/her lawyer and myself for the entry of the plea by the defendant to the charges in this case.

Date

6/4/14

Name Of Prosecutor (Type Or Print)

P. A. Martin

Signature Of Prosecutor

[Signature]

PLEA ADJUDICATION

Upon consideration of the record proper, evidence or factual presentation offered, answers of the defendant, statements of the lawyer for the defendant, and statements of the prosecutor, the undersigned finds that:

1. There is a factual basis for the entry of the plea (and for the admission as to aggravating factors and/or sentencing points);
2. The defendant is satisfied with his/her lawyer's legal services;
3. The defendant is competent to stand trial;
4. ☐ The State has provided the defendant with appropriate notice as to the aggravating factors and/or points; ☐ The defendant has waived notice as to the aggravating factors and/or points; and
5. The plea (and admission) is the informed choice of the defendant and is made freely, voluntarily and understandingly.

The defendant's plea (and admission) is hereby accepted by the Court and is ordered recorded.

Date 6/4/14	Name Of Presiding Judge (Type Or Print) JESSIE CALDWELL	Signature Of Presiding Judge
-----------------------	---	----------------------------------

SUPERIOR COURT DISMISSALS PURSUANT TO PLEA ARRANGEMENT

File No.	Count No.(s)	Offense(s)
13CRS201165	1	B+E
13CRS 201166	1	Larceny B/E
13CRS 201167	1	Conspire B/E
13CRS 202211	1	Larceny B/E
13CRS201162	1	Larceny B/E
<div style="position: relative; width: 100%; height: 100%;"> <div style="position: absolute; top: 0; left: 0; width: 100%; height: 100%; border-left: 2px solid black; border-bottom: 2px solid black;"></div> </div>		

DISTRICT COURT DISMISSALS PURSUANT TO PLEA ARRANGEMENT

File No.	Count No.(s)	Offense(s)
<div style="position: relative; width: 100%; height: 100%;"> <div style="position: absolute; top: 0; left: 0; width: 100%; height: 100%; border-left: 2px solid black; border-bottom: 2px solid black;"></div> </div>		

CERTIFICATION BY PROSECUTOR

The undersigned prosecutor enters a dismissal to the above charges pursuant to a plea arrangement shown on this Transcript Of Plea.

Date 6/4/14	Name Of Prosecutor (Type Or Print) JOSH MARIAN	Signature Of Prosecutor
-----------------------	--	-----------------------------

STATE OF NORTH CAROLINA

MECKLENBURG County

File No.

13CR-202210

In The General Court Of Justice
☒ District ☐ Superior Court Division

STATE VERSUS

Name And Address Of Defendant

FELIX RICARDO SALDIERNA
 7205 WESTERLEIGH RD
 FORT MILL

SC 00000

Social Security No.

SID No.

NC1646936A

Race

Sex

DOB

H

M

08/19/1996

WORKSHEET PRIOR RECORD LEVEL FOR FELONY SENTENCING AND PRIOR CONVICTION LEVEL FOR MISDEMEANOR SENTENCING (STRUCTURED SENTENCING)

(For Offenses Committed On Or After Dec. 1, 2009)

G.S. 15A-1340.14, 15A-1340.21

I. SCORING PRIOR RECORD/FELONY SENTENCING

NUMBER	TYPE	FACTORS	POINTS
	Prior Felony Class A Conviction	X 10	
	Prior Felony Class B1 Conviction	X 9	
	Prior Felony Class B2 or C or D Conviction	X 6	
	Prior Felony Class E or F or G Conviction	X 4	
	Prior Felony Class H or I Conviction	X 2	
	Prior Class A1 or 1 Misdemeanor Conviction (see note on reverse)	X 1	
		SUBTOTAL	

Defendant's Current Charge(s)

If all the elements of the present offense are included in any prior offense whether or not the prior offenses were used in determining prior record level

+1

If the offense was committed while the offender was

☐ on supervised or unsupervised probation, parole, or post-release supervision

+1

☐ serving a sentence of imprisonment, or ☐ on escape from a correctional institution

County

File No.

State (if other than NC)

TOTAL

II. CLASSIFYING PRIOR RECORD/CONVICTION LEVEL

MISDEMEANOR

NOTE: If sentencing for a misdemeanor, total the number of prior conviction(s) listed on the reverse and select the corresponding prior conviction level

No. Of Prior Convictions	Level
0	I
1-4	II
5+	III

PRIOR
 CONVICTION
 LEVEL

FELONY

NOTE: If sentencing for a felony, locate the prior record level which corresponds to the total points determined in Section I above

Points	Level
0-1	I
2-5	II
6-9	III
10-13	IV
14-17	V
18+	VI

PRIOR
 RECORD
 LEVEL

☐ The Court has determined the number of prior convictions to be _____ and the level to be as shown above

☐ In making this determination, the Court has relied upon the State's evidence of the defendant's prior convictions from a computer printout of DGI-CCH

☐ The Court finds the prior convictions, prior record points and the prior record level of the defendant to be as shown herein

☐ In making this determination, the Court has relied upon the State's evidence of the defendant's prior convictions from a computer printout of DGI-CCH

☐ In finding a prior record level point under G.S. 15A-1340.14(b)(2), the Court has relied on the jury's determination of this issue beyond a reasonable doubt or the defendant's admission to this issue

☐ The Court finds that all of the elements of the present offense are included in a prior offense

☐ For each out-of-state conviction listed in Section V on the reverse, the Court finds by a preponderance of the evidence that the offense is substantially similar to a North Carolina offense and that the North Carolina classification assigned to this offense in Section V is correct

☐ The Court finds that the State and the defendant have stipulated in open court to the prior convictions, points and record level


Date

Name Of Presiding Judge (Type Or Print)

Signature Of Presiding Judge

III. STIPULATION

The prosecutor and defense counsel, or the defendant, if not represented by counsel, stipulate to the information set out in Sections and V of this form, and agree with the defendant's prior record level or prior conviction level as set out in Section II based on the information herein.

Date 6/4/14	Signature Of Prosecutor 	Date	Signature Of Defense Counsel Or Defendant
----------------	--	------	---

IV. DNA CERTIFICATION
(For Offenses Committed On Or After Feb. 1, 2011)

A review of the case record (the form required by G.S. 15A-266.3A(c)) and the records of the State Bureau of Investigation (the DCI-CCH rap sheet) indicates that (check one):

- ☐ 1. The defendant is **NOT** required to provide a DNA sample for this conviction because (i) the offense is not covered by G.S. 15A-266.4 or (ii) a sample of the defendant's DNA has previously been obtained and the defendant's DNA record is currently stored in the State DNA database.
- ☐ 2. The defendant **IS** required to provide a DNA sample for this conviction because (i) the offense is covered by G.S. 15A-266.4 and (ii) a sample of the defendant's DNA has not previously been obtained and the defendant's DNA record has not previously been stored in the State DNA Database, or if previously obtained and stored, the defendant's DNA sample and record have been expunged.

Date 6/4/14	Name Of Prosecutor (Type Or Print) MAURICE STANLEY JOSH MANSUETI	Signature Of Prosecutor 
----------------	--	---

V. PRIOR CONVICTION

NOTE: Federal law precludes making computer printout of DCI-CCH (rap sheet) part of permanent public court record.

NOTE: The only misdemeanor offenses under Chapter 20 that are assigned points for determining prior record level for felony sentencing are misdemeanor death by vehicle [G.S. 20-141.4(a2)] and, for sentencing for felony offenses committed on or after December 1, 1997, impaired driving [G.S. 20-138.1] and commercial impaired driving [G.S. 20-138.2]. First Degree Rape and First Degree Sexual Offense convictions prior to October 1, 1994, are Class B1 convictions.

[illegible]☐ See AOC-CR-600 Continuation for additional prior convictions.

Source Code: 1 - DCI 3 - AOC/Local 5 - ID Bureau
 2 - NCIC 4 - AOC/Statewide 6 - Other

Date Prepared: 02/06/2013

Prepared By: JANICE M MURRAY

STATE OF NORTH CAROLINA				File No.				
MECKLENBURG County		CHARLOTTE		13CRS201161 51				
Seal of Court				In The General Court Of Justice				
NOTE: (This form is to be used for (1) felony offense(s) and (2) misdemeanor offense(s) that are consolidated for judgment with any felony offense(s). Use AOC-CR-310 for DWI offense(s).)				<input type="checkbox"/> District <input checked="" type="checkbox"/> Superior Court Division				
STATE VERSUS				JUDGMENT SUSPENDING SENTENCE - FELONY PUNISHMENT: <input type="checkbox"/> COMMUNITY <input checked="" type="checkbox"/> INTERMEDIATE (STRUCTURED SENTENCING)				
Name Of Defendant SALDIERNA, FELIX, RICARDO				G.S. 15A-1341, -1342, -1343, -1343.2, -1346				
Race H	Sex M	Date Of Birth 8/19/1996						
Attorney For State MAHAN, JOSH		<input type="checkbox"/> Def. Found Not Indigent <input type="checkbox"/> Def. Waived Attorney	Attorney For Defendant HEROY, ROB		<input type="checkbox"/> Appointed <input checked="" type="checkbox"/> Retained			
The defendant <input checked="" type="checkbox"/> pled guilty (<input checked="" type="checkbox"/> pursuant to Alford) to <input type="checkbox"/> was found guilty by a jury of <input type="checkbox"/> pled no contest to								
File No.(s)	Off.	Offense Description	Offense Date	G.S. No.	F/M CL. Pun. CL.			
13CRS201161	51	BREAKING AND OR ENTERING (F)	12/18/2012	14-54(A)	F H			
13CRS201164	51	CONSPIRACY TO COMMIT BREAKING AND ENTERING	12/18/2012	14-54(A)	F I			
<p>*NOTE: Enter punishment class if different from underlying offense class (punishment class represents a status or enhancement).</p> <p>The Court <input checked="" type="checkbox"/> 1. has determined, pursuant to G.S. 15A-1340.14, the prior record points of the defendant to be <u>0</u> PRIOR RECORD <input checked="" type="checkbox"/> I <input type="checkbox"/> III <input type="checkbox"/> V</p> <p>Any prior record level point under G.S. 15A-1340.14(b)(7) is based on the jury's determination of this issue LEVEL: <input type="checkbox"/> II <input type="checkbox"/> IV <input type="checkbox"/> VI</p> <p>beyond a reasonable doubt or the defendant's admission to this issue.</p> <p><input type="checkbox"/> 2. makes no prior record level finding because none is required.</p>								
The Court (NOTE: Block 1 or 2 MUST be checked.):								
<input checked="" type="checkbox"/> 1. makes no written findings because the prison term imposed is within the presumptive range of sentences authorized under G.S. 15A-1340.17(c). <input type="checkbox"/> 2. makes the Determination of aggravating and mitigating factors on the attached AOC-CR-605. <input type="checkbox"/> 3. makes the Findings of Extraordinary Mitigation set forth on the attached AOC-CR-606. <input type="checkbox"/> 4. finds the defendant has provided substantial assistance pursuant to G.S. 90-95(h)(5). <input type="checkbox"/> 5. adjudges the defendant to be (check only one) <input type="checkbox"/> an habitual felon to be sentenced four classes higher than the principal felony (no higher than Class C). <input type="checkbox"/> an habitual breaking and entering status offender, to be sentenced as a Class E felon. <input type="checkbox"/> 6. finds enhancement pursuant to: <input type="checkbox"/> G.S. 90-95(e)(3) (drugs). <input type="checkbox"/> G.S. 14-3(c) (hate crime). <input type="checkbox"/> G.S. 50B-4.1 (domestic violence). <input type="checkbox"/> G.S. 14-50.22 (gang). <input type="checkbox"/> Other: _____ This finding is based on the jury's determination of this issue beyond a reasonable doubt or the defendant's admission. <input type="checkbox"/> 7. finds the above designated offense(s) is a reportable conviction under G.S. 14-208.6 and therefore imposes the special conditions of probation set forth on the attached AOC-603C, Page Two, Side Two, and makes the additional findings and orders on the attached AOC-CR-605, Side Two. <input type="checkbox"/> 8. finds the above-captioned offense(s) involved the (check all that apply) <input type="checkbox"/> physical or mental <input type="checkbox"/> sexual abuse of a minor. <input type="checkbox"/> (If No. 7 not found) and therefore imposes the special conditions of probation set forth on the attached AOC-603C, Page Two, Side Two. <input type="checkbox"/> 9. finds that a <input type="checkbox"/> motor vehicle <input type="checkbox"/> commercial motor vehicle was used in the commission of the offense and that it shall be reported to DMV. <input type="checkbox"/> 10. finds this is an offense involving assault, communicating a threat, or an act defined in G.S. 50B-1(a), and the defendant had a personal relationship as defined by G.S. 50B-1(b) with the victim. <input type="checkbox"/> 11. finds the above-designated offense(s) involved criminal street gang activity. G.S. 14-50.25. <input type="checkbox"/> 12. did not grant a conditional discharge under G.S. 90-96(a) because (check all that apply) <input type="checkbox"/> the defendant refused to consent. <input type="checkbox"/> (offenses committed on or after Dec. 1, 2013, only) the Court finds, with the agreement of the District Attorney, that the offender is inappropriate for a conditional discharge for factors related to the offense. <input type="checkbox"/> 13. finds that the defendant used or displayed a firearm while committing the felony. G.S. 15A-1382.2. <input type="checkbox"/> 14. (for judgments entered on or after Dec. 1, 2013, only) finds that this was an offense involving child abuse or an offense involving assault or any of the acts as defined in G.S. 50B-1(a) committed against a minor. G.S. 15A-1382.1(a1).								
The Court, having considered evidence, arguments of counsel and statement of defendant, Orders that the above offenses, if more than one, be consolidated for judgment and the defendant be imprisoned								
for a minimum term of <u>6</u> months for a maximum term of <u>17</u> months in the custody of the N.C. DAC.								
<input type="checkbox"/> This sentence shall run at the expiration of sentence imposed in file number _____								
The defendant shall be given credit for <u>45</u> days spent in confinement prior to the date of this Judgment as a result of this charge(s) to be applied toward the <input type="checkbox"/> sentence imposed above. <input checked="" type="checkbox"/> imprisonment required for special probation set forth on AOC-CR-603C, Page Two.								
SUSPENSION OF SENTENCE								
Subject to the conditions set out below, the execution of this sentence is suspended and the defendant is placed on <input checked="" type="checkbox"/> supervised <input type="checkbox"/> unsupervised probation for <u>36</u> months.								
<input type="checkbox"/> 1. The Court finds that a <input type="checkbox"/> longer <input type="checkbox"/> shorter period of probation is necessary than that which is specified in G.S. 15A-1343.2(d). <input type="checkbox"/> 2. The Court finds that it is NOT appropriate to delegate to the Section of Community Corrections the authority to impose any of the requirements in G.S. 15A-1343.2(e) for community punishment or G.S. 15A-1343.2(f) for intermediate punishment. <input type="checkbox"/> 3. This period of probation shall begin <input type="checkbox"/> when the defendant is released from incarceration <input type="checkbox"/> at the expiration of the sentence in the case below.								
File No.	Offense	County	Court	Date				
<input type="checkbox"/> 4. The defendant shall comply with the conditions set forth in file number _____ <input checked="" type="checkbox"/> 5. The defendant shall provide a DNA sample pursuant to G.S. 15A-266.4. (AOC-CR-319 required)								
MONETARY CONDITIONS								
The defendant shall pay to the Clerk of Superior Court the "Total Amount Due" shown below, plus the probation supervision fee, pursuant to a schedule determined by the probation officer. <input type="checkbox"/> set out by the court as follows:								
WAIVE PSF								
Costs	Fine	Restitution*	Attorney's Fees	Comm Serv Fee	EHA Fee	SBM Fee	Appt Fee/Misc	Total Amount Due
\$ 354.50	\$	\$	\$	\$	\$	\$	\$	\$ 354.50
<p>*See attached "Restitution Worksheet, Notice And Order (Initial Sentencing)" AOC-CR-611, which is incorporated by reference.</p> <p><input type="checkbox"/> The Court finds just cause to waive costs, as ordered on the attached <input type="checkbox"/> AOC-CR-618. <input type="checkbox"/> Other: _____</p> <p><input type="checkbox"/> Upon payment of the "Total Amount Due," the probation officer may transfer the defendant to unsupervised probation.</p>								
AOC-CR-603C, Rev. 12/13 Material opposite unmarked squares is to be disregarded as surplusage.								
© 2013 Administrative Office of the Courts (Over)								

STATE VERSUS

File No.

13CR5201161 51

Name Of Defendant
SALDIERNA, FELIX, RICARDO

NOTE: Use this page in conjunction with AOC-CR-310C, "Impaired Driving - Judgment Suspending Sentence"; AOC-CR-603C, "Judgment Suspending Sentence - Felony"; AOC-CR-604C, "Judgment Suspending Sentence - Misdemeanor"; AOC-CR-619C, "Conditional Discharge Under G.S. 90-96(a)"; AOC-CR-621C, "Conditional Discharge Under G.S. 14-50.29"; AOC-CR-627C, "Conditional Discharge Under G.S. 90-96(a1)"; or AOC-CR-628, "Conditional Discharge Under G.S. 14-204(b)"; for offenses committed on or after Dec. 1, 2011.

COMMUNITY AND INTERMEDIATE PROBATION CONDITIONS - G.S. 15A-1343(a1)

NOTE: The conditions in this section may not be imposed for defendants placed on probation for a sentence under G.S. 20-179.

In addition to complying with the regular and any special conditions of probation set forth in the "Judgment Suspending Sentence" entered in the above case(s), the defendant shall also comply with the following conditions of probation, which may be imposed for any community or intermediate punishment.

- ☐ 1. Submit to house arrest with electronic monitoring, remain at the defendant's residence for a period of _____ days, _____ months, abide by all rules, regulations and directions of the probation officer regarding such monitoring, and pay the fees prescribed in G.S. 15A-1343(c) as provided under Monetary Conditions. The defendant may leave the residence for the following purpose(s) and as otherwise permitted by the probation officer: ☐ employment ☐ counseling ☐ a course of study ☐ vocational training.
Other: _____
 - ☐ 2. Complete _____ hours of community service during the first _____ days of the period of probation, as directed by the judicial service coordinator. The fee prescribed by G.S. 143B-708 is
☐ not due because it is assessed in a case adjudicated during the same term of court.
☐ to be paid ☐ pursuant to the schedule set out under Monetary Conditions in the "Judgment Suspending Sentence." ☐ within _____ days of this Judgment and before beginning service.
Other: _____
 - ☐ 3. Submit to the following period(s) of confinement in the custody of the ☐ Sheriff of this County, ☐ _____ (other local confinement facility). ☐ and pay jail fees. The defendant shall report in a sober condition to serve the term(s) indicated below.
NOTE: Periods of confinement imposed here must be for two-day or three-day consecutive periods, only, for no more than six days in a single month, and in no more than three separate months during the period of probation. To impose special probation under G.S. 15A-1351, see INTERMEDIATE PUNISHMENTS, below.
- | | | | | | | | | | | | | | | |
|------|------|--|-----|--|------|------|--|-----|--|------|------|--|-----|--|
| Date | Hour | <input type="checkbox"/> AM
<input type="checkbox"/> PM | for | <input type="checkbox"/> 2 days
<input type="checkbox"/> 3 days | Date | Hour | <input type="checkbox"/> AM
<input type="checkbox"/> PM | for | <input type="checkbox"/> 2 days
<input type="checkbox"/> 3 days | Date | Hour | <input type="checkbox"/> AM
<input type="checkbox"/> PM | for | <input type="checkbox"/> 2 days
<input type="checkbox"/> 3 days |
| Date | Hour | <input type="checkbox"/> AM
<input type="checkbox"/> PM | for | <input type="checkbox"/> 2 days
<input type="checkbox"/> 3 days | Date | Hour | <input type="checkbox"/> AM
<input type="checkbox"/> PM | for | <input type="checkbox"/> 2 days
<input type="checkbox"/> 3 days | Date | Hour | <input type="checkbox"/> AM
<input type="checkbox"/> PM | for | <input type="checkbox"/> 2 days
<input type="checkbox"/> 3 days |
| Date | Hour | <input type="checkbox"/> AM
<input type="checkbox"/> PM | for | <input type="checkbox"/> 2 days
<input type="checkbox"/> 3 days | Date | Hour | <input type="checkbox"/> AM
<input type="checkbox"/> PM | for | <input type="checkbox"/> 2 days
<input type="checkbox"/> 3 days | Date | Hour | <input type="checkbox"/> AM
<input type="checkbox"/> PM | for | <input type="checkbox"/> 2 days
<input type="checkbox"/> 3 days |
- ☐ 4. Obtain a substance abuse assessment, monitoring or treatment as follows: _____
 - ☐ 5. (for offenses committed on or after December 1, 2012) Abstain from alcohol consumption and submit to continuous alcohol monitoring for a period of _____ days, _____ months, the Court having found that a substance abuse assessment has identified defendant's alcohol dependency or chronic abuse.
 - ☐ 6. Participate in an educational or vocational skills development program as follows: _____
 - ☐ 7. Submit to satellite-based monitoring, if required on the attached AOC-CR-615, Side Two.

INTERMEDIATE PUNISHMENTS

In addition to complying with the regular and any special, community or intermediate conditions of probation set forth in the "Judgment Suspending Sentence" or herein for the above case(s), the defendant shall also comply with the following intermediate punishment(s) under G.S. 15A-1340.11(6).

☒ 1. **Special Probation - G.S. 15A-1351**

For the defendant's active sentence as a condition of special probation, the defendant shall comply with these additional regular conditions of probation: (1) Obey the rules and regulations of the Division of Adult Correction governing the conduct of inmates while imprisoned. (2) Report to a probation officer in the State of North Carolina within seventy-two (72) hours of the defendant's discharge from the active term of imprisonment.

☒ A. Serve an active term of 45 ☒ days ☐ months ☐ hours in the custody of the

☐ N.C. DAC, ☒ Sheriff of this County, ☐ Other: _____

☐ B. The defendant shall report in a sober condition to begin serving his/her term on:

Day	Date	Hour	<input type="checkbox"/> AM <input type="checkbox"/> PM
-----	------	------	--

and shall remain in custody until:

Day	Date	Hour	<input type="checkbox"/> AM <input type="checkbox"/> PM
-----	------	------	--

☐ C. The defendant shall again report in a sober condition to continue serving this term on the same day of the week for the next _____ consecutive weeks, and shall remain in custody during the same hours each week until completion of the active sentence ordered.

☐ D. This sentence shall be served at the direction of the probation officer within _____ days _____ months of this judgment.

☐ E. Pay jail fees. ☐ F. Work release is recommended. ☐ G. Substance abuse treatment is recommended.

☐ H. Other: _____

☐ 2. **Drug Treatment Court - G.S. 15A-1340.11(3a); 15A-1340.11(6)**

Comply with the rules adopted for the program as provided for in Article 62 of Chapter 7A of the General Statutes and report on a regular basis for a specified time to participate in court supervision, drug screening or testing, and drug or alcohol treatment programs.

Other: _____

INTERMEDIATE CONDITIONS OF PROBATION - G.S. 15A-1343(b4)

If subject to intermediate punishment, the defendant shall, in addition to the terms and conditions imposed above, comply with the following intermediate conditions of probation.
(1) If required by the defendant's probation officer, perform community service under the supervision of the Section of Community Corrections, and pay the fee required by G.S. 143B-708, but no fee shall be due if the Court imposed community service as a special condition of probation and assessed the fee in this judgment or any judgment for an offense adjudicated in the same term of court. (2) Not use, possess, or control alcohol. (3) Remain within the defendant's county of residence unless granted written permission to leave by the court or the defendant's probation officer. (4) Participate in any evaluation, counseling, treatment, or educational program as directed by the probation officer, keeping all appointments by abiding by the rules, regulations, and direction of each program.

STATE OF NORTH CAROLINA

MECKLENBURG County

File No.

13CRS201161

51

In The General Court Of Justice.

☐ District ☒ Superior Court Division

STATE VERSUS

Name Of Defendant

SALDIERNA, FELIX, RICARDO

JUDICIAL FINDINGS AS TO REQUIRED DNA SAMPLE

Race

H

Sex

M

Date Of Birth

08/19/1996

G.S. 15A-266.4, 15A-266.6

File No.

G.S. No.

Offense Description

13CRS201161

14-54(A)

BREAKING AND OR ENTERING (F)

13CRS201164

14-54(A)

CONSPIRACY TO COMMIT BREAKING AND ENTERING

13CRS202210

14-54(A)

BREAKING AND OR ENTERING (F)

13CRS202213

14-54(A)

CONSPIRACY TO COMMIT BREAKING AND ENTERING

NOTE: Use this form only to make "Judicial Findings As To Required DNA Sample" after conviction of any felony, assault on a handicapped person (G.S. 14-32.1), stalking under the former G.S. 14-277.3, or any offense described in G.S. 15A-266.3A, and only if the defendant is not sentenced to a term of confinement. Complete this form after completing the appropriate AOC judgment form.

FINDINGS OF SPECIAL INFORMATION

The Court, having entered judgment, which is incorporated by reference, makes the following "Findings Of Special Information" and includes these findings in the judgment. The judgment is modified to the extent necessary to include these findings, but the inclusion of these findings does not otherwise alter, amend, or modify the judgment in any respect.

1. The defendant has been convicted in the above case of an offense described in G.S. 15A-266.4 requiring that a DNA sample be taken.
2. The defendant has not been sentenced to a term of confinement.
3. A DNA sample has not previously been obtained by lawful process from the defendant and a record has not been stored in the State DNA Database, or if previously obtained and stored, the sample and record have been expunged.

ORDER

Based upon the foregoing findings, the Court ORDERS:

1. The defendant shall report to the Sheriff of the above-captioned county at the location shown below for the purpose of having a DNA sample taken ☒ immediately. ☐ at the date and time designated by the Sheriff and indicated below.
2. The Sheriff shall inform the court in the section provided below of any failure by the defendant to appear as ordered herein.

Date For Taking Sample

06/04/2014

Time For Taking Sample

☐ AM

☐ PM

Location For Taking Sample

MC SO OR CMC

Name Of Presiding Judge (Type Or Print)

JESSE B CALDWELL

Signature Of Presiding Judge

Date

06/04/2014

SHERIFF'S REPORT OF DEFENDANT'S FAILURE TO APPEAR

NOTE TO SHERIFF: G.S. 15A-266.6(a) provides that, if the defendant fails to appear for DNA sampling as ordered by the Court, "the sheriff shall inform the court of the failure to appear."

The undersigned hereby informs the Court that the above-named defendant failed to provide a DNA sample, in that:

- ☐ the defendant failed to appear to provide the sample as ordered above.
- ☐ the defendant appeared but failed to provide a sample in that (explain):

Name (Type Or Print)

Signature

☐ Sheriff

☐ Deputy Sheriff

Date

☐ Other:

ORDER UPON SHERIFF'S REPORT

Pursuant to the Sheriff's report above that the defendant failed to provide a DNA sample as ordered, the Court hereby Orders pursuant to G.S. 5A-15 that the clerk of superior court shall issue an order to the defendant to appear at the next criminal session of this court and show cause why he/she should not be held in criminal contempt of court.

- ☐ Further, pursuant to G.S. 5A-16 and based on the sworn statement or affidavit of (name) _____ the Court finds that there is probable cause to believe that the defendant will not appear in response to the order to show cause and therefore Orders that the clerk issue an order for the defendant's arrest with the show cause order.

NOTE TO CLERK: Pursuant to Rule of Recordkeeping 9.1, Comment E., establish a new criminal case for the contempt proceeding separate from the original criminal case captioned above.

Name Of Judge (Type Or Print)

Signature of Judge

Date

STATE OF NORTH CAROLINA

MECKLENBURG County

File No.

13CRS201161

51

Additional File No.(s)

13CRS201162,64,65,66,67 13CRS202210,11,13

In The General Court Of Justice

☐ District ☒ Superior Court Division

STATE VERSUS

Name Of Defendant

SALDIERNA,FELIX,RICARDO

Date(s) Of Trial

JANUARY 31 2014

Codefendant(s) If Tried Jointly

Name And Address Of Trial Prosecutor

JOSH MAHAM
700 EAST TRADE ST
CHARLOTTE NC 28202

Telephone No.

704-686-0700

Email Address

Name And Address Of Trial Transcriptionist

KYM HANSON
832 EAST FOURTH ST
CHARLOTTE NC 28202

Telephone No.

704-686-0181

Email Address

Name And Address Of Trial Transcriptionist

Telephone No.

Email Address

Name And Address Of Transcriptionist Of Other Proceedings On The Following Date(s)

LCR C/O JOYCE PENISTON
3800 CARDINAL BLUFF LANE
INDIAN TRIAL NC 28079

Date(s)

JUNE 4 2014

Telephone No.

704-882-4957

Email Address

Name And Address Of Defendant's Trial Counsel

ROB HEROY
301 SOUTH MCDOWELL ST SUITE 602
CHARLOTTE NC 28204

Telephone No.

704-372-2770

Email Address

MECKLENBURG COUNTY

Name And Address Of Defendant's Trial Counsel

Telephone No.

Email Address

Name And Address Of Defendant's Appellate Counsel

☐ The Appellate Defender (919) 354-7210
123 W. Main St., Suite 500, Durham, NC 27701

NOTE: All indigent appeals are assigned to the Appellate Defender.

☒ Retained Appellate Counsel

ROB HEROY
301 SOUTH MCDOWELL ST SUITE 602
CHARLOTTE NC 28204

Telephone No.

704-372-2770

Email Address

Name And Address Of Transcriptionist Of Other Proceedings On The Following Date(s)

Date(s)

Telephone No.

Email Address

(Attach additional sheet(s) if necessary)

JUDGE'S INITIAL APPEAL ENTRIES

1. ☒ a. The defendant has given Notice of Appeal to the N.C. Court of Appeals, or
☐ b. This is a capital case appealable as of right to the N.C. Supreme Court.
2. Release of the defendant pursuant to G.S. 15A-536 is ☐ denied. ☐ allowed upon execution of a secured bond in the amount of \$ _____ and compliance with the following additional conditions:
SAME BOND
3. Unless indigent, the defendant shall arrange for the transcription of the proceedings as provided in the Rules of Appellate Procedure.
- ☐ 4. (NOTE: Check in all cases where defendant is indigent.) The defendant is indigent and has requested a transcript and the appointment of counsel. It is ORDERED that the defendant is allowed to appeal as an indigent and:
 - a. The Office of Indigent Defense Services shall pay the costs of producing a transcript, and of reproducing the record and the defendant's brief.
 - b. The Appellate Defender is appointed to perfect the defendant's appeal or assign other appellate counsel pursuant to rules issued by the Office of Indigent Defense Services.
 - c. Upon request, the Clerk shall furnish to the Appellate Defender, or to alternate counsel designated by the Appellate Defender, a copy of the complete trial division file in the case and, upon request, any documentary exhibits.
 - d. Unless the parties stipulate that parts of the proceedings shall not be transcribed, the Clerk shall order from the transcriptionist(s) a transcript of all parts of the proceedings except:

Original-File Copy-Transcriptionist(s) Copy-Defendant's Trial Counsel Copy-Defendant's Appellate Counsel (or defendant if unrepresented) Copy-District Attorney
Material opposite unmarked squares is to be disregarded as surplusage.

AOC-CR-350, Rev. 6/12

© 2012 Administrative Office of the Courts

(Over)

TRIAL TESTIMONY

Pursuant to Appellate Rules 7(b) and 9(c)(2), the complete transcript of the entire proceeding will be electronically filed by the listed court reports once a docket number is assigned to this appeal, and shall be part of the Record on Appeal.

The trial transcript consists of two volumes transcribed by Court Reporter Kymberlee Hanson. Volume I contains the transcript from the hearing on the Motion to Suppress and consists of 32 pages, numbered 1-32. Volume II contains the transcript of the plea hearing and consists of 17 pages, numbered 1-17.

DEFENDANT-APPELLANT'S PROPOSED ISSUES ON APPEAL

Defendant proposes the following issues on appeal:

1. Whether the trial court erred in denying Defendant's motion to suppress any statements made pursuant to his custodial interrogation.
2. Whether the trial court's findings of facts with respect to Defendant's motion to suppress were supported by competent evidence.
3. Whether the trial court correctly found that the State complied with its obligations with respect to Defendant's constitutional and statutory rights during the course of his custodial interrogation.
4. Whether the trial court erred in formulating its conclusions of law in denying Defendant's motion to suppress in concluding that neither Defendant's juvenile rights under Chapter 7B of the North Carolina General Statutes nor his state or federal constitutional rights were violated as a result of his custodial interrogation.
5. Whether the trial court erred in formulating its conclusions of law in finding that Defendant's statements should not be suppressed.

FILED #98

128a

AUG 8 2014

AT _____ O'CLOCK _____ M
BY _____

STATE OF NORTH CAROLINA CLERK OF SUPERIOR COURT GENERAL COURT OF JUSTICE
COUNTY OF MECKLENBURG SUPERIOR COURT DIVISION
13CRS201161-167; 13CRS202210;211;213

STATE OF NORTH CAROLINA)
)
vs.)
)
FELIX SALDIERNA)
Defendant)
)
)
_____)

MOTION TO EXTEND
TRANSCRIPT DEADLINE

NOW COMES Defendant, by and through undersigned Counsel, and moves the court to extend the due date for the transcripts in this case per Rule 7(b) of the Rules of Appellate Procedure. This is the first such motion.

This the 7 day of August, 2014

W. Rob Heroy
Attorney for Defendant
Goodman Carr, PLLC
301 S. McDowell St., #602
Charlotte, NC 28204
(704) 372-2770
RHeroy@goodmancarr.net

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
13CRS201161-167; 13CRS202210;211;213

STATE OF NORTH CAROLINA)
)
 vs.)
)
 FELIX SALDIERNA)
 Defendant)
)
)
)

ORDER TO EXTEND
TRANSCRIPT DEADLINE

The Defendant's motion is granted. The Defendant is afforded an additional thirty (30) days to prepare the transcripts in this case in accordance with Rule 7 of the Rules of Appellate Procedure.

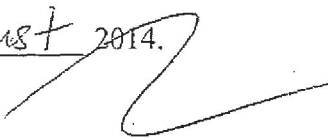
This the 7 day of August, 2014

H. B. Lewis
Superior Court Judge Presiding

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing was served this day to the District Attorney for the 26th Judicial District of North Carolina, by placing a copy in the DA pickup box at the courthouse.

This the 7 day of August 2014.



Rob Heroy
Attorney for Defendant

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing was served this day to the District Attorney for the 26th Judicial District of North Carolina, by placing a copy in the DA pickup box at the courthouse.

This the 7 day of August 2014.

Rob Heroy
Attorney for Defendant

-49-

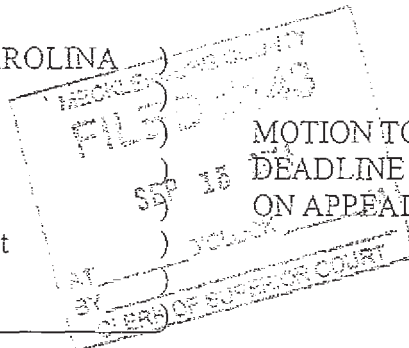
STATE OF NORTH CAROLINA
COUNTY OF MECKLENBURG

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
13CRS201161-65

STATE OF NORTH CAROLINA

vs.

FELIX SALDIERNA
Defendant



MOTION TO EXTEND
DEADLINE FOR RECORD
ON APPEAL

NOW COMES Defendant, by and through undersigned Counsel, and moves the court to extend the due date for preparation of the proposed record on appeal in this case for good cause per Rule 7(b) of the Rules of Appellate Procedure. This is the first such motion.

This the 10 day of Sept, 2014

W. Rob Heroy
Attorney for Defendant
Goodman Carr, PLLC
301 S. McDowell St., #602
Charlotte, NC 28204
(704) 372-2770
RHeroy@goodmancarr.net

STATE OF NORTH CAROLINA
COUNTY OF MECKLENBURG

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
13CRS201161-65

STATE OF NORTH CAROLINA)
)
 vs.)
)
 FELIX SALDIERNA)
 Defendant)
)
)
 _____)

ORDER TO EXTEND
DEADLINE FOR RECORD
ON APPEAL

The Defendant's motion is granted. The Defendant is afforded an additional thirty (30) days for preparation of the proposed record on appeal in this case for good cause in this case in accordance with Rule 7 of the Rules of Appellate Procedure.

This the 10 day of September, 2014



Superior Court Judge Presiding

SETTLEMENT OF RECORD ON APPEAL

Now Comes, Defendant-Appellant, by and through Counsel, and pursuant to Appellate Rule 11(b) of the North Carolina Rules of Appellate Procedures, states as follows:

1. That he served the proposed record on appeal on the District Attorney's Office for the 26th district by mail and email to the addresses listed on the certificate of service;
2. That the District Attorney's Office did not respond with any objections or proposed changes within the 30 days period set forth in the rules of appellate procedure;
3. That the record is therefore settled by rule.

This is the 24 day of Nov, 2014.



W. Rob Heroy
Attorney for Defendant-Appellant
Goodman, Carr, Laughrun, Levine & Greene
301 S. McDowell St., #602
Charlotte, NC 28204
Ph: (704)372-2770

IDENTIFICATION OF COUNSEL

W. Rob Heroy
Attorney for Defendant-Appellant
N.C. Bar # 35339
Goodman, Carr, Laughrun, Levine & Greene
301 S. McDowell St., #602
Charlotte, NC 28204
Ph: (704)372-2770
RHeroy@goodmancarr.net

Joshua Mahan
Attorney for Appellee
Assistant District Attorney for Mecklenburg County
601 E. Trade St.
Charlotte, NC 28202
Ph: (704)686-0700

Mr. Roy Cooper
Attorney General
Department of Justice
P.O. Box 629
Raleigh, NC 27602—0629
(919)706-6500


-53-

CERTIFICATE OF SERVICE OF THE PROPOSED RECORD ON APPEAL

The undersigned counsel for Defendant-Appellant hereby certifies that he has this day served a copy of the attached Defendant-Appellant's PROPOSED RECORD ON APPEAL upon Plaintiff-Appellee by placing said copy in a postage paid envelope mailing via U.S. Mail address to counsel of record as follows:

Joshua Mahan
Attorney for Appellee
Assistant District Attorney for Mecklenburg
County
601 E. Trade St.
Charlotte, NC 28202
Ph: (704)686-0700

This is the 24 day of Oct, 2014.



W. Rob Heroy
Attorney For Defendant-Appellant
N.C. Bar # 35339
Goodman, Carr, Laughrun, Levine & Greene
301 S. McDowell St., #602
Charlotte, NC 28204
Ph: (704)372-2770

CERTIFICATE OF SERVICE OF THE RECORD ON APPEAL

The undersigned counsel for Defendant-Appellant hereby certifies that he heretofore served his Record of Appeal on the State-Appellee by U.S. Mail on the 6 day of Dec, 2014.

The Record on Appeal has been settled under Rule 11(b) on the N.C. Rules of Appellate Procedure by agreement.

Based upon the foregoing, Defendant-Appellant's Proposed Record on Appeal constitutes the Record on Appeal in this case pursuant to Rule 11(b). Counsel for Appellant hereby certifies that on this date he filed the Settled Record on Appeal and verbatim transcript of proceedings within fifteen (15) days of settlement as described hereinabove pursuant to Rules 12(a) and 26(a)(1) of the N.C. Rules of Appellate Procedure.

A copy of this certificate has been served this date upon the attorney representing the Appellee in this case.

This is the 6 day of Dec, 2014.



W. Rob Heroy
Attorney for Defendant-Appellant
N.C. Bar # 35339
Goodman, Carr, Laughrun, Levine & Greene
301 S. McDowell St., #602
Charlotte, NC 28204
Ph: (704)372-2770