

MOTIONS PRACTICE: TOOLS FOR YOUR DEFENSE

*Motions prepared for “Regional Juvenile Defender Workshops,”
a Continuing Legal Education Program co-sponsored by the
Office of Indigent Defense Services and the UNC School of Government
February-May 2006*

*Prepared by Tamar Birckhead, Clinical Assistant Professor of Law
UNC School of Law*

Sample Motions included:

- A. Motion for Discovery and Exculpatory Material
- B. Motion to Determine Competency with Order
- C. Ex Parte Motion for Funds to Hire an Expert with Ex Parte Order
- D. Motion to Suppress Statements and Request for Hearing
- E. Motion and Order for Production of Transcript of Probable Cause Hearing
- F. Motion to Continue Adjudicatory Hearing and Request for Expedited Hearing
- G. Motion for Deferred Disposition
- H. Motion for Appropriate Relief
- I. Motion for Change of Venue
- J. Petition to Expunge Juvenile Record
- K. Motion and Memorandum in Support of Finding Juvenile Not Delinquent of Intent to Manufacture, Sell or Delivery a Controlled Substance

STATE OF NORTH CAROLINA
YOURSVILLE COUNTY

STATE OF NORTH CAROLINA

V.

JS, a Juvenile

IN THE GENERAL COURT OF JUSTICE
DISTRICT COURT DIVISION
FILE NO. 05-J-XXX

**MOTION FOR DISCOVERY AND
EXCULPATORY MATERIAL**

NOW COMES the Juvenile, by and through his attorney, and requests this Honorable Court, pursuant to N.C.G.S. §§ 7B-2300-2303, to require the District Attorney for Judicial District 35 to produce, divulge and permit counsel for the Juvenile to inspect, copy or photograph the following:

1. Any written or recorded statements made by the Juvenile within the possession, custody or control of the State or any of its law enforcement officials and any form reflecting the waiver of the Juvenile's rights.

2. The substance of any oral statement relevant to the subject matter of the case made by the Juvenile, regardless of to whom the statement was made, within the possession, custody or control of the State, indicating to whom each such statement was made and the date each such statement was made.

3. All prior criminal records of the Juvenile, from any source as are available to the Office of the District Attorney.

4. The names of persons to be called as witnesses, including but not limited to a copy of the record of witnesses under the age of 16, if accessible to the State.

5. All books, papers, documents, photographs, motion pictures, mechanical or electronic recordings, tangible objects, or copies or portions thereof which are within the possession, custody, or control of the State which are intended for use by the State as evidence of any kind at the trial of the Juvenile, which may be material to the preparation to the Juvenile's defense, or which were obtained from or belong to the Juvenile.

6. All results or reports of physical or mental examinations or of tests, measurements, or experiments, made in connection with the case, or copies thereof, within the possession, custody, or control of the State, and any physical evidence, which may be offered as an exhibit or evidence in the case, including, but not limited to, any fingerprint or handwriting analysis made in connection with this case.

7. The Juvenile, through counsel, further requests that the District Attorney or his agents, pursuant to United States v. Agurs and Brady v. Maryland, 373 U.S. 83, 83 S.Ct. 1194, 10 L.Ed. 2d 215 (1963), disclose to, and permit counsel for the Juvenile to inspect, copy or photograph all evidence, of whatever kind within the possession or control of the State of North Carolina, or any of its law enforcement officials, which

is favorable to, may be favorable to, or tends to be favorable to the Juvenile in this cause, or which may be material and relevant to the Juvenile's defense. This request for voluntary discovery of evidence favorable or tending to be favorable to the Juvenile includes, but is not necessarily limited to, the following items:

a. A copy of any prior criminal record available to the State or any of its law enforcement agencies of witnesses whom the State intends to or will offer as a witness on behalf of the State of the trial of the Juvenile.

b. A disclosure of all criminal charges known to the State of North Carolina or any of its law enforcement agencies pending against any person whom the State intends to or will offer as a witness on behalf of the State at the trial of the Juvenile.

c. All written, recorded, or oral statements made by any person who is a witness or an alleged witness to any of the transactions involving the offenses with which the Juvenile is charged, which statements written, recorded, or oral -- are inconsistent with the Juvenile's guilt of any of the charges against him, or which are or may tend to be favorable to the Juvenile on the issue of mitigation or punishment. This request for disclosure concerns witnesses or alleged witnesses to any of the transactions described in the petition(s) filed against the

Juvenile, whether the State intends to call such person or persons as witnesses or not.

WHEREFORE, the Juvenile requests the Court to issue an Order compelling the State to provide the foregoing items of discovery pursuant to G.S. §§ 7B-2300-2303.

This the 2nd day of February, 2005.

Respectfully submitted,

Jane White, Esq.
101 Main Street
Yoursville, NC 27000
(919) 555-1212

Certificate of Service

I hereby certify that a copy of the foregoing motion was delivered by hand to Assistant District Attorney George Crabtree, by leaving it with an employee of the Office of the District Attorney for District 35 on the 2nd day of February, 2005.

Jane White, Esq.
101 Main Street
Yoursville, NC 27000
(919) 555-1212

her, JS refused and asked her to read it to him. While Counsel read the police report, JS did not pay attention but instead looked away and fidgeted with his hands and with nearby objects. Id.

5. There were several times during their meeting when Counsel had to insist that JS focus on her instead of watching television. During their conversations, when Counsel repeatedly asked JS to look into her eyes, he refused, responding, "I can't do it!" Id.

6. After interviewing JS, Counsel had serious questions about his ability to comprehend and understand on a rational level, as JS had persistently exhibited an extreme lack of concern, motivation, and appreciation for the ramifications of his decisions and actions. Id.

7. That same evening, Counsel spoke with JS's grandmother who told her that JS has an IQ of 68 and that he is considered borderline mentally-retarded. His grandmother also stated that JS has been diagnosed with attention-deficit hyperactivity disorder (ADHD) and is prescribed medication for the condition. Id.

8. His grandmother told Counsel that JS attends school regularly but has been suspended several times for disrupting the class and "acting out" with his teachers.

JS has told his grandmother that he often finds it impossible to control his actions and that he isn't always aware of what is going on around him. Id.

9. As a result of the foregoing, Counsel has grave concerns about JS's capacity to fully understand the charges pending against him. Counsel questions whether JS is capable of understanding these charges and assisting her in his defense. Counsel therefore requests an evaluation to determine her client's ability to proceed with this case.

ARGUMENT

10. As set out in G.S. § 15A-1001(a) and as noted in State v. McCoy, 303 N.C. 1 (1981), the test of a defendant's mental capacity to stand trial is whether "by reason of mental illness or defect, he is unable to understand the nature and object of the proceedings against him, to comprehend his situation in reference to the proceedings, or to assist in his defense in a rational or reasonable manner. See also State v. McRae, 139 N.C. App. 387 (2000) (trial court erred in not conducting competency hearing).

11. Therefore, as a result of her observations of and interactions with JS, and supported by the information provided by his grandmother, counsel contends that a psychological assessment of JS is necessary to determine

whether JS has the capacity to proceed.

WHEREFORE, the Juvenile prays that this Honorable Court:

- A. Grant him an assessment before proceeding with the charges brought against him.
- B. Grant him any other mental or psychological evaluations that are deemed just and proper for effective defense in this case.

This the 3rd day of March, 2005.

Respectfully submitted,

Jane White, Esq.
101 Main Street
Yoursville, NC 27000
(919) 555-1212

Certificate of Service

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(919) 555-1212

STATE OF NORTH CAROLINA
YOURSVILLE COUNTY

IN THE GENERAL COURT OF JUSTICE
DISTRICT COURT DIVISION
FILE NO. 05-J-XXX

STATE OF NORTH CAROLINA)
)
 v.)
)
JS, a Juvenile)

ORDER TO DETERMINE COMPETENCY

This matter coming before the undersigned district court judge for hearing on the Juvenile's Motion to Determine Competency, upon good cause shown, the Court finds as follows:

1. On December 10, 2004, the Juvenile was charged with First-Degree Statutory Sexual Offense, in violation of N.C. Gen. Stat. § 14-27.4.
2. The Juvenile is represented by Attorney Jane White.
3. For good cause shown, the Court has found that the Juvenile should be evaluated for competency before proceeding to adjudication.
4. Pursuant to the Motion to Determine Competency filed in this case on March 3, 2005, the Court finds that the Juvenile is in need of a psychological assessment to determine whether he has the capacity to proceed to adjudication.

Therefore, it is ordered that the Juvenile be so evaluated.

This the 3rd day of March, 2005.

The Honorable John B. Goode
District Court Judge

STATE OF NORTH CAROLINA
YOURSVILLE COUNTY

IN THE GENERAL COURT OF JUSTICE
DISTRICT COURT DIVISION
FILE NO. 05-J-XXX

STATE OF NORTH CAROLINA

v.

JS, a Juvenile

**EX PARTE MOTION FOR FUNDS TO
HIRE AN EXPERT**

NOW COMES the Juvenile, by and through his counsel, and respectfully moves this Honorable Court, pursuant to N.C.G.S. § 7A-454, Article I of the North Carolina Constitution, and the Sixth, Eighth, and Fourteenth Amendments to the United States Constitution, for an ex parte Order allowing him to retain the services of a competent and qualified physician, psychologist or psychiatrist to assist counsel in the preparation of his defense.

As grounds for this Motion, the Juvenile alleges:

1) He is indigent and is represented in this matter by appointed counsel.

2) He faces charges of First-Degree Statutory Sexual Offense in the above-captioned case.

3) In Ake v. Oklahoma, 470 U.S. 68, 84 L.Ed. 2d 53 (1985) the United States Supreme Court determined that a Defendant was entitled to make his showing for the necessity of money for an expert's assistance ex parte 470 U.S. at 82, 84 L.Ed. 2d at 66.

4) The North Carolina Supreme Court reiterated the rule of Ake in State v. Ballard, 333 N.C. 515 (1993), in which the court

reversed the defendant's murder conviction for failure of the trial court to allow the defense to make an ex parte showing of the need for the assistance of an expert witness.

5) Privately employed counsel representing a non-indigent juvenile would not be required to reveal to the prosecution her employment of or consultation with an expert witnesses, except as required by the rules of discovery. Equal protection guarantees of the United States Constitution and of the North Carolina Constitution require that appointed counsel not be forced to reveal their thoughts, reasoning and strategy as to expert assistance to the State during a hearing on application to the court for funds for those experts.

6) Further, for the court to require an in-court showing of the need for expert assistance would pose a risk to the juvenile's privilege against self-incrimination and to confidential communications between attorney and client.

7) After speaking with the Juvenile and otherwise reviewing the case, counsel has reason to believe that an expert in the field of psychology, psychiatry and/or medical testing is crucial to the preparation of his defense. See Williams v. Martin, 618 F. 2d 1021 (4th Cir. 1980)(the obligation of the government to provide an indigent defendant with the assistance of an expert is firmly based on the Equal Protection Clause).

8) The State has used and is expected further to utilize the services of numerous experts, including criminal investigators,

medical experts, and others in the investigation, preparation and trial of this case.

9) Without the funds to hire experts to conduct investigations necessary for the preparation of a defense, the Juvenile's constitutional rights to a fair trial and to present a defense are rendered meaningless. See, e.g., Westbrook v. Zant, 704 F.2d 1487, 1496 (11th Cir. 1983)(permitting an indigent defendant to introduce mitigating evidence has little meaning if the funds necessary for compiling the evidence is unavailable).

10) The Juvenile is entitled to expert assistance to assure him of his rights under the North Carolina Constitution, Article I, Sections 14, 23, and 27 as well as his rights under the Sixth, Eighth and Fourteenth Amendments to the U.S. Constitution. These rights include that of effective assistance of counsel, to be confronted by the witnesses against him and to obtain witnesses in his favor, to present a defense, to due process, to equal protection, and to individual, reliable sentencing.

11) Because of the nature of the charges and the age and mental characteristics of the Juvenile, an expert in the areas of psychology or psychiatry with a specialization in cognitive functioning is essential to the preparation of an adequate defense and to a fair trial and is a necessary expense of representation under N.C.G.S. § 7A-450.

12) The Juvenile requests that the Court authorize him to spend up to \$3,500 for the consultation with such an expert in

this case.

Wherefore, the Juvenile, requests this Honorable Court enter an Order authorizing him to retain the services of a qualified expert for the preparation of his case and to expend no more than \$3,500 for this purpose.

This the 1st day of April, 2005.

Respectfully submitted,

Jane White, Esq.
101 Main Street
Yoursville, NC 27000
(919) 555-1212

STATE OF NORTH CAROLINA
YOURSVILLE COUNTY

IN THE GENERAL COURT OF JUSTICE
DISTRICT COURT DIVISION
FILE NO. 05-J-XXX

STATE OF NORTH CAROLINA

v.

JS, a Juvenile

EX PARTE ORDER FOR FUNDS

This matter coming before the undersigned District Court Judge for hearing on the Juvenile's Ex Parte Motion for Funds to Hire an Expert, upon good cause shown, the accused is hereby authorized to retain at State expense an expert to assist in the evaluation of the evidence, and the preparation and presentation of the defense in this matter. Compensation for said services is not to exceed the sum of \$3500 (thirty-five hundred dollars) without further authorization of this Court; however, this order does not prohibit application for additional funds if needed.

The Court further Orders that this Order be placed in the file of the Clerk of the Superior Court in this case under seal for purposes of appellate review.

This the 1st day of April, 2005.

The Honorable John B. Goode
District Court Judge

STATE OF NORTH CAROLINA
YOURSVILLE COUNTY

IN THE GENERAL COURT OF JUSTICE
DISTRICT COURT DIVISION
FILE NO. 05-J-XXX

STATE OF NORTH CAROLINA)
)
 v.)
)
 JS, a Juvenile)

**MOTION TO SUPPRESS
STATEMENTS AND REQUEST
FOR HEARING**

NOW COMES the Juvenile, by and through his attorney,
and requests this Honorable Court, pursuant to N.C.G.S. §
7B-2101, to suppress the statements made by the Juvenile on
or about the 5th day of December, 2004, which the Juvenile
is informed, believes and, therefore, alleges, the State
intends to use at the adjudicatory hearing of this case.

The Juvenile contends that the exclusion of the
statements is required by the Fifth, Sixth and Fourteenth
Amendments to the U.S. Constitution and by Article 1,
Sections 23 and 27, of the North Carolina Constitution.

The Juvenile requests an evidentiary hearing on this
motion.

In support of said motion the Juvenile states the
following:

1. Counsel for the Juvenile received from the State
its Response to the Juvenile's Motion for
Discovery and Exculpatory Material on or about
the 1st day of March, 2005. As part of its

Response, the State indicated that alleged statements were obtained from the Juvenile that the State may use at the adjudicatory hearing in this matter.

2. According to the State's discovery, the juvenile was interrogated by a Yoursville Police Detective for approximately 90 minutes on December 5, 2004.
3. The Yoursville Police Report for the incident states that the Juvenile requested that his mother be present during questioning. However, the detective made no attempt to locate the Juvenile's mother prior to interrogation.
4. The report further states that the Juvenile's grandmother was contacted, and, upon arrival, asked to be present for the interrogation of her grandson. These requests were denied, however, and the grandmother ultimately acquiesced to the detective's assistance that he question the Juvenile alone.
5. According to the documents provided by the State, at no time did the Juvenile knowingly waive his right to have a parent, guardian, or custodian present during questioning.
6. Therefore, the Juvenile's statements were

obtained in substantial violation of both the
U.S. and North Carolina Constitutions.

WHEREFORE, the Juvenile requests that the Court hold
an evidentiary hearing on this matter.

This the 10th day of April, 2005.

Respectfully submitted,

Jane White, Esq.
101 Main Street
Yoursville, NC 27000
(919) 555-1212

Certificate of Service

I hereby certify that a copy of the foregoing motion was delivered by hand to Assistant District Attorney George Crabtree, by leaving it with an employee of the Office of the District Attorney for District 35 on the 10th day of April, 2005.

Jane White, Esq.
101 Main Street
Yoursville, NC 27000
(919) 555-1212

STATE OF NORTH CAROLINA
YOURSVILLE COUNTY

IN THE GENERAL COURT OF JUSTICE
DISTRICT COURT DIVISION
FILE NO. 05-J-XXX

STATE OF NORTH CAROLINA)
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v.)
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JS, a Juvenile)
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**MOTION AND ORDER FOR PRODUCTION
OF TRANSCRIPT OF PROBABLE
CAUSE HEARING**

NOW COMES the Juvenile, by and through his attorney, and requests this Honorable Court to authorize the production of a transcript of Juvenile's probable cause hearing and to make a copy of the transcript available to Juvenile's counsel. In support of this motion, Juvenile states the following:

1. On February 20, 2005, the State conducted a probable cause hearing.
2. The probable cause hearing took place in a court of record. Accordingly, a recording was made of the hearing.
3. In order for Juvenile's counsel to effectively represent Juvenile and prepare for his adjudication, Juvenile's counsel needs working access to an accurate and written copy of the probable cause testimony.
4. In Griffin v. Illinois, 76 S.Ct. 585, 590-91 (1956), the U.S. Supreme Court held that the State is constitutionally required to provide indigent prisoners with the tools for an adequate defense or appeal when those tools are available to other prisoners who can pay for their costs.

5. In State v. Britt, 92 S. Ct. 431, 433 (N.C. 1971), the U.S. Supreme Court held that, “[w]hile the outer limits of [the Griffin v. Illinois] principle are not clear, there can be no doubt that the State must provide an indigent defendant with a transcript of prior proceedings when that transcript is needed for an effective defense or appeal.” (holding that the state court properly determined that the transcript of a first trial requested in that particular case was not needed for an effective defense because there was an adequate alternative to a transcript available to defendant).
6. The Britt Court also held that “[o]ur cases have consistently recognized the value to a defendant of a transcript of prior proceedings, without requiring a showing of need tailored to the facts of the particular case.” Id. at 434 (citations omitted).
7. A written transcript of the probable cause testimony will be invaluable to Juvenile in investigation, trial preparation, and for impeachment purposes at his adjudication.
8. Juvenile does not have access to any other means, formal or informal, of obtaining an accurate record of his probable cause testimony.
9. Accordingly, Juvenile is entitled to receive a written transcript of his probable cause hearing for use by Juvenile’s counsel.

This the 3rd day of May, 2005.

Respectfully submitted,

Jane White, Esq.
101 Main Street
Yoursville, NC 27000
(919) 555-1212

Certificate of Service

I hereby certify that a copy of the foregoing motion was delivered by hand to Assistant District Attorney George Crabtree, by leaving it with an employee of the Office of the District Attorney for District 35 on the 3rd day of May, 2005.

Jane White, Esq.
101 Main Street
Yoursville, NC 27000
(919) 555-1212

ORDER FOR WRITTEN TRANSCRIPT

This Court hereby orders the production of a written transcript of the Juvenile's probable cause hearing, a copy of which will be made available to Juvenile's counsel. Because Juvenile is indigent, the State will provide the funds necessary to produce a transcript of the probable cause hearing.

This the 3rd day of May, 2005.

The Honorable John B. Goode
District Court Judge

STATE OF NORTH CAROLINA
YOURSVILLE COUNTY

IN THE GENERAL COURT OF JUSTICE
DISTRICT COURT DIVISION
FILE NO. 05-J-XXX

STATE OF NORTH CAROLINA)
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v.)
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JS, a Juvenile)
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**MOTION TO CONTINUE
ADJUDICATORY HEARING and
REQUEST FOR EXPEDITED HEARING**

NOW COMES the Juvenile, by and through his attorney, and requests this Honorable Court to continue the adjudicatory hearing, currently scheduled for June 14, 2005, to a date three weeks hence.

The Juvenile requests an expedited hearing on this motion prior to June 14, 2005. Specifically, the Juvenile requests a hearing on Friday, June 10, 2005, five business days after the filing of this motion, which is consistent with the notice requirements of Rule 9 of Juvenile Court Local Rules for District 35.

In support of this motion, the Juvenile states the following:

1. On December 10, 2004, a juvenile petition was filed against the Juvenile, alleging First-Degree Statutory Sexual Offense, in violation of N.C. Gen. Stat. § 14-27.4, for acts allegedly committed on November 30, 2004.
2. A Motion for Discovery and Exculpatory Material was filed by the Juvenile on February 2, 2005. Among the items requested from the State were a witness list and all reports of physical examinations or tests made in connection with the case.

3. At this time, counsel has yet to receive a witness list or the medical records of the alleged victim's physical examination with "rape kit" performed at UNC Hospital following the alleged offense.¹
4. Similarly, while a written transcript of the probable cause hearing held in this case was ordered by the Court on May 1, 2005, this, too, has not yet been received by counsel²; this is another piece of evidence that is crucial to ensure that the Juvenile receives effective assistance of counsel, for it is needed for potential impeachment of the testifying witnesses at trial.³
5. In addition, as a result of extensive conversations with prior counsel and with the Juvenile and his parents, present counsel has serious concerns regarding the capacity of the Juvenile to form the necessary specific intent to commit the crime alleged.
6. Specifically, defense counsel has a good faith basis to question whether her client, 15 years old at the time of the

¹ On June 1, 2005, the State represented that they will make every effort to get these items to counsel prior to June 14, 2005; however, as it is now a mere seven business days from the date of the hearing, it is likely that counsel will not have adequate time to review the medical records and to prepare effectively for trial.

² On June 2, 2005, counsel spoke with the court reporter assigned to produce the transcript of the probable cause hearing, Melinda Keyes. She stated that she had not been told that the transcript was needed by any specific date. Counsel informed her that it was needed by June 14, 2005, the date of the adjudicatory hearing. She said that she would do her best to prepare it by that date, but that it might not be possible.

³ In addition, as present counsel was not present for the probable cause hearing on February 16, 2005 (the Juvenile was represented by prior counsel at that time), the transcript is the only means by which she can familiarize herself with the testimony from that hearing.

alleged offense, had the capacity to form the specific intent necessary to commit First-Degree Statutory Sexual Offense.

7. For these reasons, defense counsel must have sufficient time to explore the Juvenile's capacity to form the specific intent required for this crime. Three additional weeks are requested.
8. The charges pending against the Juvenile are very serious. They are ones that could have reverberations in his life for years to come. If found delinquent of these charges, the Juvenile could be ordered to register as a sex offender, in accordance with Part 4 of Article 27A of Chapter 14 of the General Statutes. For a 15 year old boy with no prior court involvement, a young adolescent, this could have a harrowing impact on both his development and socialization.
9. Therefore, to promote the ends of justice, as per Rule 9 of the Juvenile Court Local Rules for District 35, we urge the Court to continue the adjudicatory hearing in this case for a period of three weeks. This would allow counsel to explore the issue which is at the heart of this case - the Juvenile's ability to form the specific intent required for the crime - and to prepare a defense on this basis. This time would also allow counsel to receive and review critical discovery, as described in paragraphs 3 and 4.
10. To deny such a continuance would deny the Juvenile his right to a defense and his right to effective assistance of

counsel, as guaranteed by the Sixth Amendment to the U.S. Constitution and Article 1, sections 19 and 23, of the North Carolina Constitution. It would also deny him his right to due process, as guaranteed by the Fifth and Fourteenth Amendments to the U.S. Constitution. See State v. Barlowe, 157 N.C.App. 249 (2003).

11. We respectfully request a hearing on this matter prior to June 14, 2005, and suggest the date of Friday, June 10, 2005, five business days hence.

This the 3rd day of June, 2005.

Respectfully submitted,

Jane White, Esq.
101 Main Street
Yoursville, NC 27000
(919) 555-1212

Certificate of Service

I hereby certify that a copy of the foregoing motion was delivered by hand to Assistant District Attorney George Crabtree, by leaving it with an employee of the Office of the District Attorney for District 35 on the 3rd day of June, 2005.

Jane White, Esq.
101 Main Street
Yoursville, NC 27000
(919) 555-1212

STATE OF NORTH CAROLINA IN THE GENERAL COURT OF JUSTICE
YOURSVILLE COUNTY DISTRICT COURT DIVISION
FILE NO. 05-J-XXX

STATE OF NORTH CAROLINA)
)
v.) **MOTION FOR DEFERRED**
) **DISPOSITION**
JS, a Juvenile)
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)
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NOW COMES the Juvenile, by and through his attorney,
and requests this Honorable Court to defer disposition in
this case for a period of six months, pursuant to N.C.G.S.
§ 7B-2501(d). The Juvenile requests that his family be
given the opportunity to implement and oversee his
punishment, so that such punishment may be tailored to his
individual needs, and so that the resources of the Juvenile
Justice System may be preserved for children of greater
need. In support of said motion, the Juvenile states the
following:

1. On July 25, 2005, the Juvenile admitted to indecent liberties between children, a violation of G.S. 14-202.2, punishable as a Class 1 misdemeanor.
2. The Juvenile is a 15 year old boy who lives with his grandmother, Mrs. Joanna Hart. Mrs. Hart is a Certified Nursing Assistant and works part-time at the Fineway Living Center in Yourssville, NC. She is a

- strict disciplinarian and requires that her grandson not only attend school everyday but abide by a curfew and be in bed by 9 p.m. Because of her strong influence, the Juvenile's standardized test scores were high enough to qualify him to participate in the AVID (high achiever) program while in middle school.
3. The Juvenile has only recently begun to experiment with delinquent behavior and is now before this Court for the very first time as a result of his lack of judgment. His grandmother has already responded to his aberrant behavior by increasing household chores, setting an earlier curfew, and requiring that he not spend time with some of his former acquaintances who have been a negative influence upon him.
 4. The charges at hand involved a situation in which the Juvenile, at the urging of an older male acquaintance, persuaded his six-year-old female cousin to remove her clothes. He then took a photograph of her which he gave to the older male. Soon thereafter, the Juvenile admitted the conduct to his grandmother, and he voluntarily apologized to his cousin and to other family members. The photo has since been retrieved and is in the custody of the Yoursville Police Department.

5. The Juvenile has clearly exhibited intense shame over his behavior and has voluntarily entered into weekly psychological counseling as a result. His grandmother has also arranged for a Yoursville Mentor to be assigned to him; the Juvenile and his Mentor, a respected business-owner in the local community, have established a good rapport and see each other weekly.
6. Mrs. Hart does not want her grandson to be labeled delinquent, as she fears that this will affect his future goals of attending college and playing professional football - as well as his current goal of playing high school football. She also worries about the stigma of the "delinquency" label being applied to him in school now and feels that it will impact the ways in which his teachers and peers relate to him.
7. A strict taskmaster, Mrs. Hart demands that the Juvenile abide by the rules of her house so that he will learn the consequences of his actions. She feels that she can oversee his punishment more effectively than the court system, as she is his primary caregiver, and she reports that his behavior has already improved since this incident.

8. Further, Mrs. Hart feels that the court process itself has served as a wake-up call to the Juvenile, and she is confident that he will not get into trouble again.
9. As a result, Mrs. Hart has prepared a punishment plan that will occupy the Juvenile's time and prevent negative influences from swaying his behavior.
10. The specific elements of the punishment plan are as follows:
 - a. *Dusk Curfew*: The Juvenile must be home by dusk absent any prior arrangements with his grandmother for sporting events, etc.;
 - b. *Limited Phone Privileges*: the Juvenile may not receive phone calls after 8:30 pm;
 - c. *Early Bed time*: the Juvenile must be in bed on weeknights by 9:00 p.m.;
 - d. *Extra Chores*: In addition to his normal chores, the Juvenile will be assigned additional tasks to do around his house and for his neighbors on his street;
 - e. *Community Service*: the Juvenile must attend church regularly with his grandmother and must volunteer there several hours weekly, assisting the church administration with odd jobs around the building and grounds;

- f. *Counseling*: the Juvenile must attend his weekly psychotherapy appointments and participate willingly;
 - g. *Yoursville Mentoring*: the Juvenile must continue to meet weekly with his Mentor and must demonstrate a respectful and positive attitude during these interactions;
 - h. *Education*: the Juvenile will be expected to attend school daily and perform well in his classes. A certain amount of time each day will be set aside for homework;
 - i. *Stay out of trouble*: It will be made clear to the Juvenile by Mrs. Hart that any trouble he gets into, be it criminal or otherwise, will result in his grandmother immediately recommending to the Court that it cancel his deferred disposition and impose further punishment;
 - j. *Any other conditions or punishments subsequently thought to be of value.*
11. In sum, this young man's situation is unique in that he comes from a disciplined, rigorous home environment headed by a woman who cares deeply for him and who provides the structure needed for him to succeed. Mrs. Hart has expressed a strong desire to

deal with the Juvenile's problems within the family,
and she is committed to supporting him through this
experience and ensuring his success.

WHEREFORE, the Juvenile requests that the Court defer
disposition in this matter for a period of six months,
pursuant to N.C.G.S. § 7B-2501(d).

This the 3rd day of August, 2005.

Respectfully submitted,

Jane White, Esq.
101 Main Street
Yoursville, NC 27000
(919) 555-1212

Certificate of Service

I hereby certify that a copy of the foregoing motion was delivered by hand to Assistant District Attorney George Crabtree, by leaving it with an employee of the Office of the District Attorney for District 35 on the 3rd day of August, 2005.

Jane White, Esq.
101 Main Street
Yoursville, NC 27000
(919) 555-1212

after which he took a single photograph of her body which he later gave to the older male. The photo was ultimately recovered and has been in the custody of the Yoursville Police Department.

4. At the dispositional hearing, also on July 25, 2005, the Juvenile presented evidence that soon after the incident the Juvenile admitted his conduct to his family and voluntarily entered into weekly psychotherapeutic counseling. The Juvenile apologized to his cousin and cut off all contact with the older male acquaintance who had urged him to commit the act.
5. In his dispositional order, the Honorable Judge John B. Goode placed the Juvenile on supervised probation for one year and imposed a series of conditions, including the completion of 30 hours of community service, regular school attendance and maintenance of good grades, participation in weekly psychotherapy, and to not violate any laws or any reasonable and lawful rules of a parent.
6. On June 1, 2006, the Department of Juvenile Justice filed a Motion for Review, requesting that the Court extend its order of probation for an additional period of one year, pursuant to G.S. 7B-2510(c).

7. A hearing on this Motion for Review was held on July 1, 2006, and the court counselor assigned to the Juvenile acknowledged that the Juvenile had indeed complied with all conditions of probation for the entire one year period: he had maintained good grades at school, continued with regular therapy, and did not violate any laws or any rules of his home.
8. Nevertheless, after hearing, the Court found that the extension was necessary to protect the community and extended the Juvenile's probation for an additional year.
9. The Juvenile now contends that the one year extension of probation is unduly severe with regard to the seriousness of the offense, the culpability of the juvenile, and the dispositions given to other juveniles convicted of similar offenses, as per G.S. 7B-2600(b).

WHEREFORE, the Juvenile requests the Court to schedule a review hearing to determine whether the order of the court is lawful and appropriate.

This the 12th day of July, 2006.

Respectfully submitted,

Jane White, Esq.
101 Main Street
Yoursville, NC 27000
(919) 555-1212

Certificate of Service

I hereby certify that a copy of the foregoing motion was delivered by hand to Assistant District Attorney George Crabtree, by leaving it with an employee of the Office of the District Attorney for District 35 on the 12th day of July, 2006.

Jane White, Esq.
101 Main Street
Yoursville, NC 27000
(919) 555-1212

STATE OF NORTH CAROLINA
YOURSVILLE COUNTY

IN THE GENERAL COURT OF JUSTICE
DISTRICT COURT DIVISION
FILE NO. 05-J-XXX

STATE OF NORTH CAROLINA)
)
 v.)
)
JS, a Juvenile)

**MOTION FOR CHANGE
OF VENUE**

NOW COMES the Juvenile, by and through his attorney, and requests this Honorable Court for an order to transfer venue in the above-captioned matter from Yoursville County, North Carolina to Minesville County, North Carolina. The Juvenile contends that the dispositional hearing, currently scheduled for November 1, 2005, in Yoursville County, should be conducted in Minesville County where he now resides.

In support thereof, the juvenile shows the following:

1. The Juvenile is fifteen years old and is in the custody of the Yoursville County Department of Social Services.
2. The Juvenile admitted to the charge of indecent liberties between children on July 25, 2005, in juvenile court in Yoursville County. The incident occurred in Yoursville County, and at the time of adjudication the Juvenile lived with his grandmother in Yoursville County.
3. Disposition has been scheduled for November 1, 2005, in Yoursville Juvenile Court.

4. Since August, 2005, the Juvenile has lived in Minesville County with his foster parents, Mr. and Mrs. Best. The Juvenile is enrolled in the Minesville County school system, he attends Southwest Minesville Middle School, and he does not intend to return to Yoursville County to re-establish residency.

5. The North Carolina Supreme Court has stated that "[r]esidence' simply indicates a person's actual place of abode, whether permanent or temporary" Sheffield v. Walker, 231 N.C. 556, 559, 58 S.E.2d 356, 359 (1950).

6. Because the Juvenile currently lives in Minesville County, is enrolled in the Minesville County school system, and has no intention to return to Yoursville County, he resides in Minesville County.

7. A Juvenile who is a resident of a county different from the county where the disposition of a case is occurring, may file a motion requesting the court to transfer the disposition to the court in the county where he resides. N.C.G.S. § 7B-1800(3).

WHEREFORE, the Juvenile respectfully moves this Court for an order directing that venue in the above-captioned matter be transferred from Yoursville County to Minesville County and that the dispositional hearing be conducted in Minesville.

This the 10th day of October, 2005.

Respectfully submitted,

Jane White, Esq.
101 Main Street
Yoursville, NC 27000
(919) 555-1212

Certificate of Service

I hereby certify that a copy of the foregoing motion was delivered by hand to Assistant District Attorney George Crabtree, by leaving it with an employee of the Office of the District Attorney for District 35 on the 10th day of October, 2005.

Jane White, Esq.
101 Main Street
Yoursville, NC 27000
(919) 555-1212

apologies to the victim and the victim's family members.

5. The Petitioner successfully completed probation on July 26, 2006, at which time probation was terminated.

6. The Petitioner has now attained the age of 18.

7. More than 18 months have elapsed since he was released from juvenile court jurisdiction.

8. The Petitioner has not subsequently been adjudicated delinquent or convicted as an adult of any felony or misdemeanor under the laws of the United States, or the laws of this State or any other state.

9. Attached to this motion are verified affidavits of Mr. Robert Wise and Mrs. Janet True, two persons unrelated to the Petitioner who know the character and reputation of the Petitioner in the community in which he lives. See Affidavits of Robert Wise and Janet True, attached as Exhibits 1 and 2.

10. Based on the foregoing, the Petitioner requests that the Court issue an order directing the Clerk of Court of Yoursville County and all law enforcement agencies to expunge their records of the adjudication, including any references to arrests, complaints, referrals, petitions, and orders in the above-captioned matter.

WHEREFORE, the Petitioner requests the Court to schedule a hearing on this matter. The district attorney shall have 10 days

thereafter in which to file any objection thereto and shall be
duly notified as to the date of the hearing on the petition.

This the 3rd day of March, 2008.

Respectfully submitted,

Jane White, Esq.
101 Main Street
Yoursville, NC 27000
(919) 555-1212

Certificate of Service

I hereby certify that a copy of the foregoing motion was delivered by hand to Assistant District Attorney George Crabtree, by leaving it with an employee of the Office of the District Attorney for District 35 on the 3rd day of March, 2008.

Jane White, Esq.
101 Main Street
Yoursville, NC 27000
(919) 555-1212

STATE OF NORTH CAROLINA
YOURSVILLE COUNTY

IN THE GENERAL COURT OF JUSTICE
DISTRICT COURT DIVISION
FILE NO. 05-J-XXX

STATE OF NORTH CAROLINA)
)
 v.)
)
JS, a Juvenile)

EXPUNCTION ORDER

THIS CAUSE coming on to be heard and being heard before the undersigned judge presiding, in the Yoursville County District Court, the Court finds the following facts:

1. On July 25, 2005, the above-named Juvenile admitted to indecent liberties between children, a violation of N.C.G.S. § 14-202.2, punishable as a Class 1 misdemeanor.

2. The Petitioner had not previously been adjudicated delinquent of any felony or misdemeanor.

3. The Petitioner had not previously been placed on probation or previously received an expunction.

4. The Petitioner was placed on one year probation during which he completed 30 hours of community service and made formal apologies to the victim and the victim's family members.

5. The Petitioner successfully completed probation on July 26, 2006, at which time probation was terminated.

6. The Petitioner has now attained the age of 18.

7. More than 18 months have elapsed since he was released from juvenile court jurisdiction.

8. The Petitioner has not subsequently been adjudicated delinquent or convicted as an adult of any felony or misdemeanor under the laws of the United States, or the laws of this State or any other state.

WHEREFORE, IT IS ORDERED, ADJUDGED AND DECREED, pursuant to N.C.G.S. § 7B-3200, that the Clerk of Court of Yourssville County and all law enforcement agencies expunge their records of the adjudication, including any references to arrests, complaints, referrals, petitions, and orders in the above-captioned matter.

IT IS FURTHER ORDERED that the Clerk of Court of Yourssville County send a copy of this expunction order to all public officials known to be a custodian of such entries, including, but not limited to, the Yourssville Police Department, the North Carolina State Bureau of Investigation, and the Federal Bureau of Investigation.

This the 3rd day of March, 2008.

The Honorable John B. Goode
District Court Judge

STATE OF NORTH CAROLINA
YOURSVILLE COUNTY

IN THE GENERAL COURT OF JUSTICE
DISTRICT COURT DIVISION
FILE NO. 05-J-XXX

STATE OF NORTH CAROLINA)
)
 v.)
 JS, a Juvenile)

**MOTION AND MEMORANDUM IN
SUPPORT OF FINDING JUVENILE
NOT DELINQUENT OF INTENT TO
MANUFACTURE, SELL OR DELIVER
A CONTROLLED SUBSTANCE**

NOW COMES the Juvenile, by and through his attorney, and presents to this Honorable Court the following:

I. Relief Requested

Juvenile requests that the court find him delinquent only of misdemeanor possession of a controlled substance under N.C.G.S. § 90-95, a lesser-included offense of possession with intent to manufacture, sell, or deliver. Juvenile submits that the State's evidence in this case is insufficient to raise an inference of intent to distribute and thus the State has not met its burden with respect to that element of the offense.

II. Statement of the Facts

On December 22, 2004, Juvenile was stopped by police while riding his bicycle near the 1300 block of Army Avenue in downtown Yourssville. Juvenile was stopped because he was suspected of soliciting for prostitution, and was searched incident to arrest. During the search, police found a small knife, a pair of nail scissors wrapped with an Ace bandage, and a BB gun pistol. He was not charged with any offenses related to these three items. The officers also found five "nickel bags" of marijuana on the Juvenile's person. The police did not observe the Juvenile doing anything that suggested sale or delivery of the marijuana, nor did they find any significant quantity of money or paraphernalia associated with drug sales during the search.

III. Legal Authority & Argument

A. Introduction

A review of twenty-five North Carolina appellate decisions spanning more than thirty years reveals that, in cases regarding sufficiency of evidence for the charge of possession of a controlled substance with intent to sell or distribute, more than one factor supporting the inference that a defendant

intended to distribute was present in almost every case where sufficient evidence was found. The most commonly cited factors supporting an inference of intent to distribute are: large quantities of the controlled substance, significant amounts of cash on the defendant's person, the presence of scales and other material used in the packaging of drugs for distribution, police observation of the defendant engaging in what appeared to be a transaction involving the controlled substance, and division of the controlled substance into many small packages.

In the present case, only one of these factors (division of the substance into more than one package) is present. Although this factor may raise some suspicion with respect to the Juvenile's intent, North Carolina's highest court has unequivocally stated that "[i]f the evidence is sufficient merely to raise a suspicion or conjecture as to any element of the offense, even if the suspicion is strong, [a] motion to dismiss should be allowed." State v. Thomas, 329 N.C. 423, 433 (1991). Where a motion to dismiss should be allowed, there is clearly inadequate evidence for adjudication.

B. Legal Authority—Factors Supporting an Inference of Intent to Distribute

1. *Quantity of the Controlled Substance*

Perhaps the most common factor supporting the charge of intent to distribute is possession of a large quantity of the controlled substance. See, e.g., State v. Baxter, 285 N.C. 735 (1974) (219 grams of marijuana); State v. Baldwin, 161 N.C. App. 382 (2003) (414 grams of marijuana); State v. Roseboro, 55 N.C. App. 205 (1981) (900 grams of marijuana); State v. Mitchell, 27 N.C. App. 313 (1975) (35 pounds of marijuana); State v. McDougald, 18 N.C. App. 407 (1973) (276 grams of marijuana). Quantity alone however, doesn't necessarily support a charge of intent to distribute. In State v. Wiggins, 33 N.C. App. 291 (1977), the defendant was in possession of almost one-half pound of marijuana but the Court of Appeals held that this factor "alone, without some additional evidence, is not sufficient to raise an inference that the marijuana was for purposes of distribution." Id. at 294.

In the present case no evidence of quantity has been presented, suggesting that police did not consider the quantity of the seized material to be significant. The State has not submitted any testimony regarding the weight of the substance seized from the Juvenile, so no inference of intent to distribute can be drawn based on the small quantity of marijuana in his possession.

2. *Significant Amount of Money Found on Defendant's Person*

A significant amount of money in defendant's possession may also provide circumstantial evidence supporting the conclusion that defendant had an intent to sell the controlled substance. See, e.g., State v. Davis, 160 N.C. App. 693 (2003) (more than \$2,600); State v. Bowens, 140 N.C. App. 217 (2000) (\$233); State v. Alston, 91 N.C. App. 707 (1988) (\$10,638).

In this case, the Juvenile had no more than two dollars on his person when he was stopped. The incident report made no mention of finding or confiscating any currency, revealing that the arresting officers did not find the amount of money Juvenile was carrying to be significant.

3. *Possession of Other Material Used in Packaging Drugs for Distribution*

In many cases, intent to distribute could be inferred partially because the defendant also possessed scales, bags, cutting tools, or other paraphernalia used in the packaging of drugs for sale or distribution. See, e.g., State v. Williams, 307 N.C. 452, 457 (1983) ("10-15 tinfoil squares, a material frequently used to package heroin for sale"); Baxter, 285 N.C. at 736-37 ("twenty-eight small empty envelopes ... and a roll of transparent cellophane tape of a type used in the marijuana trade to seal packages"); Bowens, 140 N.C. App. at 220 ("police scanner, an electronic scale, ... individual baggies used for packaging marijuana, scissors, small scales used for cutting or weighing marijuana"); Roseboro, 55 N.C. App. at 210 ("two sets of scales, one beside a pouch of cocaine, and an abundance of Ziploc bags"); Mitchell, 27 N.C. App. at 314-15 ("an assortment of vials, packets, packages, bags ... a box of chemicals, a razor," etc.).

In the present case, the Juvenile did not possess any scales, empty bags, packaging materials or other items used to package marijuana for sale.

4. *Police Observation of Defendant Engaging in What Appeared to be a Transaction*

The inference that a defendant had intent to sell or distribute a controlled substance may be supported by the testimony of a police officer who received information suggesting defendant's intent or observed the defendant engaging in what appeared to be a drug transaction. See, e.g., Williams, 307 N.C. 452 (search of defendant's home was conducted based on information that heroin was sold from his residence); State v. Steele, 604 S.E.2d 367 (Table), 2004 WL 2340217 at **2 (N.C. App. 2004) ("[D]efendant was seen having a hand to hand transaction with two individuals at the gasoline station;

defendant attempted to flee from [police]."); State v. McNeill, 600 S.E.2d 31, 33 (N.C. App. 2004) (Police were "investigating a complaint that drug sales were occurring in front of a residence," and when the officer approached the residence "he noticed defendant ... standing in front of [the residence]." When defendant saw the officer, he fled.); State v. Carr, 122 N.C. App. 369, 373 (1996) ("defendant was seen having discussions through the car window with known drug users, one of whom had a pipe for smoking crack cocaine in his possession"); State v. Fletcher, 92 N.C. App. 50, 58 (1988) (defendant, when asked by an undercover officer for "an ounce," retrieved marijuana from his house and brought it to her).

In the present case, the arresting officers neither received information nor observed the Juvenile behaving in any way that suggested an intent to sell or distribute.

5. Division of the Controlled Substance into Multiple Packages

In many cases, one of the factors supporting the intent element of this offense is the manner in which the seized substance was packaged. When the substance is divided into many separate packages it may raise the suspicion that it is packaged for sale. In cases where the appellate courts have found that there was adequate evidence of intent to distribute marijuana, defendants possessed more than fifteen separate bags or envelopes and one of the factors discussed above was also present. See Baxter, 285 N.C. 735 (16 small envelopes containing a total of 219 grams of marijuana plus 28 empty envelopes and transparent tape); Bowens, 140 N.C. App. 217 (29 "dime bags" of marijuana plus \$233 on defendant's person, scales and packaging materials); State v. Williams, 71 N.C. App. 136 (1984) (17 "nickel or dime bags" totaling a quantity of almost one ounce); McDougald, 18 N.C. App. 407 (20 bags worth \$20 each with a total quantity of 276 grams). None of the appellate court decisions upholding sufficiency of evidence for intent to sell or distribute were based on the mere fact that a small quantity of controlled substance was divided into multiple packages.

State's evidence in this case does not compel the conclusion the Juvenile intended to sell the minimal number of bags in his possession—it is equally plausible that he had just purchased the five small bags for personal use.

C. Argument

1. Sufficiency of Evidence in This Case

Of the factors that have recurrently been found to support an inference that the defendant intended to distribute a controlled substance, this case presents only one—division of the substance

into more than one package. Precedent indicates that only one of the circumstantial factors suggesting intent, standing alone, is unlikely to constitute sufficient evidence unless that factor creates an overwhelming likelihood that the defendant had intent to distribute. See, e.g., State v. Casey, 59 N.C. App. 99, 118 (1982) ("defendant possessed in excess of 25,000 individually wrapped dosage units of LSD"). Furthermore, the number of packages of marijuana possessed by the Juvenile in this case is substantially less than even the lowest number of packages possessed by defendants in cases where the charge of possession with intent has been upheld.

Finally, the State alleges that the Juvenile's possession of several weapons supports an inference of intent to distribute. Any discussion of the presence or absence of weapons is conspicuously absent from the case law on this offense. This may be because an individual's possession of a weapon, unlike the factors discussed above, has no direct connection to possession or distribution of a controlled substance. Many people who have no involvement with drugs carry weapons for a variety of reasons, and others who do use or distribute drugs do not carry weapons. In short, possession of a weapon is only connected to the distribution of a controlled substance by a series of unwarranted assumptions. The Juvenile maintains that he carried weapons for his own protection when traveling alone by bicycle through an unsafe area of town. Nothing in the State's evidence discredits his explanation or demonstrates that the weapons were indicia of intent to distribute.

2. Comparison with State v. Turner

The State's evidence in this case is similar to the evidence presented in State v. Turner, 607 S.E.2d 19 (N.C. App. 2005), where the Court of Appeals held that the trial court improperly submitted the charge of intent to distribute to the jury. Here, the State relies primarily on Officer Butler's assertion that the number of bags of marijuana in the Juvenile's possession was more than one would typically have for personal use. In Turner, the defendant was in possession of ten "rocks" of crack cocaine valued at between one hundred fifty and two hundred dollars. Id. at 21. At trial, the arresting officer testified that, in his opinion, the number of rocks in defendant's possession was more than one would have for personal use, stating: "Generally most people that would carry rock cocaine for their personal use may carry one or two rocks." Id. at 23. The Court of Appeals noted that the State relied solely on the officer's testimony and

presented no evidence of statements by defendant relating to his intent, any sums of money found on

defendant, of any drug transactions at that location or elsewhere, of any paraphernalia or equipment used in drug sales, of any drug packaging indicative of an intent to sell cocaine, or of any other behavior or circumstances associated with drug transactions. Id. at 24.

The court went on to conclude that the charge of intent to distribute was improperly submitted to the jury. In the present case, the State relies solely on the fact that the marijuana was in five bags and an officer's opinion testimony on that fact. The evidence presented is closely analogous to Turner, except that in Turner the officer's opinion related to the quantity of the substance whereas here the officer's opinion relates to the number of packages. In this case, as in Turner, "testimony regarding the normal or general conduct of people, without more, raises only a suspicion" that the Juvenile had intent to distribute. Id.

IV. Conclusion

The State has not met its burden of proof, in that ample room for reasonable doubt remains with respect to the Juvenile's intent to distribute the controlled substance. The evidence presented by the State presents at best a suspicion with respect to the Juvenile's intent to distribute. The North Carolina Supreme Court makes clear that even when there is a strong suspicion "as to any element of the offense" a motion to dismiss should be granted. Thomas, 329 N.C. at 433. If a motion to dismiss would be appropriate, there can be no doubt that the State has not met its burden to prove every element of the offense beyond a reasonable doubt. Therefore, Juvenile respectfully requests that the court find him delinquent only of the lesser-included offense of possession of a Schedule VI controlled substance.

This the 3rd day of June, 2005.

Respectfully submitted,

Jane White, Esq.
101 Main Street
Yoursville, NC 27000
(919) 555-1212

Certificate of Service

I hereby certify that a copy of the foregoing motion was delivered by hand to Assistant District Attorney George Crabtree, by leaving it with an employee of the Office of the District Attorney for District 35 on the 3rd day of June, 2005.

Jane White, Esq.
101 Main Street
Yoursville, NC 27000
(919) 555-1212