

STATE OF NORTH CAROLINA
COUNTY OF ORANGE

IN THE GENERAL COURT OF JUSTICE
DISTRICT COURT DIVISION

FILE NO.

STATE OF NORTH CAROLINA

VS.

MOTION TO SUPPRESS STATEMENTS
AND EVIDENCE SEIZED AND
REQUEST FOR HEARING

XXX,
A JUVENILE

NOW COMES the Juvenile, by and through undersigned counsel, and moves this Court pursuant to N.C. Gen. Stat. § 7B – 2101, the 4th, 5th, 6th and 14th Amendments of the United States Constitution and the Constitution of North Carolina Article I, §§ 19, 23 and 27 and North Carolina General Statutes §15A-971 et. seq. to suppress all statements and physical evidence taken from the Juvenile on the date of September 29, 2005, which the Juvenile is informed, believes and alleges the State intends to use at the adjudicatory hearing of this case.

The statements and physical evidence were obtained in violation of the juvenile's rights under the North Carolina Juvenile Code, and the United States and North Carolina Constitutions. Specifically, the Juvenile, was interrogated by police in a custodial setting without being afforded *Miranda* warning and without a parent or guardian being present. After giving an inculpatory statement, the Juvenile then proceeded to turn over items that the State will seek to introduce into evidence. These actions flowed from the initial unlawful interrogation and therefore were derivative evidence and fall under the fruit of the poisonous tree doctrine. *Wong Sun v. United States*, 371 U.S. 471 (1963). As a result,

the statements and the evidence that flowed from the statements should be suppressed. In further support of this Motion, the Juvenile presents the attached affidavit that is incorporated herein by reference. The Juvenile further requests an evidentiary hearing on this motion prior to the adjudicatory hearing.

This the 1st day of December, 2005.

Attorney for the Juvenile

CERTIFICATE OF SERVICE

Undersigned counsel hereby certifies that a copy of the forgoing motion and attachment was served on the State by delivery of a copy of same on the above date to Assistant District Attorney _____ at her office in Hillsborough, North Carolina.

Attorney

STATE OF NORTH CAROLINA

IN THE GENERAL COURT OF JUSTICE

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STATE OF NORTH CAROLINA)

)

VS.)

)

AFFIDAVIT

XXX

I, [name of attorney], after being duly sworn depose and say as follows:

1. I am an attorney licensed to practice law in the State of North Carolina and am presently employed as an Assistant Public Defender in the Office of the Public Defender for District 15B. I am assigned to represent XXX, a Juvenile, who is 13 years old and a 7th grader in the special education program at Smith Middle School.

2. The Juvenile is charged with two cases of Felonious Breaking and Entering and Larceny after Breaking and Entering of two residences in Chapel Hill on September 24, 2005.

3. A probable cause hearing was held in this case on November 8, 2005. At that time Investigator _____ of the Chapel Hill Police Department testified. Discovery was provided to defense counsel on November 16, 2005. The following information was obtained from the hearing and the discovery.

a. Investigator _____ testified that he was assigned on September 26, 2005 to investigate break ins and larcenies at two residences on September 24, 2005. The residences were 105 and 120 Winsor Circle in Chapel Hill. The owners were not home at the time of the break ins and various items of jewelry and a camera and cell phone were missing. Two juveniles had been seen near the homes that day and had been briefly detained and then released. One was XXX.

b. On September 28, 2005, the Investigator spoke to one of the victims who identified XXX as one of the boys detained and that she knew him and had seen him outside her home before and that he was seen by other neighbors knocking on doors the date in question. On September 29, 2005, the Investigator showed pictures of students to the officer who made the detention and he identified XXX as one of the boys he had stopped. The same day, a school resource officer at Smith Middle School called and said that a female student had found a camera that she had seen with XXX previously. The serial number matched the one taken from 120 Winsor Circle.

c. The Investigator went to Smith Middle School and spoke first to the girl who found the camera. She identified XXX as having it before she found and kept it. Another

female student also told the Investigator that she had seen XXX with the camera. The Principal at Smith, David Lyons, went and retrieved XXX from his class. The Investigator placed him in a closed room with him and the Principal. The Investigator asked XXX if he wanted to talk about the incident and he said he would. He then denied going into the homes. At that point, the Principal began telling XXX to tell the truth and do the right thing. XXX asked if he was going to get in trouble and the Investigator then told him to come clean and told him he was going to look into getting a secure custody order. XXX asked what that meant and the Investigator explained secure custody, and then added he did not have to speak to him and even could leave. It was after this exchange that XXX allegedly “blurted” out a confession. He then agreed to write a statement also. At no time during this exchange was XXX, a 13 year old special ed student, advised of his *Miranda* rights or offered the opportunity to speak to a parent or lawyer.

d. Later that afternoon, officers met XXX at his home when he got off the school bus. No one else was at the home. The Investigator states that XXX provided officers at the scene several pieces of jewelry and a camera case that was in the home. XXX also took officers to a nearby gas station and recovered additional items and turned them over.

4. North Carolina Juvenile Code §7B – 2101 governs the interrogation of juveniles. It requires that any juvenile in custody, or its functional equivalent, must be advised of his *Miranda* rights and must be advised that he has a right to the presence of a parent or custodian prior to questioning. Section (b) specifically states that when a juvenile is less than 14, no confession resulting from interrogation may be admitted in evidence unless it was made in the presence of the parent, custodian or attorney.

5. Upon information and belief from conversations with XXX and his family, the Investigator never advised XXX of his *Miranda* right’s and never contacted a parent or guardian before beginning questioning. XXX, who intellectually does not function at even a 13 year old level, certainly did not feel he was free to leave having been placed in a room with a police officer and his Principal and after being advised to confess by both and even being threatened with secure detention. This was the functional equivalent of a custodial and highly coercive setting.

6. The Investigator came to the school to question XXX. He was the focus of his investigation at that point. This was not a school-related incident and the school resource officer was not involved. This was an investigation of residential break ins. His actions amounted to a denial of due process and fundamental fairness and constituted custodial interrogation and as a result, all the statements by XXX should be suppressed. To find otherwise, would contravene the statutory and constitutional protections specifically in place to protect our most vulnerable citizens. The physical evidence that was turned over by XXX after the unlawfully obtained statement clearly derived from that statement and were fruit of the poisonous tree and should be excluded.

Further affiant sayeth not.

Attorney for Juvenile

Sworn to and subscribed before me
this the ____ day of December, 2005.

Notary Public
My commission expires: _____

STATE OF NORTH CAROLINA
[] COUNTY

IN THE GENERAL COURT OF JUSTICE
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FILE NO. []

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. Gen. Stat. § 7B-2101, to suppress the statements made by the Juvenile on or about the [DATE], 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 [DATE]. 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 [POLICE OFFICER'S NAME] for approximately 90 minutes on [DATE].
3. The [NAME OF POLICE DEPARTMENT] 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 [RELATIVE] 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 [] day of [], [].

[Attorney]
[Address]
[City, State, Zip Code]
[Telephone Number]

* * * * *

Certificate of Service

I hereby certify that a copy of the foregoing motion was served on the District Attorney for the [NUMBER], Judicial District by deposit of said copy with [NAME], Assistant District Attorney.

This the [] day of [], [].

[ATTORNEY]