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## In re T.T.E.

September 13, 2019  
Volume 18, Number 17

### Back to the Future

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Next week, I will have the opportunity to travel to Southeast Asia for about 12 days. Interestingly enough, some of my extended family members travelled to Southeast Asia in the 1960's and 70's, but fortunately, my trip is a voluntary one and should not entail having to fight in a war. The plane ride over will take most of a day<sup>1</sup> and when I land I will be in a time zone that is eleven hours ahead of High Point, North Carolina, so when you arrive to work at 8:00am, it will be 7:00pm where I am. I'm no time zone expert, but I'm pretty sure that means that I will not only be travelling to another country, but travelling through time as well. Don't worry, I'm not foolish enough to try and bring back an artifact from the future (such as a sports almanac)<sup>2</sup> in an attempt to change the past, so the space/time continuum should remain intact.

Before I journey to the future, however, I need to pause and take us all back to the past. You might remember a case I wrote about back in August of 2018 that looked at the famous "chair throwing" events in human history, beginning with Indiana coach Bobby Knight's toss of a plastic chair across the court during an Indiana/Purdue basketball game in 1985. Secondary to that important issue, I also told you about a case where a misunderstood youth had decided to chuck a chair across a school cafeteria and ended up being charged with Disorderly Conduct (G.S. 14-288.4) and Resisting an Officer (G.S. 14-223). The North Carolina Court of Appeals ruled that the juvenile's actions did not support either one of those charges. The case was appealed to the N.C. Supreme Court, which issued a different ruling just last month.

If you recall in the case of In re T.T.E.,<sup>3</sup> as noted above, a juvenile in school decided one day to pick up a chair and throw it across the cafeteria. This behavior was witnessed by the school resource officer, who testified that he "didn't see anybody, you know, around that could have been hit by the chair." The juvenile would later admit to throwing the chair at his brother, who was also a student at the school.<sup>4</sup> After throwing the chair, the juvenile ran out of the cafeteria and the officer followed and grabbed him from behind. The juvenile cursed and yelled "no!" when the officer caught him. Eventually, a juvenile petition was filed against the student for Disorderly Conduct and Resisting a Public Officer.

The N.C. Supreme Court's opinion noted some additional facts that weren't included in the Court of Appeals' opinion. This event apparently occurred during "Warrior period," which was a time during the day when students receive tutoring or "get to just come out and relax a little bit, maybe hang out in the cafeteria, or hang out

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<sup>1</sup> I have never taken this long of a plane ride before and when I have flown in the past, it has been more of a north and south trajectory, so my upcoming flight caused my family to wonder whether I would fly east or west to get to my destination. This stirred a debate on which way the earth rotates and whether that rotation helps a plane reach its destination sooner and the question of whether a plane could theoretically simply hover in the air, wait for the earth to spin under it, and then land at its destination. I now know that this is not possible, although to be honest, I'm still not 100% sure why. Good thing I became a lawyer instead of a physicist.

<sup>2</sup> If you haven't watched the "Back to the Future" trilogy and didn't get this reference to "Back to the Future, Part II," I'm not sure we can be friends anymore. I know these movies predate some of you, but do yourself a favor and go rent them at the video store or whatever you whippersnappers do these days. You'll thank me later.

<sup>3</sup> No. 238A18 (16 August 2019).

<sup>4</sup> Technically, the juvenile said he was "playing with his brother or something" when he threw the chair in his direction. Sounds like a fun game.

on other parts of the campus, just to get a little break from everything else.”<sup>5</sup> Because of this, there were other students and teachers in the cafeteria at the time. Also, when the officer went to detain T.T.E., a small crowd of other students began to gather and curse at the officer, adding to the disruption.

So what was the outcome of “T.T.E.’s” chair throw? He was adjudicated delinquent<sup>6</sup> and appealed. The State asserted that the juvenile had violated G.S. 14-228.4(a)(1) which prohibits causing a “public disturbance” by engaging “in fighting or other violent conduct or in conduct creating the threat of imminent fighting or other violence.” The phrase “public disturbance” is defined in G.S. 14-228.1 as follows:

*Public disturbance. – Any annoying, disturbing, or alarming act or condition exceeding the bounds of social toleration normal for the time and place in question which occurs in a public place or which occurs in, affects persons in, or is likely to affect persons in a place to which the public or a substantial group has access. The places covered by this definition shall include, but not be limited to, highways, transport facilities, schools, prisons, apartment houses, places of business or amusement, or any neighborhood.*

The Court of Appeals pointed out that while this definition of public disturbance was very vague, it must be read in light of the more specific examples of conduct set out in the rest of the statute. As a result, the State was required to present evidence of (1) fighting, (2) “other violent conduct,” or (3) “conduct creating the threat of imminent fighting or other violence.” The court stated that “[a]lthough there were other students in the cafeteria – a very large room – when the juvenile threw a chair, no other person was nearby, nor did the chair hit a table or another chair or anything else.”<sup>7</sup> Based on that, they held that this was not “violent conduct” or conduct creating an imminent threat of violence. As a result, they vacated that adjudication due to the insufficiency of the evidence. They also ruled that since the student could not have known who was grabbing him when he cursed and yelled “no” that these actions did not give rise to a charge of resisting an officer.

On the appeal to the N.C. Supreme Court, the State did not argue the decision on the RDO charge but contended that the juvenile’s throwing of the chair and behavior as a whole did indeed constitute disorderly conduct. The higher court agreed this time, stating that it appeared that the court of appeals erroneously ruled on whether the juvenile was guilty rather than simply looking at whether the evidence taken in the light most favorable to the state was sufficient to support the charge. The court found that the evidence in that light tended to show that the juvenile threw a chair at his brother across the cafeteria and ran out of the cafeteria and through the school hallways. His interaction with the officer was observed by several other students who became actively involved in the interaction by joining the juvenile in cursing at the officer. A faculty member testified that the circumstances constituted “a significant safety issue with students gravitating towards” the situation.

Based on these facts, the court held that there was sufficient evidence to support the charge that the juvenile perpetrated an “annoying, disturbing, or alarming act . . . exceeding the bounds of social toleration normal for” the school through a public disturbance by “engaging in violent conduct” by “throwing a chair toward another student in the school’s cafeteria.” As a result, the charge should not have been dismissed and the court of appeals decision was overturned.

Because the definition of “public disturbance” and the rest of the disorderly conduct statute are fairly vague, these types of cases will always turn on their specific facts. That puts an extra responsibility on officers to articulate all the known facts that support the charge and testify to those facts well if the case goes to trial. Remember that the key words and phrases you should look to support with the facts are “fighting, violent conduct, or conduct creating the threat of imminent violence,” “public disturbance,” and “annoying, disturbing, or alarming acts exceeding the bounds of social toleration.”<sup>8</sup> Also keep in mind for school settings that there is another prong

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<sup>5</sup> After all, nothing ever goes wrong when you give school kids a big chunk of unstructured time. Speaking of bad ideas, an executive at Universal Studios wanted “Back to the Future” to be named “Space Man from Pluto,” because he was convinced that no successful film ever had the word “future” in the title.

<sup>6</sup> Adults are found guilty while juveniles are adjudicated delinquent. Juvenile court speaks a different language than adult court.

<sup>7</sup> One presumes the chair did, in fact, hit the floor again. And not silently.

<sup>8</sup> Or basically just a routine day in the legal office.

of the disorderly conduct statute that prohibits a person from “disrupting, disturbing, or interfering with the teaching of students at a school or engaging in conduct which disturbs the peace, order or discipline at a school” that might be helpful, although the case law has generally interpreted this section to require a prolonged interruption of instruction to support a charge. (G.S. 14-288.4(a)(6))

And with that, I must finish preparations for my jaunt into the future. Hopefully I can return without having to time a lightning strike to a clock tower or hopping into a refrigerator near a nuclear blast.<sup>9</sup> But if that’s what it takes, all of the movies I’ve watched will finally pay off!

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**ABOUT THE AUTHOR: Brian Beasley is the Legal Advisor for the High Point Police Department. This legal update is provided free of charge to the SR Webpage in the hopes that officers across the state would be able to benefit from it. Brian is not an attorney with Smith Rodgers, PLLC but he thinks they’re pretty cool guys.**



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<sup>9</sup> In the earliest scripts of “Back to the Future,” the time machine was a refrigerator and Marty would need the power of an atomic explosion at the Nevada Test Site to return home. Since this would have required too much money for special effects, it was rewritten so everything could take place in the town of Hill Valley. A modified DeLorean was used instead of a refrigerator because that was a dumb idea to begin with. Spielberg would later have his Indiana Jones character take cover in a lead lined refrigerator minutes before a bomb test in Nevada in “Indiana Jones in the Kingdom of the Crystal Skull.” (And that wasn’t the dumbest thing that happened in that movie, unfortunately.)