

**SMITH, RODGERS & STRICKLAND, PLLC**

**ROLL CALL TRAINING  
FROM NORTH CAROLINA'S 24/7 POLICE  
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**TOPIC: JUVENILE INTERROGATION AND "GUARDIANS"**

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**THE REPORT:**

*Sate v. Jones*, North Carolina Court of Appeals, No. COA00-1182 (December 2001).

**THE FACTS:**

The facts of this case are atrocious, heinous, cruel and despicable. It happened in Burlington on 16 October 1998. A ten-year-old girl was kidnapped, raped and murdered by several people, including the thirteen-year-old defendant.

On 21 October 1998 defendant was taken into police custody and interviewed in the presence of his aunt. He was advised of his rights both orally and in writing. He waived his rights, stating that he fully understood them. Defendant gave a statement in which he confessed.

**WHY THIS CASE IS IMPORTANT TO YOU:**

For the first time, our appellate courts have defined the concept of "guardian" as it affects juvenile interrogation procedures.

**QUICK REVIEW OF THE LAW:**

All law enforcement officers need an understanding of the basics of juvenile interrogation procedures. If a person less than 18 years of age is in custody and your officer wishes to interview him, your officer must of course provide the minor with the opportunity to have a parent, guardian or custodian present during any custodial interview. If the juvenile has not yet reached his 14th birthday, he cannot waive this extra right and must have a parent, guardian or custodian present during the questioning.

**DEFINITIONS:**

**Parent:** the natural or adoptive parent of the child

**Custodian:** G.S. § 7B-101(8) defines custodian as the person or agency that has been awarded legal custody of a juvenile by a court. It will always be easy to determine if a person is the custodian of a juvenile—there will be a court order to that effect.

## **BACK TO OUR CASE:**

The thirteen-year-old defendant lived with his aunt in Burlington, and his mother lived in New Jersey. The aunt applied for and received extra welfare payments from DSS without signing any papers because DSS was already familiar with both her and her sister's situation. However, in order to enroll the defendant in school, the Board of Education required her to sign a document that stated, "I am the custodial adult with whom [the defendant] resides."

The aunt was present with the defendant during his custodial interview where he waived the rights that he legally could (to remain silent and to a court-appointed attorney) and confessed. At a suppression hearing his attorney argued that the defendant's rights were violated, as he did not have apparent, guardian or custodian present during his custodial interview. At best, counsel argued, his aunt was a "caretaker" or merely one who stood in loco parentis (Latin for "in place of or for a parent).

It was clear to the Court that the aunt was not the minor's parent or legal custodian. Likewise, her statement that she was the adult with whom defendant resided did not suffice to establish herself as legal custodian, as a proper "custodian" attains such status only by court order. So what is the Court to do in such a case? Allow a murdered to go free? Only one possibility remained:

**Defining Guardian:** The Court of Appeals noted that the Juvenile Code employs the term "guardian" even though it is not defined in the Code (ß 7B-600). For this reason the Court turned to Black's Law Dictionary for a definition. Accordingly, a guardian is:

[a] person lawfully invested with the power, and charged with the duty, of taking care of the person and managing the property and rights of another person, who, for defect of age, understanding, or self-control, is considered incapable of administering his own affairs. One who legally has responsibility for the care and management of the person, or the estate, or both, of a child during its minority. [Black's Law Dictionary, 6th Ed. 1990]

The Court noted that evidence at trial indicated the defendant's aunt had signed the juvenile waiver form provided by the Burlington Police Department in the area designated for parent, guardian or custodian. Further, it showed that the defendant was dependent on his aunt for room, board, education, and clothing. Finally, it showed that by declaration and conduct, the aunt did those things that can be construed as creating a guardianship in the broadest legal sense of the concept.

**Held:** The Court of Appeals held that the aunt was the guardian. She legally had responsibility for the care and management of her nephew during his minority. "Legal authority is not exclusively conferred by the government upon an individual ... it is clear that the defendant's aunt was his guardian. Both DSS and the local school system, each a part of the State, gave [her] lawful authority over the defendant."

## **WHAT FIRST LINE SUPERVISORS SHOULD KNOW:**

1. During the custodial interview of a minor thirteen years old or less, the minor must have a parent, guardian or custodian present. In fact, if the minor asks for a specific individual who is from one of the three categories, your officer must have that very person present or the interview cannot be legally conducted.
2. During the custodial interview of a minor who is fourteen to seventeen years of age where the minor requests a parent, guardian or custodian, your officer must see that one is present. In fact, if the minor asks for a specific individual who is from one of the three categories, your officer must have that very person present or the interview cannot be legally conducted.

3. Properly supervise your officers by making certain the adult is either a parent or custodian. This can be accomplished by asking the appropriate questions (“Are you his mother? Do you have a court order granting you legal custody?”)
4. If the adult is neither the parent nor custodian, consider the status of the adult as a possible guardian under the Jones test discussed above. The best circumstance would be where the adult has had some authority conferred upon him by some government agency such as the Department of Social Services or the Board of Education.
5. If this is not the case, make certain this adult has at least the power and “self- imposed duty” to care for the child. This might arise in a situation where the parent has the child in his or her custody if only by “default,” and is making some effort to act as a guardian.
6. To prevent these issues from becoming problems at all, encourage your officers to conduct noncustodial interviews whenever possible.

## **NEW YEAR ADDED BONUS:**

### **The American Creed**

In 1917, William Tyler Page of Maryland won a nationwide contest for “the best summary of American political faith.” The United States House of Representatives accepted the statement as the American Creed on April 3, 1918. Its two paragraphs remind us that responsibilities are the source of rights. It deserves to be read, memorized and recited. Today very few people have heard of the Creed, and no less regrettably, many citizens are not aware that freedom is never free, that all rights are founded upon meeting certain responsibilities, and that we owe a duty to our country to be the best citizen it is in our power to be. Here is the Creed:

I believe in the United States of America as a Government of the people, by the people, for the people; whose just powers are derived from the consent of the governed; a democracy in a republic; a sovereign Nation of many sovereign States; a perfect union, one and inseparable; established upon those principles of freedom, equality, justice and humanity for which American patriots sacrificed their lives and fortunes. I therefore believe it is my duty to my country to love it; to support its Constitution; to obey its laws; to respect its flag; and to defend it against all enemies.

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