

SUPREME COURT OF NORTH CAROLINA

State v. Oglesby, 361 N.C. 550

648 S.E.2d 819 (2007) · No. No. 683PA05 · Decided August 24, 2007

SUMMARY

The Supreme Court of North Carolina held that a juvenile's incriminating statement did not require suppression under N.C.G.S. § 7B-2101 because the aunt whom the juvenile requested to call was not a statutory guardian or custodian. The court exercised its discretion to review the suppression issue despite a preservation problem, affirmed the Court of Appeals in part, and vacated and remanded in part for harmless-error review of sentencing issues under Blakely. Review of additional issues was deemed improvidently allowed.

CASE DETAILS

COURT	Supreme Court of North Carolina
WRITING FOR THE COURT	Brady, Justice; Timmons-Goodson, Justice
JURISDICTION	North Carolina
DECIDED	August 24, 2007
DOCKET	No. 683PA05
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Cross-petitions for discretionary review of a Court of Appeals decision affirming in part and remanding in part the criminal judgments.
STANDARD OF REVIEW	A trial court's findings of fact concerning suppression are reviewed for support by competent evidence; legal conclusions are reviewed under the applicable legal standard. Preservation of evidentiary error is governed by North Carolina Rule of Appellate Procedure 10(b)(1), subject to discretionary review under Rule 2 to prevent manifest injustice. Sentencing error was remanded for harmless-error review.
PRECEDENTIAL VALUE	Published North Carolina Supreme Court opinion; precedential.
PARTIES	State of North Carolina, Jaamall Denaris Oglesby v. Jaamall Denaris Oglesby, State of North Carolina

TOPICS

criminal procedure

suppression of evidence

sentencing

preservation of error

appellate procedure

PRACTICE AREAS

criminal procedure

appellate procedure

juvenile justice

sentencing

evidence

QUESTIONS PRESENTED

1. Whether Oglesby's incriminating statement had to be suppressed under N.C.G.S. § 7B-2101 because he requested to telephone his aunt during custodial interrogation.
2. Whether the pretrial suppression issue was preserved for appellate review without renewal of the objection at trial.
3. Whether the Court of Appeals properly treated Blakely error in Oglesby's aggravated-range robbery sentences as structural error.
4. Whether the additional issues concerning leg shackles and the sufficiency of the murder indictment warranted discretionary review.

HOLDINGS

1. North Carolina Rule of Evidence 103(a)(2) is invalid to the extent it conflicts with North Carolina Rule of Appellate Procedure 10(b)(1), which requires renewal of an objection at trial to preserve a pretrial evidentiary ruling for appellate review.
2. An aunt who lacks a legally established guardianship or custodial relationship is not a statutory guardian or custodian under N.C.G.S. § 7B-2101; therefore, the juvenile's statement was not required to be suppressed merely because he requested to telephone his aunt.
3. Section 7B-2101 applies to a person who meets the statutory definition of juvenile even if that person is tried as an adult.
4. The Court of Appeals erred by treating the Blakely sentencing error as structural error; the issue must instead be reviewed for harmless error.

KEY QUOTATIONS

"We hold that the statement need not be suppressed since defendant's aunt was not a "guardian" for purposes of the relevant statute." (648 S.E.2d at 819)

"Accordingly, we hold that, to the extent it conflicts with Rule of Appellate Procedure 10(b)(1), Rule of Evidence 103(a)(2) must fail." (648 S.E.2d at 821-22)

"However, an "aunt" is not an enumerated relation in the statute, and an interpretation of the term "guardian" to encompass anything other than a relationship established by legal process would unjustifiably expand the plain and unambiguous meaning of the word." (648 S.E.2d at 822)

FACTUAL BACKGROUND

Sixteen-year-old Oglesby made an incriminating statement during a custodial interrogation by Winston-Salem police after requesting to telephone his aunt. The trial court found that the aunt was not Oglesby's guardian or custodian and denied his motion to suppress. Oglesby was convicted of first-degree murder, first-degree

kidnapping, and attempted robbery with a firearm, and had pleaded guilty to two additional robbery charges for which he received aggravated-range sentences.

PROCEDURAL HISTORY

Oglesby was indicted for first-degree murder, first-degree kidnapping, attempted robbery with a firearm, and two counts of robbery with a dangerous weapon. He pleaded guilty to the two robbery charges, was convicted by a jury of the remaining charges, and received aggravated-range sentences for the robbery convictions. The Court of Appeals found no error in part and remanded in part for resentencing. The Supreme Court allowed discretionary review, affirmed the suppression ruling, vacated the Court of Appeals' treatment of the sentencing error as structural, and remanded for harmless-error review.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The Court of Appeals' treatment of the aggravated-range robbery sentences as structural error was vacated, and the case was remanded to the Court of Appeals for harmless-error review under *State v. Blackwell*. The suppression ruling was affirmed, and discretionary review of the additional issues was improvidently allowed.

CASES CITED

- *State v. Golphin*, 352 N.C. 364, 449, 533 S.E.2d 168, 224 (2000), cert. denied, 532 U.S. 931 (2001)
- *State v. Roache*, 358 N.C. 243, 292, 595 S.E.2d 381, 413 (2004)
- *State v. Grooms*, 353 N.C. 50, 65-66, 540 S.E.2d 713, 723 (2000), cert. denied, 534 U.S. 838 (2001)
- *State v. Hayes*, 350 N.C. 79, 80, 511 S.E.2d 302, 303 (1999) (per curiam)
- *State v. Bonnett*, 348 N.C. 417, 437, 502 S.E.2d 563, 576-77 (1998), cert. denied, 525 U.S. 1124 (1999)
- *State v. Tutt*, 171 N.C. App. 518, 524, 615 S.E.2d 688, 692-93 (2005)
- *State v. Stocks*, 319 N.C. 437, 439, 355 S.E.2d 492, 493 (1987)
- *State v. Bennett*, 308 N.C. 530, 535, 302 S.E.2d 786, 790 (1983)
- *State v. Elam*, 302 N.C. 157, 160-61, 273 S.E.2d 661, 664 (1981)
- *In re A.R.G.*, 361 N.C. 392, 396, 646 S.E.2d 349, 351 (2007)
- *State v. Ripley*, 360 N.C. 333, 339, 626 S.E.2d 289, 293 (2006)
- *State v. Blackwell*, 361 N.C. 41, 42, 49-51, 638 S.E.2d 452, 453, 458-59 (2006), cert. denied, 127 S. Ct. 2281 (2007)
- *State v. Fincher*, 309 N.C. 1, 9-11, 24, 305 S.E.2d 685, 691-92, 699 (1983)

OPINION

PER CURIAM.

648 S.E.2d 819 (2007) STATE of North Carolina v. Jaamall Denaris OGLESBY. No. 683PA05. Supreme Court of North Carolina. August 24, 2007. Roy Cooper, Attorney General, by Jonathan P. Babb, Special Deputy Attorney General, for the State-appellant/appellee. M. Gordon Widenhouse, Jr., Chapel Hill, for defendant-appellee/appellant. BRADY, Justice.

In this case we determine whether an incriminating statement made by a juvenile during a custodial interrogation must be suppressed at trial, pursuant to N.C.G.S. § 7B-2101, when the juvenile had requested to telephone his aunt before making the statement.

We hold that the statement need not be suppressed since defendant's aunt was not a "guardian" for purposes of the relevant statute. Accordingly, we affirm the decision of the Court of Appeals in part. We also vacate and remand the decision of the Court of Appeals in part for further proceedings. BACKGROUND On 7 July 2003, the Forsyth County Grand Jury returned a true bill of indictment charging defendant with first-degree murder, first-degree kidnapping, and attempted robbery with a firearm in connection with the fatal shooting of Scott Gray Jester during the early morning hours of 10 September 2002.

Jester's body had been discovered later the same morning near an exit ramp off Interstate 40 in Winston-Salem after he had sustained three gunshot wounds to the back of the head. On 3 November 2003, the Forsyth County Grand Jury also returned a true bill of indictment charging defendant with two counts of robbery with a dangerous weapon in connection with the robberies of two convenience stores on 7 September 2002 and on 8 September 2002.

On 24 May 2004, defendant entered a plea of guilty to the two charges of robbery with a dangerous weapon, but the trial court postponed sentencing on those convictions until after defendant's trial on the three remaining charges. Also on 24 May 2004, and before defendant's trial, the trial court heard defendant's motion to suppress an incriminating statement he made to law enforcement officers with the Winston-Salem Police Department during a custodial interrogation which had taken place on 11 September 2002, when defendant was sixteen years old.

Defendant's contention was that his juvenile rights were violated during the interrogation because the detectives did not cease questioning him when he requested to telephone his aunt and that therefore the statement should be suppressed. At the conclusion of the pretrial hearing, the trial court made findings of fact that defendant's aunt was not his guardian or custodian under N.C.G.S. § 7B-2101 and that, although defendant requested to telephone his aunt, this "was not a time specific request," nor did defendant say he would not speak with the officers until he was allowed to place the call.

Based upon these findings, the trial court concluded that there was no statutory or constitutional violation of defendant's juvenile rights and denied defendant's motion to suppress. On 28 May

2004, the jury found defendant guilty of first-degree murder under the felony murder rule, first-degree kidnapping, and attempted robbery with a firearm.

The trial court entered judgment consistent with the jury's verdict, and defendant was sentenced to life imprisonment without parole for the felony murder conviction and in the presumptive ranges for the first-degree kidnapping and attempted robbery convictions. Also on 28 May 2004, the trial court entered judgment on the two charges of robbery with a dangerous weapon consistent with defendant's plea of guilty.

The trial court sentenced defendant in the aggravated range for both convictions, finding the same aggravating factor for both: That defendant joined with more than one other person in the commission of the offense and was not charged with committing a conspiracy. Defendant appealed to the Court of Appeals, which in a unanimous 6 December 2005 opinion found no error in part and remanded the case in part for resentencing. *821 The State and defendant petitioned this Court for discretionary review of the Court of Appeals decision, and these petitions were subsequently allowed on 19 December 2006.

The State has raised one issue before the Court on appeal: Whether the trial court committed reversible Blakely error by sentencing defendant in the aggravated range for his two convictions for robbery with a dangerous weapon. Defendant has raised three issues: (1) whether the trial court erred in denying his motion to suppress; (2) whether the trial court erred in ordering that defendant be restrained by leg shackles; and (3) whether defendant's conviction for murder should be vacated because the indictment did not set forth all the elements of first-degree murder.

ANALYSIS We determine first whether the trial court erred in denying defendant's motion in limine to suppress the statement he made to law enforcement officers on 11 September 2002. The State contends that defendant should be barred from raising this issue on appeal since he did not renew his objection at trial and has not argued, alternatively, that the trial court committed plain error by allowing the statement entered into evidence.

See N.C. R.App. P. 10(c)(4); *State v. Golphin*, 352 N.C. 364, 449, 533 S.E.2d 168, 224 (2000), cert. denied, 532 U.S. 931, 121 S.Ct. 1379, 149 L.Ed.2d 305 (2001). As the Court of Appeals indicated, defendant may have relied to his detriment on a 2003 amendment to the North Carolina Rules of Evidence, which provides in pertinent part: "Once the [trial] court makes a definitive ruling on the record admitting or excluding evidence, either at or before trial, a party need not renew an objection or offer of proof to preserve a claim of error for appeal."

N.C.G.S. § 8C-1, Rule 103(a)(2) (2005) (emphasis added). There is a direct conflict between this evidentiary rule and North Carolina Rule of Appellate Procedure 10(b)(1), which this Court has consistently interpreted to provide that a trial court's evidentiary ruling on a pretrial motion is not

sufficient to preserve the issue of admissibility for appeal unless a defendant renews the objection during trial.

See *State v. Roache*, 358 N.C. 243, 292, 595 S.E.2d 381, 413 (2004); *State v. Grooms*, 353 N.C. 50, 65-66, 540 S.E.2d 713, 723 (2000), cert. denied, 534 U.S. 838, 122 S.Ct. 93, 151 L.Ed.2d 54 (2001); *Golphin*, 352 N.C. at 449, 533 S.E.2d at 224; *State v. Hayes*, 350 N.C. 79, 80, 511 S.E.2d 302, 303 (1999) (per curiam); *State v. Bonnett*, 348 N.C. 417, 437, 502 S.E.2d 563, 576-77 (1998), cert. denied, 525 U.S. 1124, 119 S.Ct.

909, 142 L.Ed.2d 907 (1999). For this reason, our intermediate appellate court has already held that Rule of Evidence 103(a)(2) is unconstitutional to the extent it conflicts with Rule of Appellate Procedure 10(b)(1). See *State v. Tutt*, 171 N.C.App. 518, 524, 615 S.E.2d 688, 692-93 (2005).

The Constitution of North Carolina expressly vests in this Court the "exclusive authority to make rules of procedure and practice for the Appellate Division." N.C. Const. art. IV, § 13, cl. 2. Although Rule 103(a)(2) is contained in the Rules of Evidence, it is manifestly an attempt to govern the procedure and practice of the Appellate Division as it purports to determine which issues are preserved for appellate review.

Accordingly, we hold that, to the extent it conflicts with Rule of Appellate Procedure 10(b)(1), Rule of Evidence 103(a)(2) must fail. See *State v. Stocks*, 319 N.C. 437, 439, 355 S.E.2d 492, 493 (1987); *State v. Bennett*, 308 N.C. 530, 535, 302 S.E.2d 786, 790 (1983); *State v. Elam*, 302 N.C. 157, 160, 273 S.E.2d 661, 664 (1981).

As a consequence of the invalidity of Rule 103(a)(2) and the application of Appellate Rule 10(b)(1) to the instant case, defendant has failed to preserve the admissibility of his incriminating statement for appellate review. Nor has defendant argued that the trial court committed plain error. See N.C. R.App. P. 10(c)(4); *Golphin*, 352 N.C. at 449, 533 S.E.2d at 224.

Nevertheless, as the Court of Appeals noted, the amendment to Rule 103(a)(2) was presumed constitutional at the time of defendant's trial, which was held before the Court of Appeals decision in *Tutt*. Given the harsh consequences of barring review when a defendant has relied to his detriment on existing law, we exercise this Court's discretion under Appellate Procedure *822 Rule 2 "to prevent manifest injustice" to defendant and to review his contention on the merits.

See N.C. R.App. P. 2; see also *Stocks*, 319 N.C. at 439, 355 S.E.2d at 493; *Elam*, 302 N.C. at 161, 273 S.E.2d at 664. An accused juvenile's rights during a custodial interrogation are codified in N.C.G.S. § 7B-2101, which states in part that "[a]ny juvenile in custody must be advised prior to questioning... [t]hat the juvenile has a right to have a parent, guardian, or custodian present during questioning."

N.C.G.S. § 7B-2101(a)(3) (2005).[1] The statute further provides that "[i]f the juvenile indicates in any manner and at any stage of questioning... that the juvenile does not wish to be questioned further, the officer shall cease questioning." Id. § 7B-2101(c) (2005).

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." Id. § 7B-2101(d) (2005). Defendant argues that the interrogation should have ceased when he requested to telephone his aunt, whom he asserts was effectively a "guardian," and that therefore the trial court erred under N.C.G.S. § 7B-2101(d) by denying his motion to suppress the incriminating statement he made shortly after his request was denied by the interrogating officers.

Clearly, defendant was entitled by N.C.G.S. § 7B-2101(a)(3) to have a "parent, guardian, or custodian" present during his interrogation. However, an "aunt" is not an enumerated relation in the statute, and an interpretation of the term "guardian" to encompass anything other than a relationship established by legal process would unjustifiably expand the plain and unambiguous meaning of the word.

See Black's Law Dictionary 566 (abr. 7th ed. 2000) (defining "guardian" as "[o]ne who has the legal authority and duty to care for another's person or property" (emphasis added)). We are bound by well-accepted rules of statutory construction to give effect to this plain and unambiguous meaning and we therefore decline any attempt to ascertain a contrary legislative intent.

See, e.g., *In re A.R.G.*, 361 N.C. 392, 396, 646 S.E.2d 349, 351 (2007). The trial court made a finding of fact that defendant's aunt was not his guardian or custodian. From the testimony of defendant's aunt, it is apparent that she never had custody of defendant, that defendant had only stayed with her on occasion but not for any considerable length of time, and that she had never signed any school papers for him.

As the trial court's finding of fact is supported by competent evidence, it cannot be disturbed on appeal. See *State v. Ripley*, 360 N.C. 333, 339, 626 S.E.2d 289, 293 (2006). Moreover, the only evidence which could possibly support a contrary finding of fact is the aunt's testimony that she was "a mother figure" to defendant.

However, this does not amount to the legal authority inherent in a guardian or custodial relationship. Defendant's aunt was clearly not a statutory person, and defendant therefore had no right to have her present during questioning.

Thus, we affirm in part the decision of the Court of Appeals. However, we vacate the portion of the Court of Appeals decision in which that court found Blakely error in defendant's aggravated sentences for robbery with a dangerous weapon, which it treated as structural error, and remand to the Court of Appeals for harmless error review pursuant to *State v. Blackwell*, 361 N.C.

41, 42, 49-51, 638 S.E.2d 452, 453, 458-59 (2006), cert. denied, ___ U.S. ___, 127 S.Ct. 2281, 167 L.Ed.2d 1114 (2007). As to the additional issues presented in defendant's petition, we conclude that discretionary review was improvidently allowed. AFFIRMED IN PART; VACATED AND REMANDED IN PART; DISCRETIONARY REVIEW IMPROVIDENTLY ALLOWED IN PART. *823 Justice TIMMONS-GOODSON dissenting.

Because I believe that the majority erroneously elevates form over substance in casting the dispositive issue in this case as the subsequently determined legal status of the aunt instead of the contemporaneous state of mind of the juvenile and police officers during interrogation, I respectfully dissent. Our legislature has provided that "[a]ny juvenile in custody must be advised prior to questioning... [t]hat the juvenile has a right to have a parent, guardian, or custodian present during questioning[.]" N.C.G.S. § 7B-2101 (2005).

Juveniles are awarded special consideration in light of their youth and limited life experiences. In *re Stallings*, 318 N.C. 565, 576, 350 S.E.2d 327, 333 (1986) (Martin, J., dissenting) ("Our criminal justice system recognizes that 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.").

This is why our courts have consistently recognized that "[t]he [S]tate has a greater duty to protect the rights of a respondent in a juvenile proceeding than in a criminal prosecution." In *re T.E.F.*, 359 N.C. 570, 575, 614 S.E.2d 296, 299 (2005) (quoting *State v. Fincher*, 309 N.C. 1, 24, 305 S.E.2d 685, 699 (1983) (Harry Martin, J., concurring) (alterations in original)); see also *In re Meyers*, 25 N.C.App.

555, 558, 214 S.E.2d 268, 270 (1975) (stating that in a juvenile proceeding, unlike an ordinary criminal proceeding, the burden upon the State to see that a juvenile's rights are protected is increased rather than decreased). Though not paramount, age is an important factor in assessing the possible violation of constitutional or statutory rights. See *id.* ("Although a confession is not inadmissible merely because the person making it is a minor, to be admissible it must have been voluntary, and the age of the person confessing is an additional factor to be considered in determining voluntariness." (internal citation omitted)).

"Once a juvenile defendant has requested the presence of a parent, or any one of the parties listed in the statute, defendant may not be interrogated further `until [counsel, parent, guardian, or custodian] has been made available to him, unless the accused himself initiates further communication, exchanges, or conversations with the police." *State v. Branham*, 153 N.C.App.

91, 95, 569 S.E.2d 24, 27 (2002) (quoting *Michigan v. Jackson*, 475 U.S. 625, 626, 106 S.Ct. 1404, 1406, 89 L.Ed.2d 631, 636 (1986) (alterations in original)). In the past, our appellate courts have held that contravention of these juvenile rights is akin to *Miranda* violations. *State v. Smith*,

317 N.C. 100, 106, 343 S.E.2d 518, 521 (1986), abrogated on other grounds by *State v. Buchanan*, 353 N.C.

332, 543 S.E.2d 823 (2001). In *Smith*, we applied the rule requiring all interrogation to cease when an adult defendant requests an attorney to a juvenile who requests an attorney, parent, guardian, or custodian. *Id.*; see also *State v. Hunt*, 64 N.C.App. 81, 86, 306 S.E.2d 846, 850 (holding that juvenile defendant's Miranda rights were violated when the police continued to interrogate him after he requested that his parents be present), disc. rev. denied, 309 N.C.

824, 310 S.E.2d 354 (1983). The burden rests on the State to show the juvenile defendant made a knowing and intelligent waiver of such Miranda rights. *State v. Miller*, 344 N.C. 658, 666, 477 S.E.2d 915, 920 (1996) (citing *State v. Simpson*, 314 N.C. 359, 367, 334 S.E.2d 53, 59 (1985)).

In evaluating whether such a waiver was knowing and intelligent, we consider the relevant state of mind of reasonable actors during the situation, and not with the benefit of hindsight. See *State v. Davis*, 305 N.C. 400, 410, 290 S.E.2d 574, 580-81 (1982) (describing the test for determining whether someone is in police custody as whether a "reasonable person in the suspect's position would believe that he had been taken into custody or otherwise deprived of his freedom of action was deprived in any significant way" (citing *United States v. Mendenhall*, 446 U.S. 544, 100 S.Ct.

1870, 64 L.Ed.2d 497 (1980))). Seen in this light, the detectives had no way of knowing the legal status of the juvenile's aunt at the time of the taped confession. It is telling that even appellate courts have not always construed the statute as narrowly as the majority seems to indicate is required. *824 In a case in which the shoe was on the other foot and the State sought to have an aunt recognized as complying with this statute in an analogous situation, the Court of Appeals held that an aunt constituted a guardian for the purpose of admitting a defendant's confession, even though she did not fall into any of the statute's enumerated categories.

State v. Jones, 147 N.C.App. 527, 539-40, 556 S.E.2d 644, 652 (2001) (finding aunt was guardian "within the spirit and meaning of the Juvenile Code," even though she did not meet the legal definition set therein or fit into the enumerated categories), disc. rev. denied and appeal dismissed, 355 N.C. 351, 562 S.E.2d 427 (2002). From a policy perspective, we have long held that whether evidence is admitted or excluded under Miranda depends on whether exclusion of the evidence would deter improper conduct by law enforcement.

State v. May, 334 N.C. 609, 613, 434 S.E.2d 180, 182 (1993), cert. denied, 510 U.S. 1198, 114 S.Ct. 1310, 127 L.Ed.2d 661 (1994). The majority's holding effectively discourages police officers from complying with the strictures of the Juvenile Code. Since it is uncontested that (a) the juvenile's confession in this case would be inadmissible if the individual requested had fallen into the requisite category, and (b) the detectives were not aware of the aunt's precise legal status when

they chose to press ahead in their interrogation, policy considerations also favor excluding the taped confession.

Therefore, I would hold the confession inadmissible.[2] A test centering on the circumstances of the aunt as known to the detectives during the interrogation, rather than following a subsequent legal determination, fits in better with the structure and stated objectives of the Juvenile Code.[3] Such a test is more aptly geared to our oft-stated maxim that the burden of proof to show that the juvenile made a knowing and intelligent waiver of his rights lies with the State.

Miller, 344 N.C. at 666, 477 S.E.2d at 920. Taking the majority's reasoning to its logical conclusion, police could decline a defendant's request for counsel and still use his subsequent statements as evidence if the requested attorney turned out to have unrelated professional licensing problems such as a shortfall in CLE credits or delinquency in Bar dues.

Such a scenario would be self-evidently problematic. Yet I believe it is analytically indistinguishable from the majority's current holding. Since I believe the majority erroneously shifts the pivotal test from the contemporaneous knowledge of the police officers to the subsequently ascertained legal status of the aunt, I cannot agree with the majority's reasoning as currently stated, and respectfully dissent.

NOTES [1] N.C.G.S. § 7B-101 defines "juvenile" to mean "[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." As a result, N.C.G.S. § 7B-2101 applies to defendant even though he was tried as an adult, notwithstanding the heading of Chapter 7B, Article 21, which reads: "Law Enforcement Procedures in Delinquency Proceedings."

See *State v. Fincher*, 309 N.C. 1, 9-11, 305 S.E.2d 685, 691-92 (1983). [2] The majority's holding is likely to have wider repercussions because of the large number of North Carolina minors in nontraditional households. See Child Welfare League of Am., North Carolina's Children in 2007, available at [http:// www.cwla.org/advocacy/statefactsheets/2007/ northcarolina.pdf](http://www.cwla.org/advocacy/statefactsheets/2007/northcarolina.pdf) (last visited Aug.

20, 2007) (21.7% of the 10,077 children in North Carolina not in parental custody on 30 September 2004 resided with relatives.) [3] The need for special protection is wellfounded since at least two empirical studies show that "the vast majority of juveniles are simply incapable of understanding their Mirand a rights and the meaning of waiving those rights."

Trey Meyer, Comment, Testing the Validity of Confessions and Waivers of the Self-Incrimination Privilege in the Juvenile Courts, 47 U. Kan. L.Rev. 1035, 1050-51 (1999).

BRADY, J.

BRADY, Justice. In this case we determine whether an incriminating statement made by a juvenile during a custodial interrogation must be suppressed at trial, pursuant to N.C.G.S. § 7B-2101, when the juvenile had requested to telephone his aunt before making the statement.

We hold that the statement need not be suppressed since defendant's aunt was not a "guardian" for purposes of the relevant statute. Accordingly, we affirm the decision of the Court of Appeals in part. We also vacate and remand the decision of the Court of Appeals in part for further proceedings. BACKGROUND On 7 July 2003, the Forsyth County Grand Jury returned a true bill of indictment charging defendant with first-degree murder, first-degree kidnapping, and attempted robbery with a firearm in connection with the fatal shooting of Scott Gray Jester during the early morning hours of 10 September 2002.

Jester's body had been discovered later the same morning near an exit ramp off Interstate 40 in Winston-Salem after he had sustained three gunshot wounds to the back of the head. On 3 November 2003, the Forsyth County Grand Jury also returned a true bill of indictment charging defendant with two counts of robbery with a dangerous weapon in connection with the robberies of two convenience stores on 7 September 2002 and on 8 September 2002.

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Defendant's contention was that his juvenile rights were violated during the interrogation because the detectives did not cease questioning him when he requested to telephone his aunt and that therefore the statement should be suppressed. At the conclusion of the pretrial *553hearing, the trial court made findings of fact that defendant's aunt was not his guardian or custodian under N.C.G.S. § 7B-2101 and that, although defendant requested to telephone his aunt, this "was not a time specific request," nor did defendant say he would not speak with the officers until he was allowed to place the call.

Based upon these findings, the trial court concluded that there was no statutory or constitutional violation of defendant's juvenile rights and denied defendant's motion to suppress. On 28 May 2004, the jury found defendant guilty of first-degree murder under the felony murder rule, first-degree kidnapping, and attempted robbery with a firearm.

The trial court entered judgment consistent with the jury's verdict, and defendant was sentenced to life imprisonment without parole for the felony murder conviction and in the presumptive ranges for the first-degree kidnapping and attempted robbery convictions. Also on 28 May 2004, the trial

court entered judgment on the two charges of robbery with a dangerous weapon consistent with defendant's plea of guilty.

The trial court sentenced defendant in the aggravated range for both convictions, finding the same aggravating factor for both: That defendant joined with more than one other person in the commission of the offense and was not charged with committing a conspiracy. Defendant appealed to the Court of Appeals, which in a unanimous 6 December 2005 opinion found no error in part and remanded the case in part for resentencing.

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Defendant has raised three issues: (1) whether the trial court erred in denying his motion to suppress; (2) whether the trial court erred in ordering that defendant be restrained by leg shackles; and (3) whether defendant's conviction for murder should be vacated because the indictment did not set forth all the elements of first-degree murder. ANALYSIS We determine first whether the trial court erred in denying defendant's motion in limine to suppress the statement he made to law enforcement officers on 11 September 2002.

The State contends that defendant should be barred from raising this issue on appeal *554since he did not renew his objection at trial and has not argued, alternatively, that the trial court committed plain error by allowing the statement entered into evidence. See N.C. R. App. P. 10(c)(4); *State v. Golphin*, 352 N.C. 364, 449, 533 S.E.2d 168, 224 (2000), cert. denied, 532 U.S. 931 (2001).

As the Court of Appeals indicated, defendant may have relied to his detriment on a 2003 amendment to the North Carolina Rules of Evidence, which provides in pertinent part: "Once the [trial] court makes a definitive ruling on the record admitting or excluding evidence, either at or before trial, a party need not renew an objection or offer of proof to preserve a claim of error for appeal." N.C.G.S. § 8C-1, Rule 103(a)(2) (2005) (emphasis added).

There is a direct conflict between this evidentiary rule and North Carolina Rule of Appellate Procedure 10(b)(1), which this Court has consistently interpreted to provide that a trial court's evidentiary ruling on a pretrial motion is not sufficient to preserve the issue of admissibility for appeal unless a defendant renews the objection during trial. See *State v. Roache*, 358 N.C.

243, 292, 595 S.E.2d 381, 413 (2004); *State v. Grooms*, 353 N.C. 50, 65-66, 540 S.E.2d 713, 723 (2000), cert. denied, 534 U.S. 838 (2001); *Golphin*, 352 N.C. at 449, 533 S.E.2d at 224; *State v. Hayes*, 350 N.C. 79, 80, 511 S.E.2d 302, 303 (1999) (per curiam); *State v. Bonnett*, 348 N.C. 417, 437, 502 S.E.2d 563, 576-77 (1998), cert. denied, 525 U.S. 1124 (1999).

For this reason, our intermediate appellate court has already held that Rule of Evidence 103(a)(2) is unconstitutional to the extent it conflicts with Rule of Appellate Procedure 10(b)(1). See *State v. Tutt*, 171 N.C. App. 518, 524, 615 S.E.2d 688, 692-93 (2005).

The Constitution of North Carolina expressly vests in this Court the “exclusive authority to make rules of procedure and practice for the Appellate Division.” N.C. Const. art. IV, § 13, cl. 2. Although Rule 103(a)(2) is contained in the Rules of Evidence, it is manifestly an attempt to govern the procedure and practice of the Appellate Division as it purports to determine which issues are preserved for appellate review.

Accordingly, we hold that, to the extent it conflicts with Rule of Appellate Procedure 10(b)(1), Rule of Evidence 103(a)(2) must fail. See *State v. Stocks*, 319 N.C. 437, 439, 355 S.E.2d 492, 493 (1987); *State v. Bennett*, 308 N.C. 530, 535, 302 S.E.2d 786, 790 (1983); *State v. Elam*, 302 N.C. 157, 160, 273 S.E.2d 661, 664 (1981).

As a consequence of the invalidity of Rule 103(a)(2) and the application of Appellate Rule 10(b)(1) to the instant case, defendant *555 has failed to preserve the admissibility of his incriminating statement for appellate review. Nor has defendant argued that the trial court committed plain error. See N.C. R. App. P. 10(c)(4); *Golphin*, 352 N.C. at 449, 533 S.E.2d at 224.

Nevertheless, as the Court of Appeals noted, the amendment to Rule 103(a)(2) was presumed constitutional at the time of defendant’s trial, which was held before the Court of Appeals decision in *Tutt*. Given the harsh consequences of barring review when a defendant has relied to his detriment on existing law, we exercise this Court’s discretion under Appellate Procedure Rule 2 “to prevent manifest injustice” to defendant and to review his contention on the merits.

See N.C. R. App. P. 2; see also *Stocks*, 319 N.C. at 439, 355 S.E.2d at 493; *Elam*, 302 N.C. at 161, 273 S.E.2d at 664. An accused juvenile’s rights during a custodial interrogation are codified in N.C.G.S. § 7B-2101, which states in part that “[a]ny juvenile in custody must be advised prior to questioning... [t]hat the juvenile has a right to have a parent, guardian, or custodian present during questioning.” N.C.G.S. § 7B-2101(a)(3) (2005).¹ The statute further provides that “[i]f the juvenile indicates in any manner and at any stage of questioning... that the juvenile does not wish to be questioned further, the officer shall cease questioning.” *Id.* § 7B-2101(c) (2005).

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.” *Id.* § 7B-2101(d) (2005). Defendant argues that the interrogation should have ceased when he requested to telephone his aunt, whom he asserts was effectively a “guardian,” and that therefore the trial court erred under N.C.G.S. § 7B-2101(d) by denying his motion to suppress the incriminating statement he made shortly after his request was denied by the interrogating officers.

Clearly, defendant was entitled by N.C.G.S. § 7B-2101(a)(3) to have a “parent, guardian, or custodian” present during his interrogation. However, an “aunt” is not an enumerated relation in the statute, and an interpretation of the term “guardian” to encompass anything other than a relationship established by legal process would unjustifiably expand the plain and unambiguous meaning of the word.

See Black’s Law Dictionary 566 (abr. 7th ed. 2000) (defining “guardian” *556as “[o]ne who has the legal authority and duty to care for another’s person or property” (emphasis added)). We are bound by well-accepted rules of statutory construction to give effect to this plain and unambiguous meaning and we therefore decline any attempt to ascertain a contrary legislative intent.

See, e.g., *In re A.R.G.*, 361 N.C. 392, 396, 646 S.E.2d 349, 351 (2007). The trial court made a finding of fact that defendant’s aunt was not his guardian or custodian. From the testimony of defendant’s aunt, it is apparent that she never had custody of defendant, that defendant had only stayed with her on occasion but not for any considerable length of time, and that she had never signed any school papers for him.

As the trial court’s finding of fact is supported by competent evidence, it cannot be disturbed on appeal. See *State v. Ripley*, 360 N.C. 333, 339, 626 S.E.2d 289, 293 (2006). Moreover, the only evidence which could possibly support a contrary finding of fact is the aunt’s testimony that she was “a mother figure” to defendant.

However, this does not amount to the legal authority inherent in a guardian or custodial relationship. Defendant’s aunt was clearly not a statutory person, and defendant therefore had no right to have her present during questioning.

Thus, we affirm in part the decision of the Court of Appeals. However, we vacate the portion of the Court of Appeals decision in which that court found Blakely error in defendant’s aggravated sentences for robbery with a dangerous weapon, which it treated as structural error, and remand to the Court of Appeals for harmless error review pursuant to *State v. Blackwell*, 361 N.C.

41, 42, 49-51, 638 S.E.2d 452, 453, 458-59 (2006), cert. denied, -U.S. -, 127 S. Ct. 2281, 167 L. Ed. 2d 1114 (2007). As to the additional issues presented in defendant’s petition, we conclude that discretionary review was improvidently allowed. AFFIRMED IN PART; VACATED AND REMANDED IN PART; DISCRETIONARY REVIEW IMPROVIDENTLY ALLOWED IN PART.. N.C.G.S. § 7B-101 defines “juvenile”to mean “[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.” As a result, N.C.G.S. § 7B-2101 applies to defendant even though he was tried as an adult, notwithstanding the heading of Chapter 7B, Article 21, which reads: “Law Enforcement Procedures in Delinquency Proceedings.” See *State v. Fincher*, 309 N.C.

1, 9-11, 305 S.E.2d 685, 691-92 (1983).

