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State v. Saldierna

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61 N.Y.L. SCH. L. REV. 175 (2016–2017)

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In *The Federalist No. 47*, James Madison warns, “[t]he accumulation of all powers, legislative, executive, and judiciary, in the same hands, whether of one, a few, or many, . . . may justly be pronounced the very definition of tyranny.”¹ To prevent such tyranny, the separation of powers among the three branches of government has existed since the founding of the U.S. government.² The separation of governmental powers was also adopted by the individual states, posing as a restriction and barrier to prevent any one branch of government from becoming too powerful, thus creating a balance of power.³ Despite this idealistic framework, the judicial branch often exercises the most authority, operating without supervision or approval from the other two branches.⁴ The decision by the North Carolina Court of Appeals in *State v. Saldierna*⁵ is an example of judicial power and the court’s ability to mold current legislation, through statutory interpretation, to its own belief of how a law should be read, interpreted, and applied despite the legislature’s intent.

In *Saldierna*, the court considered, as a matter of first impression, whether a juvenile’s request to call his mother during a custodial interrogation was an invocation of the juvenile’s statutorily protected right to have a parent present during questioning, as established under section 7B-2101(a)(3) of the North Carolina General Statutes,⁶ or whether such a request was too ambiguous to warrant protection of the right.⁷ The *Saldierna* court held that a juvenile’s right to have a parent, guardian, or custodian present during police questioning is a state constitutional right and is not controlled by established precedent concerning the invocation of federal constitutional rights.⁸ Precedent requires a suspect to clearly, unequivocally, and unambiguously invoke a federal constitutional right and does not require law enforcement officials to clarify a suspect’s ambiguous statement.⁹ As a result of its holding, the *Saldierna* court created

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1. THE FEDERALIST NO. 47, at 245 (James Madison) (Ian Shapiro ed., 2009).
 2. See U.S. CONST. arts. I–III (creating the three branches of government and their respective powers).
 3. See generally Jack M. Beermann, *An Inductive Understanding of Separation of Powers*, 63 ADMIN. L. REV. 467 (2011).
 4. See, e.g., ALL. FOR JUSTICE, THE ROBERTS COURT AND JUDICIAL OVERREACH (2013) (expanding this assertion in a discussion of the Roberts Court).
 5. 775 S.E.2d 326 (N.C. Ct. App. 2015).
 6. N.C. GEN. STAT. § 7B-2101(a) (2015) (amending N.C. GEN. STAT. § 7B-2101(b) (1998)).
 7. *Saldierna*, 775 S.E.2d at 327.
 8. *Id.* at 333. A juvenile’s right to have a parent present during questioning “is an additional protection specifically granted through [the] Juvenile Code to the children of [North Carolina], a right which goes beyond the protections offered to adult suspects during interrogations.” *Id.* (emphasis omitted). Federally established constitutional rights include: (1) the right to remain silent; (2) that anything you say can and will be used against you in court; and (3) the right to consult with an attorney and have one appointed if not currently represented by one. *Miranda v. Arizona*, 384 U.S. 436, 444 (1966).
 9. Both U.S. and North Carolina Supreme Court precedent require a person to clearly and unequivocally invoke a constitutional right. See *Davis v. United States*, 512 U.S. 452, 459 (1994) (requiring a suspect to unambiguously articulate a desire to have counsel present during a custodial interrogation to invoke the constitutional right to have an attorney present); *State v. Golphin*, 533 S.E.2d 168, 225 (N.C. 2000) (holding that a juvenile defendant must unambiguously invoke the right to remain silent and law

a new rule and standard requiring law enforcement officers to clarify the meaning behind “an ambiguous statement touching on a juvenile’s right to have a parent present during an interrogation.”¹⁰

This case comment contends that the *Saldierna* court erred in holding that law enforcement officers are required to clarify the meaning behind a juvenile’s ambiguous statement that possibly invoked his right to have a parent present during a custodial interrogation.¹¹ This holding was contrary to the intent of the North Carolina Supreme Court to hold a juvenile’s right to have a parent present during questioning to the same standard as the other rights enumerated in section 7B-2101(a). This intent is also evidenced by the North Carolina General Assembly’s (NCGA)¹² intentional construction of section 7B-2101, which shows that section 7B-2101(a)(3) is not to be held to a different standard than the other three constitutional protections codified in the statute.¹³ Additionally, the *Saldierna* court supported its holding by citing to a *prospective* amendment of section 7B-2101, set to take effect December 1, 2015, which the court acknowledged had no applicability to or effect on the question at bar.¹⁴ Ultimately, the *Saldierna* decision creates a public policy concern by manifesting judicial overreach, which occurs when appellate courts interpret and shape legislation beyond the intent of the legislators who promulgated it.¹⁵

In January 2013, sixteen-year-old Felix Saldierna was arrested in South Carolina by Charlotte-Mecklenburg police for outstanding burglary and vandalism charges related to incidents that occurred in Charlotte, North Carolina, in 2012.¹⁶ Saldierna was transported to Moss Justice Center, a juvenile facility located in York County, South Carolina, for booking and questioning.¹⁷ Detective Aimee Kelly of the Charlotte-Mecklenburg Police Department conducted an audio-recorded interview with Saldierna in the booking area of the facility.¹⁸

Before asking any questions, Detective Kelly advised Saldierna of his rights pursuant to section 7B-2101(a), which states the following:

enforcement is not required to clarify a juvenile’s meaning behind an ambiguous statement touching on a constitutional right).

10. *Saldierna*, 775 S.E.2d at 334.

11. *Id.*

12. The NCGA is the legislative body within the state of North Carolina, consisting of the House of Representatives and Senate, that is responsible for creating the laws of the state and codifying them in statutes. *See* N.C. CONST. art. II, § 1.

13. *See* discussion *infra* pp. 183–86 (expanding this assertion).

14. *Saldierna*, 775 S.E.2d at 334. Section 7B-2101 was amended in May 2015 to prevent any juvenile under sixteen years of age from waiving the right to have a parent present while being interrogated. *Id.* This amendment took effect on December 1, 2015. *Id.* Until this amendment, section 7B-2101 only precluded juveniles less than fourteen years of age from waiving the right to have a parent present. *Id.*

15. *See generally* ALL. FOR JUSTICE, *supra* note 4 (discussing judicial overreach in the U.S. Supreme Court).

16. *Saldierna*, 775 S.E.2d at 327.

17. *Id.*

18. *Id.*

(a) Any juvenile in custody must be advised prior to questioning: (1) [t]hat the juvenile has a right to remain silent; (2) [t]hat any statement the juvenile does make can be and may be used against the juvenile; (3) [t]hat the juvenile has a right to have a parent, guardian, or custodian present during questioning; and (4) [t]hat the juvenile has a right to consult with an attorney and that one will be appointed for the juvenile if the juvenile is not represented and wants representation.¹⁹

Saldierna was also provided with written Juvenile Waiver of Rights forms.²⁰ Saldierna indicated that he understood his rights by placing his initials next to each paragraph.²¹ Saldierna also verbally indicated that he understood each right that Detective Kelly read to him by responding with “yeah” or “yes ma’am.”²² After acknowledging that he understood all his rights, Saldierna marked the option on the waiver form that read, “I DO wish to answer questions now WITHOUT a lawyer, parent, guardian, or custodian here with me,” and signed the form.²³

At 12:10 p.m, before the interrogation, Saldierna asked Detective Kelly, “[u]m, [c]an I call my mom?”²⁴ Detective Kelly responded, “[c]all your mom now?” To which Saldierna replied, “I think she is on her lunch now.”²⁵ Saldierna was then given an opportunity to call his mother.²⁶ At 12:20 p.m., Saldierna returned from phoning his mother and Detective Kelly began to interrogate Saldierna.²⁷ The interview continued for an hour, during which time Saldierna confessed to his involvement in the crimes.²⁸

On January 22, 2013, Saldierna was indicted on multiple charges stemming from his involvement in the 2012 incident in Charlotte.²⁹ On October 9, 2013, Saldierna filed a motion to suppress his confession to Detective Kelly.³⁰ The motion was denied by the Mecklenburg County Superior Court on January 31, 2014.³¹ On February 20, 2014, the superior court issued a written order outlining its findings of fact.³² The superior court determined that (1) Saldierna was properly advised of his rights

19. N.C. GEN. STAT. § 7B-2101(a) (2015) (amending N.C. GEN. STAT. § 7B-2101(b) (1998)).

20. *Saldierna*, 775 S.E.2d at 328. Detective Kelly provided Saldierna with Juvenile Waiver of Rights forms in both English and Spanish; she read the English waiver form to Saldierna while he followed on both forms. *Id.*

21. *Id.*

22. *Id.*

23. *Id.*

24. *Id.*

25. *Id.*

26. *Id.*

27. *Id.*

28. *Id.*

29. *Id.*

30. *Id.*

31. *Id.*

32. *Id.*

pursuant to section 7B-2101, which he understood and voluntarily waived, and (2) Saldierna requested to call his mother before the start of questioning, but never, at any time, made an unambiguous request to have his mother present during questioning.³³ Based on these findings, the superior court made the following conclusions of law:

(1) That the State carried its burden by a preponderance of the evidence that [Saldierna] knowingly, willingly, and understandingly waived his juvenile rights. (2) That the interview process in this case was consistent with the interrogation procedures as set forth in [section] 7B-2101. (3) That none of [Saldierna's] State or Federal rights were violated during the interview conducted of [Saldierna]. (4) That statements made by [Saldierna] were not gathered as a result of any State or Federal rights violation.³⁴

On June 4, 2014, Saldierna pleaded guilty to two charges before the superior court, reserving a right to appeal the denial of the motion to suppress.³⁵

On appeal, the North Carolina Court of Appeals considered, as a matter of first impression, whether Saldierna's request to call his mother required Detective Kelly to clarify Saldierna's request before continuing the interrogation.³⁶ Saldierna argued that his request to call his mother "was not ambiguous[]" and that he directly sought to have a parent present [during the interview].³⁷ Alternatively, Saldierna argued that even "if his request to call his mother was ambiguous, [Detective] Kelly was required to clarify whether Saldierna was invoking his right to have a parent present during a custodial interrogation as guaranteed by section 7B-2101."³⁸ The state argued that this case was controlled by U.S. and North Carolina Supreme Court precedent, which required a suspect to clearly, unambiguously, and unequivocally invoke a *Miranda* right and that if an ambiguous statement was made by a suspect, law enforcement had no obligation to stop questioning or clarify the statement.³⁹ The state urged the North Carolina Court of Appeals to apply this controlling rule to a "juvenile's right to have a parent present during questioning," which is listed within the *Miranda* rights codified in section 7B-2101(a).⁴⁰

33. *Id.* at 329–30. There were a total of twenty-four findings of fact listed in the trial court's order, *id.*; however, only the most relevant are listed, as they directly relate to the *Saldierna* court's review.

34. *Id.* at 330.

35. *Id.*

36. *Id.* at 327.

37. *Id.* at 330 (alteration in original).

38. *Id.*

39. *Id.* at 332; *see* *Davis v. United States*, 512 U.S. 452, 461–62 (1994) (holding that a suspect must unambiguously and unequivocally invoke *Miranda* rights and law enforcement officers are not required to stop questioning or clarify a suspect's ambiguous statement possibly invoking a *Miranda* right); *State v. Golphin*, 533 S.E.2d 168, 224–25 (N.C. 2000) (applying the federal standard that requires the invocation of *Miranda* rights to be clear and unequivocal to also apply to juveniles in the state of North Carolina who invoke their *Miranda* rights pursuant to section 7B-2101).

40. *Saldierna*, 775 S.E.2d at 333.

The North Carolina Court of Appeals determined that a juvenile’s “right to have a parent present” was a state-imposed protection, established solely within section 7B-2101(a)(3), and was not controlled by precedent concerning the invocation of *Miranda* rights, which must be unambiguously and unequivocally invoked.⁴¹ Thus, the *Saldierna* court established a new requirement applying only to section 7B-2101(a)(3) when it held “[t]hat an ambiguous statement touching on a juvenile’s right to have a parent present during an interrogation triggers a requirement for the interviewing officer to clarify the juvenile’s meaning” before proceeding with questioning.⁴²

In reaching this holding, the *Saldierna* court analyzed an amendment of section 7B-2101(b), set to take effect December 1, 2015, that would require any juvenile less than sixteen years of age to have a parent, guardian, or custodian present before any questioning in a custodial interrogation.⁴³ When *Saldierna* was arrested, section 7B-2101(b) required any juvenile less than fourteen years of age to have a parent present during a custodial interrogation.⁴⁴ The *Saldierna* court reasoned that the NCGA’s decision to raise the requirement age was reflective of an intent to further protect juveniles during “high-stakes and potentially life-altering procedure[s]” such as custodial interrogations.⁴⁵ The *Saldierna* court also reasoned that the NCGA’s decision to amend section 7B-2101(b) lent significant support to its holding that police were required to clarify a juvenile’s ambiguous statement that possibly invoked a right to have a parent present.⁴⁶ The *Saldierna* court thus vacated *Saldierna*’s conviction, reversed the superior court’s decision, and remanded the case for further proceedings.⁴⁷

This case comment contends that the *Saldierna* court erred in holding that law enforcement officers are required to clarify the meaning behind a juvenile’s ambiguous statement that possibly invoked the right to have a parent present during a custodial interrogation. First, the *Saldierna* court incorrectly distinguished and dismissed North Carolina Supreme Court precedent that indicated that section 7B-2101(a)(3) should have been held to the same invocation standard as the rest of the *Miranda* rights contained in section 7B-2101(a), requiring a juvenile to unambiguously invoke the right to have a parent present during a custodial interrogation. Second, the *Saldierna* court’s determination of the NCGA’s intent behind the creation and structuring of section 7B-2101 is contradicted and unsupported by the application of standard methods of statutory construction and interpretation, which show that the NCGA did not intend to hold section 7B-2101(a)(3) to a different standard than the

41. *Id.* at 332–33.

42. *Id.* at 334.

43. *Id.*; see Act of June 4, 2015, ch. 58, pt. I, § 1.1, 2015 N.C. Sess. Laws 126, 126 (codified as amended in N.C. GEN. STAT. § 7B-2101 (2015)).

44. N.C. GEN. STAT. § 7B-2101(b) (1998) (amended 2015).

45. *Saldierna*, 775 S.E.2d at 334.

46. *Id.*

47. *Id.*

rest of the rights codified in the statute.⁴⁸ Third, the *Saldierna* court erroneously relied on the prospective amendment of section 7B-2101 for significant support despite acknowledging that the amendment had no bearing or effect on the issue at bar. The *Saldierna* court's decision demonstrates the effects of judicial overreach when courts interpret and shape legislation through holdings that conflict with the legislature's intent.

First, the *Saldierna* court incorrectly dismissed and distinguished precedent concerning the invocation of section 7B-2101(a)(3). In *Davis v. United States*, the U.S. Supreme Court held that a suspect must unambiguously invoke a *Miranda* right for it to apply during a custodial interrogation.⁴⁹ The *Davis* Court also held that law enforcement officers were not required to ask clarifying questions to a suspect who gave an ambiguous statement that possibly invoked a *Miranda* right.⁵⁰ In *State v. Golphin*, the North Carolina Supreme Court adopted the *Davis* holdings and applied them to the juvenile rights contained in section 7B-2101.⁵¹ After *Golphin*, juveniles must unambiguously and unequivocally invoke a *Miranda* right, and law enforcement officers are not required to ask clarifying questions concerning a juvenile's ambiguous statement that would possibly invoke such rights.⁵²

Applying *Golphin*, *Saldierna*'s request should not have invoked the protection of section 7B-2101(a)(3) because it failed to satisfy the unambiguous *Davis* standard.⁵³ Accordingly, Detective Kelly should not have been required to ask *Saldierna* clarifying questions to discern the meaning behind his ambiguous request. The *Saldierna* court acknowledged that *Saldierna*'s request to call his mother was "at best an ambiguous request" and that [he] never made an "unambiguous request to have his mother present during questioning."⁵⁴ In fact, *Saldierna*'s request was identical to the one made in *People v. Nelson* where the California Supreme Court held that a fifteen-year-old juvenile's request to "call his mother" during a custodial interrogation was not a clear and unequivocal invocation of any constitutional right.⁵⁵ The *Nelson* court

48. Sections 7B-2101(a)(1), (2), and (4) are the federal rights derived from *Miranda*, which include the right to remain silent, that anything a suspect says can and may be used against the suspect in court, and the right to have an attorney present during questioning. *Id.* at 332.

49. 512 U.S. 452, 461–62 (1994); see also *Fare v. Michael C.*, 442 U.S. 707, 727–28 (1979) (requiring a suspect to make an unambiguous invocation of rights).

50. *Davis*, 512 U.S. at 461–62.

51. 533 S.E.2d 168, 225 (N.C. 2000).

52. See *id.*

53. *Id.*

54. *State v. Saldierna*, 775 S.E.2d 326, 331 (N.C. Ct. App. 2015) (citation omitted).

55. 266 P.3d 1008, 1020 (Cal. 2012). The court found that the juvenile's requests to speak with his mother were not sufficiently clear to require cessation of the questioning when he asked to call his mother to "let her know what's happening" and "talk to her about it." *Id.* at 1012. Compare *id.*, with *Saldierna*, 775 S.E.2d at 331, 334 (holding that a juvenile's request to speak with his mother was not an unambiguous request to have his mother present during questioning and required clarification by the interviewing officer).

determined that the juvenile's request did not meet the *Davis* standard and did not require the law enforcement officer to clarify the juvenile's intent behind the request.⁵⁶

Additionally, the North Carolina appellate courts had previously applied an unambiguous standard to section 7B-2101(a)(3). In *State v. Smith*, the North Carolina Supreme Court concluded that a sixteen-year-old juvenile invoked the right to have a parent present during questioning when he requested that his mother be brought to the station.⁵⁷ The juvenile's statement was an unambiguous invocation of his right to have a parent present during questioning and provided him the protection of section 7B-2101(a)(3).⁵⁸ In *State v. Branham*, the North Carolina Court of Appeals determined that a sixteen-year-old juvenile invoked his right and protection under section 7B-2101 when he asked to have his mother present during police questioning and when he instructed the police officers to write his request on paper.⁵⁹

The juveniles in both cases requested that their parents actually come to the station and be physically present during interrogation.⁶⁰ These holdings are consistent with the common and generally understood definition of "present," which means "at the particular place or event that is being referred to."⁶¹ These requests directly contrast with Saldierna's request to simply speak with his mother by telephone. At no time did Saldierna ask to have his mother physically with him—or present—at the location where he was being interrogated.⁶²

The *Smith* and *Branham* holdings recognize that an invocation of section 7B-2101(a)(3) occurs when a juvenile makes an unambiguous request to have a parent actually *present* during questioning.⁶³ These holdings are also consistent with the unambiguous invocation standard that the North Carolina Supreme Court adopted from *Davis*,⁶⁴ and further support the position that section 7B-2101(a)(3) is held to the same invocation standard as the other rights enumerated in section 7B-2101(a).

56. *Nelson*, 266 P.3d at 1012, 1015.

57. 343 S.E.2d 518, 522 (N.C. 1986), *abrogated by* *State v. Buchanan*, 543 S.E.2d 823, 828 (N.C. 2001). This case considered juvenile rights enumerated in N.C. GEN. STAT. § 7A-595 (repealed 1998), which was recodified in N.C. GEN. STAT. § 7B-2101(a) (2015), but the substance of subsection (a)(1)–(4) was not altered when the statute was recodified. *Saldierna*, 775 S.E.2d at 332 n.3 (“The substance of [section 7A-595(a)(1)–(4)] [is] indistinguishable from that in [section 7B-2101(a)].”).

58. *See Smith*, 343 S.E.2d at 522.

59. 569 S.E.2d 24, 28–29 (N.C. Ct. App. 2002).

60. *Smith*, 343 S.E.2d at 519; *Branham*, S.E.2d at 26.

61. *Present*, MERRIAM-WEBSTER, <http://www.merriam-webster.com/dictionary/present> (last visited Oct. 21, 2016).

62. *See Saldierna*, 775 S.E.2d at 330. *But see* *State v. Reed*, 590 S.E.2d 477, 2004 WL 77759, at *3–6 (N.C. Ct. App. Jan. 20, 2004) (unpublished table decision) (holding that a defendant did not clearly invoke a constitutional right when he said, “if you wait until my dad comes, I’ll tell you everything,” *id.* at *3).

63. *See Smith*, 343 S.E.2d at 522; *Branham*, 569 S.E.2d at 27–29; *see also* *State v. Hunt*, 306 S.E.2d 846, 848–50 (N.C. Ct. App. 1983) (holding that a sixteen-year-old's request to have his parents present was an invocation of this right and subsequent interrogation by police without a parent present violated this right).

64. *See State v. Golphin*, 533 S.E.2d 168, 225 (N.C. 2000) (adopting the unambiguous invocation standard from *Davis v. United States*, 512 U.S. 452, 459, 461–62 (1994)).

The *Saldierna* court dismissed *Golphin*, however, and reasoned that the *Davis* standard did not apply because it only controlled the federally established rights of section 7B-2101(a)—codified in subsections (1), (2), and (4)—and that subsection (3) was a special statutory right and different from the other enumerated rights within section 7B-2101(a).⁶⁵ The court distinguished *Smith* and *Branham* by claiming that those cases do not control its analysis because they do not deal with a juvenile’s ambiguous request to invoke section 7B-2101(a)(3).⁶⁶ Ultimately, the *Saldierna* court failed to apply *any* precedential or rational application and, instead, held section 7B-2101(a)(3) to a new, higher standard that required law enforcement officers to clarify a juvenile’s ambiguous statement that may invoke the right to have a parent present during a custodial interrogation.⁶⁷

The creation of this new requirement, however, blatantly contradicts *Golphin*’s additional holding that law enforcement officers are not required to clarify a juvenile’s ambiguous statement that possibly touches on the invocation of a *Miranda* right.⁶⁸ The *Saldierna* court supported its decision to create the new clarification requirement by reiterating that section 7B-2101(a)(3) is an additional state statutory protection to juveniles, which goes beyond the normal rights and protections established in *Miranda*.⁶⁹ The *Saldierna* court held that its review of section 7B-2101 revealed that the NCGA intended to hold this statutory right to a different standard of protection than the one afforded to the *Miranda* rights codified in section 7B-2101(a).⁷⁰ The *Saldierna* court also reasoned that the new requirement “reflect[ed] the [NCGA’s] intent that law enforcement officers proceed with great caution in determining whether a juvenile is attempting to invoke this right.”⁷¹ This argument, however, was flawed because the NCGA’s structuring⁷² of section 7B-2101(a) indicated that it intended all the listed rights to be held to the same invocation standard and did not intend to separate the standards, as the *Saldierna* court did.

Second, the *Saldierna* court’s determination of the NCGA’s intent behind section 7B-2101 is contradicted and unsupported by the application of standard methods of statutory interpretation and construction. In *State v. Oglesby*, the North Carolina Supreme Court recognized that it was “bound by well-accepted rules of statutory

65. *Saldierna*, 775 S.E.2d at 332–33.

66. *Id.*

67. *Id.* at 334.

68. *See Golphin*, 533 S.E.2d at 225.

69. *Saldierna*, 775 S.E.2d at 332–33; *see also* *State v. Fincher*, 305 S.E.2d 685, 692 (N.C. 1983) (holding that a juvenile defendant’s right to have a parent present during questioning is not derived from the Constitution, but from a state statute).

70. *Saldierna*, 775 S.E.2d at 333.

71. *Id.*

72. The “structure” of section 7B-2101 refers to the intentional choice of words, phrases, and language, as well as the physical layout, punctuation, and joining of the phrases that compose the statute. *See* discussion *infra* pp. 183–86.

construction.”⁷³ In *State ex rel. Hunt v. Reinsurance Facility*, the North Carolina Supreme Court affirmed that the primary task of statutory interpretation was to ensure that the legislative intent is given effect.⁷⁴ Legislative intent is identified by looking at the plain language of the statute,⁷⁵ as well as the construction of the statute itself.⁷⁶ Unfortunately, the *Saldierna* court never analyzed the plain language or the actual construction of section 7B-2101. Such analysis would have revealed that the NCGA’s intent in promulgating section 7B-2101 was unsupported by the *Saldierna* court’s determination that section 7B-2101(a)(3) was meant to be held to a different invocation standard.

The *Saldierna* court failed to examine the plain language of section 7B-2101 in its analysis of legislative intent. In *Oglesby*, the North Carolina Supreme Court examined the plain language and meaning of section 7B-2101(a)(3), as well as the words the NCGA chose in creating it.⁷⁷ The court decided not to adopt an alternative meaning contrary to the one expressed by the plain and unambiguous language used in the statute.⁷⁸ In *Oglesby*, a juvenile in a custodial interrogation requested to speak with his aunt, attempting to invoke the right and protection of section 7B-2101(a)(3).⁷⁹ The court examined the plain language of section 7B-2101(a)(3) and held that the juvenile’s “aunt” did not qualify as a parent, guardian, or custodian as express in the statute.⁸⁰ In the decision, the court explained that it was bound by the plain and unambiguous meaning of the language of the statute, which illustrated the NCGA’s intent in creating section 7B-2101.⁸¹

Oglesby stands for the proposition that the NCGA likely intended section 7B-2101(a)(3) to be invoked when a juvenile actually requested to have a parent present during questioning, provided the person requested was, in fact, the juvenile’s parent. The holding of the North Carolina Supreme Court in *Smith* directly supports this intent because it held that section 7B-2101(a)(3) was invoked when a juvenile specifically asked to have his parent brought to the station during his custodial interrogation.⁸² The North Carolina Court of Appeals also followed this intent in *Branham* when it determined that a juvenile invoked section 7B-2101(a)(3) when he

73. 648 S.E.2d 819, 822 (N.C. 2007).

74. 275 S.E.2d 399, 405 (N.C. 1981).

75. *First Bank v. S & R Grandview, L.L.C.*, 755 S.E.2d 393, 394 (N.C. Ct. App. 2014).

76. *Elec. Supply Co. v. Swain Elec. Co.*, 403 S.E.2d 291, 294 (N.C. 1991).

77. *See Oglesby*, 648 S.E.2d at 822.

78. *Id.*

79. *Id.*

80. *Id.*

81. *Id.*

82. *See State v. Smith*, 343 S.E.2d 518, 522 (N.C. 1986), *abrogated by State v. Buchanan*, 543 S.E.2d 823, 828 (N.C. 2001).

specifically requested that his mother be present during his interrogation.⁸³ The plain language the NCGA used in section 7B-2101 thus illustrates its intent.⁸⁴

The *Saldierna* court, however, never analyzed or discussed the plain language of section 7B-2101. Had it conducted such an analysis, it would have realized that the NCGA specifically intended “[t]hat the juvenile has a right to have a parent . . . present during questioning.”⁸⁵ This language shows that the NCGA did not intend section 7B-2101(a)(3) to be invoked by a juvenile’s request to speak, call, or “consult” with a parent.⁸⁶ In actuality, the NCGA could have used all those words to indicate that subsection (a)(3) is triggered by even a juvenile’s broad request regarding the involvement of a parent in a custodial interrogation.⁸⁷ Instead, the NCGA’s decision to narrowly construct subsection (a)(3) indicates that a juvenile’s request to have a parent present should be specific—consistent with the unambiguous requirement under *Golphin*.⁸⁸

The *Saldierna* court also never discussed the specific construction of section 7B-2101 in its analysis. In *Progressive American Insurance Co. v. Vasquez*, the North Carolina Supreme Court indicated that when items appear in a list, joined by semicolons and the conjunctive word “and,” all the listed items relate to one another and are not to be treated separately.⁸⁹ Section 7B-2101(a) contains four juvenile rights: subsections (1), (2), and (4) contain the federal rights enumerated in *Miranda*, and subsection (3) is the added state statutory right for juveniles to have a parent present during a custodial interrogation.⁹⁰ These four rights appear in section 7B-2101(a) in a list, joined by semicolons and the conjunctive word “and.”⁹¹

This construction shows that the NCGA intended to have all the enumerated rights in section 7B-2101(a) held to the same standard of application and invocation and not to be separated as independent clauses held to individual standards, as the

83. See *State v. Branham*, 569 S.E.2d 24, 27 (N.C. Ct. App. 2002).

84. See *First Bank v. S & R Grandview, L.L.C.*, 755 S.E.2d 393, 394 (N.C. Ct. App. 2014) (stating that “[t]he plain language of a statute is the primary indicator of legislative intent”).

85. N.C. GEN. STAT. § 7B-2101(a)(3) (2015) (emphasis added) (amending N.C. GEN. STAT. § 7B-2101(b) (1998)).

86. The NCGA specifically grants “[t]hat the juvenile has a right to consult with an attorney and that one will be appointed for the juvenile if the juvenile is not represented and wants representation.” *Id.* § 7B-2101(a)(4).

87. Arkansas specifically uses such language in its juvenile code, stating that law enforcement cannot question a juvenile who “[w]ishes to speak with his or her custodial parent, guardian, or custodian or to have that person present.” ARK. CODE ANN. § 9-27-317(i)(2)(c)(ii) (2016). Alabama uses a broadly constructed phrase, which states that a juvenile has a “right to communicate with his or her parent.” ALA. CODE § 12-15-202(b)(4) (2016).

88. See *State v. Golpin*, 533 S.E.2d 168, 225 (N.C. 2000).

89. 515 S.E.2d 8, 11 (N.C. 1999).

90. *State v. Saldierna*, 775 S.E.2d 326, 332 (N.C. Ct. App. 2015).

91. § 7B-2101(a). “There is no reason why punctuation, which is intended to and does assist in making clear and plain the meaning of all things else in the English language, should be rejected in the case of the interpretation of statutes.” *State v. Bell*, 115 S.E. 190, 192 (N.C. 1922) (citation omitted).

Saldierna court concluded.⁹² After all, if the NCGA intended to hold section 7B-2101(a)(3) to a different standard of application, as the *Saldierna* court argued,⁹³ it could have separated subsection (3) from the list of *Miranda* rights and indicated that it was an additional protection for juveniles, but subject to a separate heightened standard of invocation. That the NCGA did not use this alternative construction illustrates that its intent was to apply a single standard of invocation to all four enumerated rights. This intent contradicts the *Saldierna* court's holding that a juvenile's right to have a parent present should be held to a different invocation standard than the other rights enumerated in the same statute.

Third, the *Saldierna* court supported its holding by citing to the NCGA's amendment of section 7B-2101(b).⁹⁴ In March 2015, the NCGA chose to amend section 7B-2101(b) to require any juvenile less than sixteen years of age to have a parent, guardian, or custodian present during police interrogation.⁹⁵ This was the only change the NCGA made to section 7B-2101.⁹⁶ Although the *Saldierna* court recognized that this change would not have applied to Saldierna, as he was already over sixteen years of age, it reasoned that the NCGA's decision to raise the age requirement in section 7B-2101(b) was "instructive that the lawmakers elected by the citizens of [North Carolina] have determined that children only months younger than Saldierna can never waive the right to have a parental figure or attorney present during such a high-stakes and potentially life-altering procedure."⁹⁷ The *Saldierna* court used this amendment to support its conclusion "[t]hat an ambiguous statement touching on a juvenile's right to have a parent present during an interrogation triggers a requirement for the interviewing officer to clarify the juvenile's meaning."⁹⁸

In *Ray v. North Carolina Department of Transportation*, the North Carolina Supreme Court considered the effect of prospective statutory amendments on current and pending cases.⁹⁹ Prospective amendments that act to clarify current statutes—amendments that do "not change the substance of the law but instead give[] further insight into the way in which the legislature intended the law to apply from its original enactment"—can be applied to and influence current and pending cases.¹⁰⁰ Prospective amendments that change the substance of the law only affect questions

92. See *Saldierna*, 775 S.E.2d at 332–34.

93. *Id.*

94. *Id.* at 334.

95. Act of June 4, 2015, ch. 58, pt. I, § 1.1, 2015 N.C. Sess. Laws 126, 126 (codified as amended in § 7B-2101). Previously only juveniles less than fourteen years of age were required to have a parent, guardian, or custodian present during interrogation. *Id.*

96. See *id.*

97. *Saldierna*, 775 S.E.2d at 334 (emphasis omitted).

98. *Id.*

99. 727 S.E.2d 675 (N.C. 2012).

100. *Id.* at 681.

of law occurring after the effecting date of the statute.¹⁰¹ The amendment of section 7B-2101 is a substantive change as it changed the permissible age for a waiver of a parent's presence. There is no clarification in the amended statute that would allow it to apply, in any fashion, to the inquiry before the *Saldierna* court. Therefore, the *Saldierna* court's use of the prospective amendment in any way to support its position was misplaced and improper.

Applying accepted canons of construction to the amended statute further undermines the *Saldierna* court's holding. Legislative intent can be identified through the use of canons of construction,¹⁰² such as the reenactment doctrine¹⁰³ or legislative silence.¹⁰⁴ In *State v. White*, the North Carolina Court of Appeals acknowledged that courts can determine legislative intent by examining the phraseology and word construction used in a statute, as well as the law as it existed before the statute was created or modified.¹⁰⁵ In *Scott v. Scott*, a justice of the North Carolina Supreme Court stated: "I am pleased to see this [c]ourt return . . . to the undiluted application of the doctrine of statutory construction inferring legislative approval of the decisions of this [c]ourt from legislative silence in the face of those decisions."¹⁰⁶

According to the reenactment doctrine, when a legislature reenacts a statute with unchanged and previously used statutory language and construction, it represents an implied approval of the prior administrative construction.¹⁰⁷ Additionally, legislative silence during the reenactment process is persuasive evidence that the current judicial holdings and interpretations of the statute are correct and consistent with the overall legislative purpose of the statute.¹⁰⁸

Application of the reenactment doctrine reveals that the NCGA was satisfied with the phrasing and construction of section 7B-2101(a) as it only amended section

101. *See id.*

102. *See generally* Jacob Scott, *Codified Canons and the Common Law of Interpretation*, 98 GEO. L.J. 341 (2010) (discussing courts' use of canons of construction in statutory interpretation to determine legislative intent behind the creation and construction of statutes).

103. *See* Bryan T. Camp, *A History of Tax Regulation Prior to the Administrative Procedure Act*, 63 DUKE L.J. 1673, 1708 (2014) (discussing the emergence of the reenactment doctrine).

104. *See* RON VILLANOVA, LEGAL METHOD 114–16 (1999).

105. 294 S.E.2d 1, 2 (N.C. Ct. App. 1982).

106. 442 S.E.2d 493, 499 (N.C. 1994) (Mitchell, J., concurring).

107. Camp, *supra* note 103, at 1708; *see also* Girouard v. United States, 328 U.S. 61, 76 (1946) (finding that the failure of the legislature to alter a statute after it had been judicially construed, and the subsequent reenactment of the same statute, is implicit recognition that the judicial interpretation is correct); Brown v. Brown, 196 S.E. 333, 335 (N.C. 1938) (holding that a presumption exists that the legislature knew what the judicial interpretation of a statute was when it reenacted the statute using the same language); Plemmons v. City of Gastonia, 302 S.E.2d 905, 907 (N.C. Ct. App. 1938) (stating that the legislature's reenactment of "the operative portion of the statute, *verbatim* . . . emphasize[s] its satisfaction with the law as codified, and we are bound by such expressions of its intent").

108. *Scott*, 442 S.E.2d at 499 (Mitchell, J., concurring); *see* VILLANOVA, *supra* note 104, at 114–16.

7B-2101(b), leaving the remaining portions of section 7B-2101 unchanged.¹⁰⁹ Additionally, the NCGA's legislative silence concerning the unchanged portions of section 7B-2101 is persuasive evidence that the current judicial holdings concerning the application and protections of section 7B-2101(a) are consistent with the legislative intent behind promulgating section 7B-2101.¹¹⁰

Judicial precedent does not hold a juvenile's right to have a parent present during questioning to a different standard than the rest of the *Miranda* rights codified alongside it.¹¹¹ Additionally, the current version of section 7B-2101 does not indicate that subsection (a)(3) should be held to a separate standard of protection or invocation.¹¹² Lastly, the prospective section 7B-2101(b), effective December 1, 2015, does not hold subsection (a)(3) to a separate standard.¹¹³ If a legislature wants to achieve a specific result that is inconsistent with judicial precedent, the legislature must indicate "such an intent with unmistakable clarity."¹¹⁴ The NCGA has made it clear that section 7B-2101(a) is to be held to a uniform standard of application and protection. Thus, the *Saldierna* court erred in holding that Detective Kelly was required to clarify the meaning behind Saldierna's request to call his mother before continuing with her interrogation.¹¹⁵

The *Saldierna* court's holding illustrates the power of the judicial branch of government. The NCGA as the legislative branch of government in North Carolina had the responsibility and power to draft, approve, and enact section 7B-2101. Detective Kelly, under the authority of the North Carolina executive branch, applied section 7B-2101 first-hand to Saldierna during his arrest and interrogation. Ultimately, the North Carolina Court of Appeals, as the judicial branch, interpreted section 7B-2101 during its review of Saldierna's appeal. These functions are

109. Act of June 4, 2015, ch. 58, pt. I, § 1.1, 2015 N.C. Sess. Laws 126, 126 (codified as amended in N.C. GEN. STAT. § 7B-2101 (2015)).

110. See *Brown*, 196 S.E. at 335 (noting that a presumption exists that the legislature knew what the judicial interpretation of a statute was when it reenacted the statute using the same language); VILLANOVA, *supra* note 104, at 114–16.

111. See *State v. Golphin*, 533 S.E.2d 168, 224–25 (N.C. 2000) (applying the federal standard that requires the invocation of *Miranda* rights to be clear and unequivocal to juveniles in North Carolina who invoke their *Miranda* rights pursuant to section 7B-2101); *State v. Miller*, 477 S.E.2d 915, 920–21 (N.C. 1996) (holding that a juvenile had effectively waived his right to have his mother present during questioning, resulting in no violation of his additional juvenile *Miranda* rights); *State v. Smith*, 343 S.E.2d 518, 521 (N.C. 1986) (holding that a juvenile's right, pursuant to the statute, to have a parent or guardian present during questioning is analogous to the right to counsel under *Miranda* and entitled to the same protection), *abrogated on other grounds* by *State v. Buchanan*, 543 S.E.2d 823, 828 (N.C. 2001); see also *In re W.R.*, 675 S.E.2d 342, 344 (N.C. 2009) (noting that both *Miranda* warnings and section 7B-2101 apply only to the custodial interrogation framework).

112. See N.C. GEN. STAT. § 7B-2101(a) (2015).

113. See § 1.1, 2015 N.C. Sess. Laws at 126.

114. YULE KIM, CONG. RESEARCH SERV., 97-589, STATUTORY INTERPRETATION: GENERAL PRINCIPLES AND RECENT TRENDS 17–18 (2008).

115. *State v. Saldierna*, 775 S.E.2d 326, 334 (N.C. Ct. App. 2015).

exemplary of the separation of powers theory in application. Although the powers of each branch may have been separate, they were not equal.

The *Saldierna* court, through its judicial power, transformed section 7B-2101(a) in both substance and application. The *Saldierna* court created a new requirement for section 7B-2101(a)(3) that was not intended or expressed by the NCGA when it created or amended the statute.¹¹⁶ This new requirement must now be followed by law enforcement officers when applying section 7B-2101(a)(3) in practice, even though the requirement is not codified in the language of section 7B-2101. Thus, the *Saldierna* court had the power to create, interpret, and apply legislation without restriction. In essence, this is a working definition of the tyranny that James Madison warned of back in 1788.¹¹⁷ Society should be cautious of judicial overreach disguised as application of statutory interpretation because it threatens the separation of powers.¹¹⁸

Law does not bind a defendant until the court interprets and gives effect to the statutory commands present within the legislation.¹¹⁹ Judicial statutory interpretation, however, should be based on established principles and should only be employed when precedent does not control the issue at bar. The *Saldierna* court incorrectly dismissed and distinguished judicial precedent controlling section 7B-2101(a)(3). It dismissed the unambiguous *Davis* standard adopted in *Golphin*.¹²⁰ It distinguished precedential rationales in *Smith* and *Branham* that further supported the position that section 7B-2101(a)(3) requires a juvenile to unambiguously invoke such right.¹²¹

In reaching its holding, the *Saldierna* court failed to employ any standard methods of statutory construction or interpretation to support its position. It did not look at the plain language or the NCGA's intentional construction of section 7B-2101. If it had, it would have realized that all four rights codified in section 7B-2101(a) were related and intended to be held to one universal standard. Further, the *Saldierna* court dismissed applicable canons of construction, such as the reenactment doctrine and the rule of legislative silence, which demonstrate that the NCGA was satisfied with judicial interpretations and applications of section 7B-2101(a)(3) because the NCGA chose not to change section 7B-2101(a) in the 2015 amendment.¹²²

The *Saldierna* court's decision to require law enforcement officers to clarify a juvenile's ambiguous statement that possibly invokes section 7B-2101(a)(3) is thus the result of misinterpreted legislative intent, improper analysis of precedent, and an

116. See *id.* at 330–34 (creating a new requirement for law enforcement officers not specifically listed within section 7B-2101 and not implemented by the North Carolina Supreme Court in previous analyses of ambiguous invocations of juvenile rights); see also § 7B-2101(a) (amending only subsection (b) of section 7B-2101 and leaving the remainder of the section untouched).

117. See THE FEDERALIST NO. 47, *supra* note 1, at 245.

118. See *Van Dresser v. Firlings*, 24 N.E.2d 969, 970 (Mass. 1940).

119. See U.S. CONST. art. III, § 2.

120. *Saldierna*, 775 S.E.2d at 332.

121. *Id.* at 331–33.

122. See N.C. GEN. STAT. § 7B-2101(a) (2015).

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error in using prospective laws to influence current legal issues. Ultimately, this holding is an example of the judiciary's power and ability to mold legislation, through statutory interpretation, to its own belief of how a law should be read, interpreted, and applied despite the legislature's intent. This holding is also an example of judicial overreach and the threat such power has to the separation of powers within both state and federal government.