Florida Public Defender Association

Juvenile Justice Steering Committee
Lunch 'n Learn Series – January 29, 2016

2015 Juvenile Case Law Update

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DETENTION

Secure: A child cannot be placed in secure detention for more than 21 days prior to an adjudicatory hearing being held. The child is entitled to immediate release.

J.S. v. State, __ So.3d __, 41 F.L.W. D181 (Fla. 5th DCA 1/12/2016)

TRIAL (ADJUDICATORY & EVIDENTIARY HEARINGS)

Evidence: The court errs in finding a VOP based solely on hearsay.

T.J. v. State, 162 So.3d 158 (Fla. 4th DCA 2015)

Evidence: Under sec. 90.204, Fla. Stat., the court can use information from any source of pertinent information as long as it is relevant and not excluded by privilege. However, to use the Kelley Blue Book online service as a source of information regarding the value of a used car, the state must present evidence that the source is reliable and used by persons in the field of valuing used cars. (See this case for an extensive discussion of the evidence needed to establish the value of a used car for restitution purposes, and the use of online sources to establish pricing.)

S.M. v. State, 159 So.3d 966 (Fla. 2d DCA 2015)

Evidence: A store security officer watching on closed circuit TV watch Child conceal items, and recovered the item upon confronting her. The TV stream was recorded, but at trial the state was unable to play the video. The loss prevention officer testified to what he observed from watching the live stream, and the court overruled a best evidence objection. Held: Testimony describing events that were observed live and recorded do not violate the best evidence rule, even if the recording is not admitted in evidence. The officer's testimony is not an attempt to prove the contents of the recording, and the live video feed is not a recording.

J.J. v. State, 170 So.3d 861 (Fla. 3d DCA 2015)

Evidence: Child's fingerprints were found on the window pane of the window through which a burglar entered and stole property belonging to the victim. No other evidence tied the Child to the crime. The Child and victim knew each other, and the Child had been in the victim's apartment previously. Held: The court errs in failing to grant a judgment of dismissal. The fingerprint evidence standing alone is insufficient to sustain the conviction when there is no evidence of when the prints were left on the window or other evidence tying the Child to the crime.

C.P.C. v. State, __ So.3d __, 40 F.L.W. D2444 (Fla. 5th DCA 10/30/2015)

Evidence: Words on a sign are not hearsay and are a verbal act. A sign has independent legal significance, and where a posted sign states that local police officers are authorized by the owners to direct any person to leave the premises, the court properly admits a photo of the sign to prove that the police officers had the authority to trespass a person off the premises.

A.J.M. v. State, __ So.3d __, 41 F.L.W. D157 (Fla. 4th DCA 1/13/2016)

Evidence: Child was adjudicated delinquent at hearing after the Court erroneously admitted and almost exclusively relied upon a video of the incident without the State laying a proper foundation.

L.T. v. State, __ So.3d __, 41 F.L.W. D234 (Fla. 1st DCA 1/20/16)

Procedure: The defense is not required in a delinquency trial to renew a motion for judgment of dismissal after the presentation of all evidence to preserve any error in the denial of the motion at the end of the state's case.

E.H. v. State, 170 So.3d 957 (Fla. 1st DCA 2015)

Judgment of Dismissal: The Child was charged with arson of a shed behind his house; was found guilty at an adjudicatory hearing and appealed the denial of his motion for judgment of dismissal. The court reversed because the state failed to establish a prima facie case of arson. It was error to deny the motion for judgment of dismissal where the state failed to prove that he willfully and unlawfully set the fire that caused damage to the shed. Although the state proved that the Child intentionally set a fan on fire and that a shed in the same general area burned, the state also carried the burden of connecting the two to prove a crime occurred, rather than an accident attributable to an 11-year-old child's poor judgment.

M.T.A. v. State, __ So.3d ___, 40 Fla. L. Weekly D2774 (Fla. 1st DCA 2015)

MOTION TO SUPPRESS

Search & Seizure: Due to the inherently dangerous nature of a traffic stop of a car containing multiple passengers, a LEO may order the passengers out of the car during the stop. When the car is found to be stolen, the LEO properly handcuffs and pats down the passengers. Even though the passengers are not under arrest, it is proper to place a handcuffed passenger in the patrol car while the officer investigates the circumstances of the stolen car.

Upon patting down a passenger, the officer felt an object in his pocket which the officer identified as a baggie containing plant-like material. The officer did not know what the material was when he felt it, and he located no bulges or anything which resembled a weapon. He removed the item from the Child's pocket and found marijuana. The trial court denied a motion to suppress.

Held: Because there was no indication the officer thought the item as a weapon, and he could not immediately identify the item as marijuana, the "plain feel" doctrine does not apply and the court errs in failing to suppress.

G.M. v. State, 172 So.3d 963 (Fla. 4th DCA 2015)

Search & Seizure – *Terry* stop: A police officer was investigating a truly anonymous tip that certain persons were selling drugs. The officer approached and saw two persons at the scene in a car, stopped them, and asked if he could search. The defendant produced a bag of marijuana. Held: The officer saw no suspicious activity to corroborate the tip, and the officer had no reasonable suspicion that the defendant was doing anything wrong. The court errs in failing to suppress.

A.P. v. State, __ So.3d __, 41 F.L.W. D179 (5th DCA 1/15/2016)

Investigatory Stop: LEOs observed the Child meet with a known prostitute and drug user. The officers observed him exiting the back door of an abandoned home which was part of the "Board and Secure" program, located in an area known for criminal activity, and specifically marked with a sign which contained a warning that trespassers would be arrested for violating the city code. A search revealed cocaine. In denying the motion to suppress, the court found the officers had reasonable suspicion under the totality of the circumstances that the Child had committed, was committing, or was about to commit a crime. Therefore, the investigatory stop was not unlawful, and there was no error in denying his motion to suppress.

D.T. v. State, 178 So.3d 949 (Fla. 4th DCA 2015)

Abandoned property: Where the Child placed his backpack/book bag on the ground at the specific request of the deputy, then stepped away, and there was no evidence that he did or said anything that indicated he planned to leave without his bag once the encounter with law enforcement concluded, the state failed to prove that he abandoned his backpack. Therefore the court erred in relying upon officer safety as a basis for denying the motion to suppress the marijuana located within the backpack where there was no testimony that he did anything to raise officer safety concerns during the encounter with the deputies. The court remanded for further proceedings, including entry of an order on the issue of whether, under the totality of the circumstances, the Child gave unequivocal, voluntary consent to the search.

K.W. v. State, __ So.3d __, 40 Fla. L. Weekly D2805 (Fla. 5th DCA 12/18/2015)

DISPOSITION

E.A.R.: The court found the Child guilty of grand theft and ordered a PDR, and the order required DJJ to recommend a restrictiveness level recommendation in the event they also recommended probation. The department recommended probation, and recommended low risk commitment if the court did not approve of the probation recommendation. At disposition, the court imposed a low risk commitment without doing an *E.A.R.* analysis. Held: *E.A.R.* applies only when the court seeks to impose a commitment level different than the department recommends. Probation is not a commitment level. Thus, when DJJ recommends probation and a low-risk commitment if the court does not accept probation, there is no error under *E.A.R.*

(See this case for approval of the First and Second DCA's approach to the applicability of *E.A.R.* under these circumstances.)

D.R. v. State, 178 So.3d 478 (Fla. 4th DCA 2015)

E.A.R.: When the court wants to disregard DJJ's recommendation of probation, the court must then seek a commitment restrictiveness level recommendation from the department. The court cannot order a commitment without getting a level recommendation from DJJ. (See this case for discussion of the proper procedure under *E.A.R.* to order a commitment over DJJ's recommendation of probation in the case of a juvenile sex offender.)

D.G. v. State, 170 So.3d 1 (Fla. 2d DCA 2015)

E.A.R.: When DJJ recommends probation and the court wants to commit the Child, the court must send the case back to DJJ for a commitment level recommendation. When DJJ recommends a minimum restrictiveness level

commitment and the court overrides it to impose a moderate risk commitment, the commitment is reversed when the court's reasons for choosing a level different than that recommended by DJJ is not shown by a preponderance of the evidence. (See this case for discussion of the steps the court must use in imposing a more severe commitment level disposition than that recommended by DJJ.

R.R.R. v. State, 173 So.3d 1084 (Fla. 2d DCA 2015)

E.A.R.: The Child appealed the trial court's disposition order adjudicating him delinquent and committing him to the custody of the Department of Juvenile Justice for placement in a low-risk residential program. He argued that the trial court improperly departed from the Department's recommendation of probation without providing sufficient reasons in violation of *E.A.R. v. State*, 4 So.3d 614 (Fla. 2009), and by imposing commitment without input from the Department on the appropriate restrictiveness level. Resolution of both issues is controlled by the decision in *B.K.A. v. State*, 122 So.3d 928 (Fla. 1st DCA 2013). The court affirmed the trial court's decision to adjudicate him delinquent, but reversed the particulars of the commitment and remanded with instructions for the trial court to receive a recommendation from the Department regarding a restrictiveness level before committing him.

M.T.G. v. State, 165 So.3d 871 (Fla. 1st DCA 2015)

Credibility: The court errs in imposing a harsher sentence than it would have otherwise based on the court's conclusion that the Child lied on the stand. At sentencing the court cannot consider the truthfulness of the Child's trial testimony.

R.M.T. v. State, 157 So.3d 441 (Fla. 2d DCA 2015)

Commitment/MM: Under sec. 985.441(2)(d), the court can commit a Child to a non-secure residential program for a misdemeanor so long as the court makes written findings that the protection of the public requires such placement or that the particular needs of the Child would be best served by such placement.

R.S.C. v. State, 157 So.3d 541 (Fla. 1st DCA 2015)

Commitment/MM: When the Child is on probation for misdemeanors and commits technical VOPs, under sec. 985.441(2) he can be committed at most to a non-secure residential placement. The court errs in imposing a high-risk placement.

I.A. v. State, 163 So.3d 671 (Fla. 1st DCA 2015)

Commitment: When the Child enters a plea with an agreed disposition of a suspended low-risk commitment, upon finding a VOP the court can order a low-

risk commitment without getting a restrictiveness level recommendation from DJJ. A Child can properly waive a PDR, and when the court follows the agreed disposition and then enters the disposition that was agreed upon initially upon finding a VOP, no PDR or recommendation is required.

A.L.M. v. State, 176 So.3d 1026 (Fla. 1st DCA 2015)

Orders: If a discrepancy exists between the written disposition and the oral pronouncement, the written disposition must be corrected to conform to the oral pronouncement.

C.M. v. State, 170 So.3d 855 (Fla. 2d DCA 2015)

Jurisdiction: The court loses jurisdiction to impose restitution once the Child turns 19.

D.A.B. v. State, 156 So.3d 582 (Fla. 5th DCA 2015)

Jurisdiction: The Child pled to a sex offense and asked to extend his time for disposition so he could complete a sex offender program. As part of the agreement extending the disposition, he agreed that he could be committed until age 21 under Sec. 985.0301(5)(h). He failed to complete the program, and he was committed to a program until age 21 even though by that time he was over age 19. Held: Because he had agreed to the extension, keeping him in the program until 21 was permissible.

T.D. v. State, 172 So.3d 1024 (Fla.1st DCA 2015)

Sex Offender Registration: Under sec. 943.0435(1)(a)1.d, a juvenile 14 or over who commits lewd molestation must register as a sex offender only if the molestation "involved unclothed genitals." Where the court finds that the Child touched clothed parts of the victims, he cannot be required to register as a sex offender.

M.B. v. State, 159 So.3d 960 (Fla. 5th DCA 2015)

Cost of Investigation: At Disposition, the trial court imposed costs of investigation. The Child argued on appeal that the relevant statutes only authorized imposition of the cost of prosecution, but not investigation, in juvenile cases. In upholding the imposition of costs of investigation, the court noted that the legislature enacted section 985.032(2) which reads: "A juvenile who has been adjudicated delinquent or has adjudication of delinquency withheld shall be assessed costs of prosecution as provided in s. 938.27." Because the relatively new section authorizes the assessment of costs of prosecution "as provided in s. 938.27," -- which expressly and unambiguously defines costs of prosecution as

"including investigative costs" -- the plain language of the statute authorizes the assessment of investigative costs in juvenile cases.

Q.Q.P. v. State, __ So.3d __, 41 Fla. L. Weekly D60a (Fla. 5th DCA 12/31/2015)

Orders/Probation Condition: The Child was charged with Battery on a county bus driver, entered a plea, and adjudication of delinquency was withheld. The Dispo Order included a requirement to submit to hepatitis and HIV testing. The court impermissibly used Rule 3.800(c) as a backdoor mechanism to impose hepatitis and HIV testing when it was not permitted to do so under section 960.003 of the Florida Statutes. The plain language of section 960.003(4) provides for testing following "delinquency adjudication." While the term "delinquency adjudication" is not defined in chapter 960, case law establishes that statutory reference to a juvenile who has been adjudicated delinquent does not encompass a juvenile for whom adjudication has been withheld.

P.R. v. State, __ So.3d ___, 41 Fla. L. Weekly D134 (Fla. 4th DCA 2016)

RESTITUTION

Speculation: The court errs in imposing restitution where the victim testifies that the damage to her car cost "probably" $479. When the victim does not present a receipt, figures preceded by "probably," "like," and "I think." all render the total speculative and not sufficiently supported by evidence.

K.R. v. State, 155 So.3d 507 (Fla. 4th DCA 2015)

Jurisdiction: The court loses jurisdiction to impose restitution once the Child turns 19.

D.A.B. v. State, 156 So.3d 582 (Fla. 5th DCA 2015)

Fair Market Value: Under sec. 90.204, the court can use information from any source of pertinent information as long as it is relevant and not excluded by privilege. However, to use the Kelley Blue Book online service as a source of information regarding the value of a used car, the state must present evidence that the source is reliable and used by persons in the field of valuing used cars. (See this case for an extensive discussion of the evidence needed to establish the value of a used car for restitution purposes, and the use of online sources to establish pricing.)

S.M. v. State, 159 So.3d 966 (Fla. 2d DCA 2015)

Fair Market Value (depreciation): The court errs in adding an arbitrary depreciation percentage across the board for various items stolen or damaged during a burglary. Restitution must be based on testimony regarding the items fair

market value. The court must indicate the amount of restitution it orders for each item, or at least each class of items. The court errs in ordering restitution for repairs to a home when the victim "thought" the repairs would total $400.

D.D. v. State, 172 So.3d 969 (Fla. 4th DCA 2015)

Fair Market Value (vs. Replacement value): Evidence of value of a cell phone is insufficient where the state presents only replacement value. Although the victim testified that he had his original sales receipt, the state neglected to ask him about the original purchase price of the phone, a fact which, when combined with testimony about the phone's age, condition, and how it had been customized, would have supported a finding that the market value of the phone at the time and place of the offense was at least $300. Replacement value is a proper measure only if the fair market value cannot be sufficiently established.

E.G. v. State, __ So.3d __, 40 F.L.W. D2731 (Fla. 4th DCA 12/9/2015)

NOTE: If your judge needs a lot of cases to get the point regarding the proof needed to establish value for restitution purposes, see:

Schenk v. State, 150 So.3d 275 (Fla. 5th DCA 2014)
J.A.B. v. State, 148 So.3d 151 (Fla. 5th DCA 2014)
Prinz v. State, 149 So.3d 65 (Fla. 4th DCA 2014)
Phillips v. State, 141 So.3d 702 (Fla. 4th DCA 2014)
D.J.R. v. State, 139 So.3d 458 (Fla. 1st DCA 2014)
J.W.A. v. State, 128 So.3d 912 (Fla. 1st DCA 2013)

Presence: A Child can waive is presence at a restitution hearing, or his waiver can be implied by his voluntary absence from the hearing. Under sec. 985.437(2), the court errs in imposing restitution at the rate of $30 per month without making a finding that the amount is within the range of what the Child and parent can reasonably be expected to pay. Where the defense preserves the error and the court does not make sufficient findings regarding the Child's ability to pay, the restitution order is reversed.

L.W. v. State, 163 So.3d 598 (Fla. 3d DCA 2015)

VIOLATION OF PROBATION

Hearsay: The court errs in finding a VOP based solely on hearsay.

T.J. v. State, 162 So.3d 158 (Fla. 4th DCA 2015)

MISCELLANEOUS

Appeal: When the court enters a restitution order in a juvenile case, but does not enter a disposition order and instead makes the restitution order part of a diversion plan, no appealable order is entered. However, the restitution order can be reviewed by certiorari.

J.C. v. State, 159 So.3d 969 (Fla. 2d DCA 2015)

Appeal/Competency: Appellate court jurisdiction to review a nonfinal order requires a court rule. Under rule 9.145, the state may appeal a nonfinal order finding a juvenile incompetent to proceed. However, once the Child is found incompetent, the placement decision is a different issue under sec. 985.19 and rule 8.095. Because the placement decision is not covered by rule 9.145, the appellate court is without jurisdiction to hear an appeal by the state regarding the placement of an incompetent juvenile.

State v. K.S., 177 So.3d 294 (Fla. 1st DCA 2015)

Appeal/Competency: An order finding a Child competent to stand trial is not a dispositive order for appeal purposes. However, because competency relates to the issue of whether the plea is entered freely and voluntarily, it is one of a limited number of issues that can be appealed from a plea, but before it can be appealed the Child must first seek to withdraw the plea. This preservation issue applies to juvenile proceedings as well as adult. Thus, where the Child does not move to withdraw the plea, the issue is not preserved for appeal.

R.C. v. State, 157 So.3d 458 (Fla. 4th DCA 2015)

Contempt: The court errs in finding a juvenile in direct criminal contempt for things he did and said in court when the court failed to appoint counsel or obtain a waiver of counsel before proceeding with the contempt hearing.

M.D.M. v. State, __ So.3d __, 40 F.L.W. D2384 (Fla. 4th DCA 10/21/2015)

Dismissal by court: Where no motion to dismiss has been filed, the trial court is without authority to dismiss a criminal prosecution *sua sponte*. When the state has been unable to serve a juvenile with a notice to appear, the court cannot simply dismiss the petition. The prosecution has complete discretion on deciding who to prosecute.

State v. C.W., 166 So.3d 950 (Fla. 4th DCA 2015)

Dismissal by court: Under sec. 985.0301(6), the court has the authority *after* the adjudicatory hearing to end its jurisdiction over the Child. The court cannot,

however, use that section to dismiss a case *prior* to trial when the Child had left for another state and the state had refused to extradite him.

State v. D.A., 171 So.3d 229 (Fla. 4th DCA 2015)

Dismissal by court: The state appeals the trial court's dismissal of a petition for delinquency against J.Q., a minor. The trial court erred in *sua sponte* dismissing the petition prior to an adjudicatory hearing. The court reversed. The trial court relied on *State v. A.A.*, 110 So.3d 988 (Fla. 4th DCA 2013), in dismissing the petition. *A.A.*, however, is distinguishable. There, the state argued that the trial court lacked jurisdiction to dismiss a juvenile case where the juvenile had not been served. This court affirmed, holding that jurisdiction attached when the child was detained and taken into custody. Here, the trial court's jurisdiction was not in question. J.Q. properly and commendably concedes error. The court reversed and remanded for further proceedings

State v. J.Q., 178 So.3d 943 (Fla. 4th DCA 2015)

Withdrawal of Plea: Relief regarding the withdrawal of a plea in a juvenile case can be had only by petition for writ of habeas corpus.

R.E.C., III v. State, 159 So.3d 362 (Fla. 4th DCA 2015)

CRIMES: BURGLARY

Principal Theory: Mere presence at the scene of the crime, knowledge of the crime, and even flight from the scene are insufficient to show that a Child was an aider and abettor. Rather, to be a principal to the commission of a crime, one must have a conscious intent that the crime be done and must do some act or say some word which was intended to and does incite, cause, encourage, assist, or advise another person to actually commit the crime.

When the evidence shows that the Child was present at the scene when others were going in and out of a storage building, but the evidence does not show that Child was looking around or otherwise acting as a lookout, the court errs in finding that he committed burglary. The evidence is sufficient, however, to convict for trespassing and the conviction is reduced to that crime.

K.B. v. State, 170 So.3d 121 (Fla. 2d DCA 2015)

Evidence: Child's fingerprints were found on the window pane of the window through which a burglar entered and stole property belonging to the victim. No other evidence tied the Child to the crime. The Child and victim knew each other, and the Child had been in the victim's apartment previously. Held: The court errs in failing to grant a judgment of dismissal. The fingerprint evidence standing alone

is insufficient to sustain the conviction when there is no evidence of when the prints were left on the window or other evidence tying the Child to the crime.

C.P.C. v. State, __ So.3d __, 40 F.L.W. D2444 (Fla. 5th DCA 10/30/2015)

CRIMES: INTRODUCTION OF FIREARM INTO COUNTY DETENTION FACILITY

A Juvenile Assessment Center ("JAC") is not a county detention center for purposes of introduction of a firearm into a detention facility under sec. 951.22. Because a juvenile is "taken into custody" and is not arrested, and he is charged with a "delinquent act" and not charged with a misdemeanor or felony, a JAC does not meet the definition of a "county detention facility" in sec. 951.23(1)(a). In addition, the court erred in imposing a $100 cost of prosecution on a juvenile under sec. 938.27 (but see sec. 985.032, effective July 1, 2013, permitting the imposition of a cost of prosecution).

J.J. v. State, __ So.3d __, 40 F.L.W. D2391 (Fla. 2d DCA 10/21/2015)

CRIMES: LOITERING AND PROWLING

Child's act of congregating in a high crime area at 3:30 p.m. and then dispersing when the police arrive is only vaguely suspicious conduct and cannot support a conviction for loitering. The conduct fails to support the first element of loitering.

D.J.E. v. State, 178 So.3d 78 (Fla. 1st DCA 2015)

CRIMES: POSSESSION

Constructive: The Child was arrested, handcuffed, and placed in the back of a patrol car. He trashed around for a while, and after he was removed the officer found a baggie of cocaine between the door and seat. She testified that it had not been there when she began her shift and the Child had been the only person in the back seat. Held: The evidence is insufficient to show that he constructively possessed the cocaine. (See this case for extensive discussion of the elements of constructive possession.)

R.C.R. v. State, 174 So.3d 460 (Fla. 4th DCA 2015)

CRIMES: RESISTING OFFICER

Probable Cause: The Child was convicted of resisting arrest without violence after fleeing from a traffic stop. Because the officer did not have a lawful basis for the traffic stop, the court reversed. The State asserts that the officer was justified

in stopping him because the officer believed that he was not old enough to operate a scooter. There was no evidence that the officer knew his birthday. He was about 16 years and 9 months old. Therefore, the officer's knowledge was stale. The State asserts that the officer's attempted stop was justified because the Child was not wearing protective eyewear. Section 316.211(3)(a) exempts from the requirement of protective eyewear those operators who are at least 16 and who are operating motorcycles either powered by motors smaller than 50 cubic centimeters or rated not in excess of two brake horsepower. The State failed to produce evidence that the scooter was not exempted.

W.B. v. State, __ So.3d __, 40 Fla. L. Weekly D2556 (Fla. 3rd DCA 2015)

Note: Cases reported through 1/27/16. If no "So.3d" citation listed, then cases were not final as of this date.

The Presenters would like to thank the Florida Public Defender Association for promulgating the weekly Florida Law Weekly updates relating to criminal law, as well as Kurt Erlenbach, for weekly updates in the Florida Criminal Cases Notebook. Any errors in citation or interpretation of the cases are the responsibility of the Presenters and not the FPDA or Mr. Erlenbach.