FLORIDA PUBLIC DEFENDER ASSOCIATION

2017 JUVENILE CASE LAW UPDATE
FPDA JUVENILE PROGRAM

32nd ANNUAL WINTER TRIAL WITH STYLE

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Note: Cases reported through 11/10/17. If no "So.3d" citation listed, then cases were not final as of this date. For informational purposes, the date format in the citations are expanded to show when in 2017 a case was decided.

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.

2017 JUVENILE CASE LAW UPDATE

DETENTION

Electronic Monitoring: The trial court ordered the Child placed on electronic monitoring for more than 15 days after being adjudicated delinquent. Filing a writ of habeas corpus, the Child appealed the imposition of the EM past the 15 days, arguing the order was unlawful. Section 985.26(3), Florida Statutes (2016), provides that a Child may not be held in secure or non-secure detention care for more than 15 days following the entry of an order of adjudication. Electronic monitoring is considered to be a form of non-secure detention under section 985.03(18)(b), Florida Statutes (2017). The appellate court found the imposition of more than 15 days was unauthorized and remanded the case for entry of an order striking electronic monitoring.

D.P.O. v. State, 212 So.3d 1064 (Fla. 5th DCA 2/24/2017)

Pre-adjudication: The court must strictly comply with sec. 985.26 regarding detaining a Child in secure detention. When the Child is detained longer than 21 days without complying with the statute, the Child is entitled to release under a habeas petition.

Z.J. v. State, 224 So.3d 308 (Fla. 5th DCA 8/2/2017)

Post-Plea Detention/Written Reasons: The Child filed a petition for writ of habeas corpus, alleging that he was being wrongfully detained in secure detention. He pled to lewd and lascivious conduct on a victim less than twelve years of age, and the trial court ordered him held in secure detention while awaiting an opening in a non-secure residential commitment program. He did not score high enough for secure detention on his risk assessment instrument, and the State concedes that the trial court did not enter any written findings otherwise justifying secure detention. Generally, determinations regarding placement of a minor in secure detention are based on the risk assessment. However, section 985.255 permits the court to otherwise order secure detention based upon written findings. However, where a statute requires a written order giving findings and reasons, the transcript of the proceedings upon which the order was based cannot act as a substitute. Although the trial court made findings of fact at the hearing sufficient to support secure detention, the trial court failed to enter a written order reflecting those findings as required by statute. The court directed the trial court to either enter a written order justifying his secure detention or to order his release therefrom by 5:00 p.m. on the second business day following the date of issuance of this opinion. NOTE: This case pre-dates the change in the statute, effective 10/18/17.

T.M. v. State, __ So.3d.__, 42 Fla. L. Weekly D2091 (Fla. 5th DCA 2017)

Post-adjudication: The Child admitted to violations of probation in six separate cases and was sentenced to a non-secure residential commitment program. The trial court set a hearing date to determine the status of his placement in that program and ordered that he be detained until that hearing. At that hearing, the probation officer requested that he be further detained until a later date. The trial court set another hearing date for September 8, 2017 to determine his status again.

The record indicated that as of August 15, 2017, the Child had been held beyond the fifteen-day limit provided in section 985.27(1)(a), Florida Statutes (2017), and he was ordered released immediately from secure detention.

Q.B. v. State, 225 So.3d 954 (Fla. 5th DCA 2017)

MOTION TO SUPPRESS

***Terry* Stop:** Where the evidence shows that a LEO was investigating a robbery, and the officer found the Child in the area and ordered him to stop which led to him resisting, the evidence is insufficient to show that the officer had sufficient suspicion to make the stop. Whether an officer's well-founded suspicion is reasonable is determined by the totality of the circumstances that existed at the time of the investigatory stop and is based solely on facts known to the officer. Where the officer does not testify that she had a description of the Child, the evidence is insufficient to show a reasonable suspicion. When the officer stops the Child without a reasonable suspicion, the officer is not lawfully executing a legal duty, and a conviction for resisting without violence is reversed. When the resisting is the predicate offense for a burglary, the burglary likewise must be dismissed. Flight alone is insufficient to form the basis of a resisting charge. There must be additional factors, other than flight, which would justify a reasonable suspicion sufficient to make a stop.

(See this case for a discussion of resisting an officer attempting to make a *Terry* stop.)

B.M. v. State, 915 So.2d 649 (Fla. 2d DCA 3/10/2017)

Encounter: A LEO heard persons talking in a city park at night, and he decided to investigate. As he approached, the group started to walk away, and he told them to stop. The Child stopped and a pat-down revealed marijuana. Held: The court errs in denying a motion to suppress. The officer's testimony was clear that the Child was not free to leave, and the officer lacked reasonable suspicion to make the stop. The court errs in finding that the stop was an encounter.

N.S. v. State, __ So. 3d __, 42 F.L.W. D1162 (Fla. 4th DCA 5/24/2017)

Search and Seizure: A LEO saw the Child riding his bicycle without lights around 9:00 p.m. An investigation found that he was on probation with a 6:00 p.m. curfew, and he did not appear to be returning from work. The officer arrested him for the curfew violation, and a search revealed drugs. Held: While an officer cannot ignore things that may provide an innocent explanation, the fact that there might be an innocent explanation does not destroy probable cause to make an arrest. The fact that the Child was out three hours after curfew and there did not appear to be a valid excuse makes the arrest lawful. The officer did a reasonable investigation to establish probable cause.

State v. C.J., 219 So. 3d 974 (Fla. 4th DCA 5/31/2017)

TRIAL (ADJUDICATORY HEARING)

Prior Inconsistent Statement: The court errs in refusing to allow the state to refresh the recollection of a LEO with his audio recorded deposition. Just as a printed deposition transcript can be used to refresh a recollection, an audiotape also can be used to refresh or to impeach.

J.G. v. State, 213 So.3d 936 (Fla. 4th DCA 3/15/2017)

Judgment of Dismissal: The state's failure to present evidence identifying the victim's stolen car as the same car from which the Child was seen running requires the court to grant a judgment of dismissal. The fact that the Child was seen running from the car is insufficient evidence to support grand theft and burglary charges.

V.G. v. State, 224 So.3d 795 (Fla. 2d DCA 8/2/2017)

***Richardson* Hearing:** The Child was accused of having taken a Nintendo game system, five games, and a protective case for the Nintendo from his step-brother. On the morning of the adjudicatory hearing, the victim/step-brother informed the prosecutor that the Child had previously admitted to the victim/step-brother that the Child committed the theft. The prosecutor did not disclose the admission to the defense under the mistaken belief that the Child had waived disclosure by not deposing the victim/step-brother. The *Richardson* inquiry into the state's failure to disclose the victim's statement was inadequate where the trial court failed to address all four *Richardson* prongs, citing to *Knight v. State*, 76 So.3d 879, 888 (Fla. 2011) (explaining that when a party alleges a discovery violation, the trial court must inquire into the surrounding circumstances and determine (1) whether a discovery violation occurred, (2) "whether the State's discovery violation was inadvertent or willful," (3) "whether the violation was trivial or substantial," and (4) "most importantly, what affect [sic] it had on the defendant's ability to prepare for trial").

Z.L. v. State, __ So.3d __, 42 Fla. L. Weekly D1885 (Fla. 2nd DCA 8/30/2017)

DISPOSITION

Alternate Recommendation: DJJ recommended probation. The trial court erred in committing the Child to a non-secure primary residential treatment program without first obtaining a restrictiveness level from DJJ. State conceded error, and case reversed.

D.A.H. v. State, 212 So.3d 399 (Fla. 4th DCA 3/8/2017)

Alternate Recommendation: DJJ recommended probation on a solicitation to commit homicide charge and an alternate recommendation of commitment to a non-secure residential program. The trial court upwardly departed and committed the Child, who had no prior record and was abused by his family, to a maximum risk commitment program. Case reversed and remanded for Disposition to probation before a different judge.

D.V. v. State, 216 So.3d 3 (Fla. 4th DCA 3/22/2017)

Costs – "Additional Court Cost": The court reversed for correction of the probation order, which improperly includes in the Memorandum of Costs an "Additional Court Cost" of $65.00, as this cost may not be imposed in juvenile cases where adjudication is withheld.

C.M. v. State, __ So.3d __, 42 Fla. L. Weekly D2173 (Fla. 3rd DCA 2017)

Costs - Ordinance: A county may not adopt an ordinance under sec. 939.185(1)(a) imposing a court cost when adjudication is withheld.

H.S. v. State, __ So. 3d __, 42 F.L.W. D2114 (Fla. 3d DCA 10/4/2017)

Costs - Teen Court: Under sec. 938.19, a county can create a cost of up to $3 to fund teen court programs. However, under the statute, the cost can be imposed only when the court adjudicates the Child guilty and cannot impose it when the court withholds adjudication.

F.F. v. State, 218 So.3d 455 (Fla. 4th DCA 4/19/2017)

Costs - Transcription & Identify Codefendants: It is error to order the Child to pay transcription costs as a condition of his probation under sec. 27.52(6). Upon remand, the trial court was also directed to modify that portion of the probation order prohibiting him from having contact with the codefendants involved in the robbery and is directed to specify the name of the individuals with whom he is prohibited from being involved.

J.J.P. v. State, 219 So.3d 1007 (Fla. 2d DCA 6/9/2017)

E.A.R.: Where the court fails to articulate an understanding of the respective characteristics of the different restrictiveness levels and does not explain why the non-secure residential level placement was better suited to the Child's rehabilitative needs, the court errs in deviating from DJJ's disposition recommendation.

(See this case for an extensive discussion of the proper procedure for deviating from DJJ's recommendation.)

M.J. v. State, 212 So.3d 534 (Fla. 1st DCA 3/10/2017)

E.A.R.: The court errs in deviating from DJJ's recommendation of a non-secure commitment to a high-risk commitment when the sentencing order does not show how the high-risk treatment program better addresses the Child's needs.

A.V. v. State, 216 So.3d 698 (Fla. 2d DCA 4/12/2017)

E.A.R.: The State appeals the disposition of a juvenile delinquency case claiming that the trial court erroneously deviated from the DJJ's recommended disposition without giving reasons as required by *E.A.R. v. State*, 4 So.3d 614 (Fla.2009). In affirming, the appellate court affirmed

the trial court because it did not deviate from the Department's recommendation. The Child pled no contest to a misdemeanor battery charge, after which the trial court requested a predisposition report from the Department. Although DJJ recommended that the Child be committed to a non-secure residential commitment program (conditioned upon the court finding by a preponderance of the evidence that protection of the public requires such a placement or that the needs of the Child would be best served by such a placement), the trial court did not depart from DJJ's conditional recommendation by committing the Child to a minimum-risk, non-residential commitment program.

State v. I.D., 219 So.3d 249 (Fla. 1st DCA 2017)

E.A.R.: When DJJ recommends probation and the court decides to commit, the court must first return the case to DJJ for a recommendation regarding commitment level.

K.L.L. v. State, 244 So.3d 918 (Fla. 1st DCA 8/28/2017)

E.A.R.: The court violates *E.A.R.* by deviating from DJJ's disposition recommendation with nonspecific reasons. To deviate, the court must give a legally sufficient foundation for departing from the Department's recommendation, which is accomplished "by identifying significant information that [the Department] has overlooked, failed to sufficiently consider, or misconstrued with regard to the child's programmatic, rehabilitative needs along with the risks that the unrehabilitated child poses to the public." (See this case, Makar, J., concurring, for a criticism of the *E.A.R.* requirements as being beyond those required by statute.)

T.S. v. State, __ So. 3d __, 42 F.L.W. D2138 (Fla. 1st DCA 10/6/2017)

Order – Oral v. Written: In this *Anders* appeal, the Child appealed from a Disposition Order, withheld adjudication of delinquency, and placed him on probation. The court affirmed in all respects but noted that a possible sentencing error may exist in the actual disposition order. The disposition order reflects that the trial court imposed a total of $200 in costs and fees, whereas the trial court's oral pronouncement of sentence imposed a total of $150 in court costs. However, because the Child failed to preserve this potential error by filing a motion to correct sentencing error, this court must affirm. The affirmance is without prejudice for the Child to raise this possible sentencing error in an appropriate post-conviction motion.

R.L.F. v. State, -- So.3d __, 42 Fla. L. Weekly D2096 (Fla. 2nd DCA 10/4/2017)

Orders - Restitution: The court errs in ordering restitution for items listed by the victim at a restitution hearing but not listed in the Petition, police report/discovery, PDR or plea agreement.

J.D. v. State, 212 So.3d 1144 (Fla. 5th DCA 3/17/2017)

Reclassification of Offense (mask): Under sec. 775.0845, wearing a mask to conceal the offender's identity during any portion of the crime will qualify the offender for a sentence reclassification. The fact that the Child did not conceal his face with his shirt through the entire burglary does not prohibit the court from reclassifying the crime.

L.D.H. v. State, 212 So.3d 387 (Fla. 4th DCA 2/22/2017)

RESTITUTION

Hearsay (estimate): The State has the burden of presenting competent substantial evidence of the value of stolen property in a restitution hearing. Where the property is jewelry and the owner testifies only to what a jeweler told her the stolen items were worth, the evidence is insufficient to obtain a restitution order. A recitation of someone else's estimate of value is insufficient to support an order of restitution.

O.W. v. State, __ So. 3d __, 42 F.L.W. D613 (Fla. 1st DCA 3/15/2017)

Hearsay (estimate): Automobile repair estimates are hearsay and are not admissible to prove the amount of restitution owed by a defendant.

A.J.A. v. State, 215 So.3d 639 (Fla. 5th DCA 4/7/2017)

Items Not Listed: The court errs in ordering restitution for items listed by the victim at a restitution hearing but not listed in the delinquency petition, police report, PDR, plea agreement, or discovery documents.

J.D. v. State, 212 So.3d 1144 (Fla. 5th DCA 3/17/2017)

Range: Where the victim's testimony provides a range in possible values of stolen foreign currency, the court's restitution order is based on substantial, competent evidence if the court choses a value within but not outside that range [trial court erred in ordering $5000.00 in restitution based on the victim's testimony of a range from $2000.00 to $3600.00].

J.J.N. v. State, 214 So.3d 784 (Fla. 5th DCA 3/31/2017)

PROBATION

Special Condition: The court's requirement that the Child attend court every Friday as a condition of probation lacks a relationship to the crime for which he was convicted, does not relate to conduct which is itself not criminal, and is not reasonably related to future criminality. A requirement that a Child not participate in school sports is not reasonably related to rehabilitation and is stricken.

J.R.M. v. State, __ So. 3d __, 42 F.L.W. D2229 (Fla. 4th DCA 10/18/2017)

CRIMES: ASSAULT

The victim saw two people near his truck appearing to be trying to steal it. The victim drew his gun and one person ran. The Child was subdued on the ground, and the victim testified that the Child seemed to be reaching for his waist. The victim retrieved a pellet gun from the Child's waistband. Among other crimes, the Child was charged with assault. Held: no evidence was presented which showed a verbal threat or any overt act that could be construed as a threat, and the court errs in failing to dismiss the assault count.

J.S. v. State, 207 So.3d 903 (Fla. 4th DCA 1/4/2017)

CRIMES: BURGLARY

When the state fails to prove that the alleged victim was the owner of the vehicle defendant is charged with burglarizing, the court errs in failing to dismiss. Ownership is an essential element of burglary.

*B.R.W. v. State***,** 226 So.3d 366 (Fla. 2d DCA 9/15/2017)

CRIMES: DISRUPTION OF SCHOOL FUNCTION

Under sec. 877.13(1)(a), to commit the crime of disrupting the administration of a school, the state must show that the defendant intended to cause a disruption to school functions. The statute prohibits only expression or conduct which materially disrupts or interferes with normal school functions of activities. The fact that the Child and another student got into a fight on school grounds before the start of the school day does not show a violation of the statute. What ultimately got the other students' attention was the Child being escorted to the office. The court reversed for entry of a judgment of dismissal.

(See this case for a discussion of what actions are needed to show an intentional violation of school functions.)

H.N.B. v. State, 223 So.3d 308 (Fla. 4th DCA 7/19/2017)

CRIMES: IMPROPER EXHIBITION

Pocketknife: When the Child is charged with improper exhibition of a dangerous weapon that is not a firearm under sec. 790.10, the state is required to establish that the knife is not a "common pocketknife." Where the witness says the Child was holding a knife but could give no description of its appearance, characteristics, or dimensions, the state does not carry its burden and the court errs in failing to dismiss.

(See this case for discussion of the state's burden of proof when charging improper exhibition of a dangerous weapon and for a discussion of the "common pocketknife" exception.)

G.R.N. v. State, 220 So.3d 1267 (Fla. 4th DCA 6/21/2017)

CRIMES: POSSESSION OF DRUG PARAPHERNALIA

Where the Child is charged with possession of drug paraphernalia under sec. 893.147(1)(b), which prohibits possession of items designed for use in injection, ingesting, inhaling, or otherwise introducing drugs into the body, the Child cannot be convicted when the evidence shows he possessed items used to pack, repack, store, contain or conceal drugs in violation of sec. 893.147(1)(a). When the state charges the wrong section of the statute, the court errs in finding the Child guilty.

J.V. v. State, 221 So.3d 619 (Fla. 4th DCA 7/5/2017)

CRIMES: RESISTING OFFICER

An officer on patrol saw a group of five people standing together in a park. He saw smoke emanating from the group and smelled burning marijuana. He could not determine which person threw a cigarette on the ground, and he detained all of them. He told the group he was going to search them all, and the Child said he would not consent. The officer told him if he did not consent, the LEO would construe it as resisting and arrest him, which he did. The Child then admitted he had marijuana. The trial court denied a motion to suppress. Held: The officer was not engaged in the lawful execution of a legal duty when he detained the Child, thus arresting him for resisting was not lawful. The court erred in denying the motion to suppress. The fact that an officer sees marijuana smoke coming from a group of people does not provide sufficient suspicion to detain any of them.

B.G. v. State, 213 So.3d 1016 (Fla. 2d DCA 2/10/2017)

A LEO got a report of a light-skinned black male in shorts and a T-shirt looking in windows. The officer saw a person about a quarter of a mile away matching that description. The officer tried to stop him and the Child ran. He was charged with loitering and resisting. The court dismissed the loitering but found him guilty of resisting. Held: The evidence was insufficient to permit the officer to stop the Child. Under *Wardlow*, flight in a high-crime area may allow an officer to make a stop but without evidence that the area met that criteria, flight alone is not a sufficient basis to make a stop.

T.P. v. State, 224 So.3d 792 (Fla. 2d DCA 8/2/2017)

CRIMES: THEFT

The Child committed the offense of knowingly possessing a stolen driver's license under sec. 322.212 when the evidence shows he possessed and used a driver's license belonging to a person he did not know and who did not give him permission to have it.

S.C. v. State, 224 So.3d 249 (Fla. 3d DCA 7/12/2017)

Evidence that the Child was a passenger in a stolen vehicle is insufficient to show he committed theft of the vehicle. Where a stolen car was found outside the apartment where Child lived, and Child's fingerprint was found on the inside rearview mirror, the evidence is insufficient to sustain a finding that he stole the car.

A.D.P. v. State, 223 So.3d 428 (Fla.2d DCA 7/14/2017)

The state's failure to present evidence identifying the victim's stolen car as the same car from which the Child was seen running requires the court to grant a JOA. The fact that the Child was seen running from the car is insufficient evidence to support grand theft and burglary charges.

V.G. v. State, 224 So.3d 795 (Fla. 2d DCA 8/2/2017)

When there is no evidence regarding the value of a stolen iPad at the time it was stolen, and there was no evidence of the cost of replacement within a reasonable time after the offense, the court errs in finding the Child guilty of theft over $100 and less than $300.

Y.R. v. State, __ So.3d __, 42 F.L.W. D1837 (Fla.3d DCA 8/23/2017)

CRIMES: TRESPASS

Sec. 810.097(1), trespass on school grounds, does not require that the school personnel ask the trespasser his reasons for being on school grounds. When the school principal sees the Child on school grounds without permission, that evidence is sufficient for a prima facie case of trespassing on school grounds. (See this case for a discussion of the defense proposal that the state be required to ask the trespasser why he or she was present prior to making an arrest.)

J.H. v. State, 220 So.3d 508 (Fla. 3d DCA 5/31/2017)

MISCELLANEOUS

Competency: The court errs in accepting a stipulation to the Child's competency following an order for a competency exam. Even if the parties agree that based on the doctors' report the Child is competent, the court must make an independent evaluation of the reports before finding the Child competent to proceed.

(See this case for the proper procedures to follow in a juvenile's competency hearing.)

B.R.C. v. State, 210 So.3d 243 (Fla. 2d DCA 2/8/2017)

Competency: The court errs in proceeding with a VOP hearing when counsel brings to its attention that the Child is acting bizarrely and has reason to believe he is not competent. The court must order a competency evaluation. Once an evaluation is ordered, the court must review the reports and make an independent determination that the Child is competent. The court cannot rely on DDJ's report that the Child was found competent by their doctors. The case is remanded for a *nunc pro tunc* competency determination.

A.L.Y. v. State, 212 So.3d 399 (Fla. 4th DCA 3/8/2017)

Competency: Once the court enters an order finding a Child incompetent to proceed, the court thereafter must hold a hearing and enter a written order stating that competency has been restored. The failure to enter a written order gets reversal.

T.M. v. State, 214 So.3d 786 (Fla. 5th DCA 3/31/2017)

Competency: The court errs in proceeding with trial and disposition after ordering a competency evaluation but not holding a subsequent competency hearing.

D.B. v. State, 222 So.3d 627 (Fla. 4th DCA 6/21/2017)

Contempt: Two Children sought to quash a writ of bodily attachment based on their failure to appear at contempt proceedings on the grounds that the juvenile court did not have jurisdiction to find them in contempt and because they were not properly served with the order to show cause. The juvenile court was authorized to hold them in contempt; however, the trial court erred in denying their motion to quash a writ of bodily attachment because the record does not demonstrate that they were properly served. Their appearance at the hearing to contest jurisdiction and object based on lack of service of process did not waive service. The petition for writ of certiorari is granted, and the order of the trial court is quashed.

J.L. and J.L. v. State, 207 So.3d 1028 (Fla. 1st DCA 2017)

Contempt: The court errs in sentencing a Child to concurrent 30-day sentences for direct criminal contempt. The court is limited to 5 days for the first contempt and 15 days for the second.

*C.R.T. v. State***,** 215 So.3d 187 (Fla. 5th DCA 4/4/2017)

Contempt: The court errs in detaining a Child for ten days based on a finding of indirect criminal contempt without strictly following the requirements of rule 8.150 and sec. 985.037.

J.H. v. State, 216 So.3d 761 (Fla. 5th DCA 4/21/2017) and

F.P. v. State, 216 So.3d 762 (Fla. 5th DCA 4/21/2017)

Contempt: The violation of a curfew constitutes indirect criminal contempt, and the court errs in summarily placing the Child in detention. The court must follow the indirect criminal contempt provisions of sec. 985.037 before placing the Child in detention.

A.P. v. State, 215 So.3d 662 (Fla. 5th DCA 4/27/2017)

Habeas: Where a statute requires a written order giving findings and reasons, the transcript of the proceedings upon which the order was based cannot act as a substitute.

T.M. v. State, __ So.3d __, 42 Fla. L. Weekly D2091 (Fla. 5th DCA 2017)

Waiver of Counsel: It is fundamental error for the court to not make a proper inquiry into the Child's waiver of counsel at both plea and disposition hearings.

T.R. v. State, 216 So.3d 767 (Fla. 2d DCA 5/3/2017)