



Juvenile Justice Center News

VOLUME 1, ISSUE 3

Juvenile Justice Center



Florida Juvenile Case Law Update July 15, 2008

What's New? amended [Florida Rule of Juvenile Procedure 8.165\(a\)](#).

8.165(a) Duty of the Court. The court shall advise the child of the child's right to counsel. The court shall appoint counsel as provided by law unless waived by the child at each stage of the proceeding. Waiver of counsel can occur only after the child has had a meaningful opportunity to confer with counsel regarding counsel, the consequences of waiving counsel, and any other factors that would assist the child in making the decision to waive counsel. This waiver shall be in writing.

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DISCOVERY VIOLATIONS

[D.G.B., v. State](#) 2008 WL 2219327 (5th DCA 2008): The state violated discovery on two occasions. After examination of the record and considering various curative measures fashioned by the trial court, a mistrial was not required in order to ensure that the Defendant received a fair trial.

DISPOSITION

[T.D.D. v. State](#), 981 So. 2d 674 (2d DCA 2008): The trial court had two disposition hearings on the same crime and gave the child 15 days detention at each disposition hearing. The trial court also added a condition of anger management that was not part of the written oral findings at the first disposition hearing. The court followed: [Ashley v. State](#), 850 So. 2d 1265, 1267 (Fla. 2003) ("Once a sentence has been imposed and the person begins to serve the sentence, that sentence may not be increased without running afoul of double jeopardy principles."); [I.B. v. State](#), 771 So. 2d 1258, 1259 (Fla. 4th DCA 2000) (concluding that the trial court's action in setting aside a disposition order and then "resentencing appellant after his sentence had already been served" violated double jeopardy). Reversed and remanded to enter a disposition order consistent with the rulings made at the first hearing.

[A.T. v. State](#), 2008 WL 1806118 (4th DCA 2008): Sixteen year old girl committed to level high risk residential program, an upward departure from the PDR. There is no double jeopardy violation as the departure only increased the restrictiveness level. It was not a resentencing. Affirmed.

[X.H. v. State](#), 2008 WL 2605126 (5th DCA 2008): A trial court may disregard DJJ's recommendations if the court reasons and makes reference to the characteristics of the restrictiveness level and the needs of the child. Affirmed.

JUVENILE JUSTICE CENTER

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DOUBLE JEOPARDY

[A.M.W. v. State](#) 980 So. 2d 1219 (5th DCA 2008): A.M.W. argued that he may not be convicted of both grand theft of a firearm and third-degree grand theft of other items when both charges arise from the same burglary. A.M.W.'s adjudication for grand theft of a firearm was AFFIRMED.

[D.R. v. State](#), 2008 WL 2388027 (5th DCA 2008): Juvenile challenged his separate convictions on two counts of lewd and lascivious molestation based upon double jeopardy grounds. The 5th DCA found that the acts that gave rise to the separate charges arose from a single criminal episode. Case remanded with instructions that the trial judge strike Appellant's conviction as to one of the counts and resentence Appellant accordingly.

"...acts that gave rise to the separate charges arose from a single criminal episode."

MOTION TO SUPPRESS

[T.R.T. v. State](#) 2008 WL 2150930 (2^d DCA 2008): The child's motion to suppress the marijuana for an illegal search and seizure should have been granted. The state argued that the child's actions provided a reasonable suspicion that he was loitering or prowling however, in order to establish the crime of loitering or prowling, it must be shown that (1) the individual is loitering or prowling "in a place, at a time or in a manner not usual for law-abiding individuals," and (2) "the circumstances must 'warrant a justifiable and reasonable alarm or immediate concern for the safety of persons or property in the vicinity.'" The Supreme Court has warned against using this statute as a "catch-all" provision to detain suspicious individuals without a sufficient basis to sustain any other charge. Case reversed and remanded.

RESTITUTION

[C.Y. v. State](#) 2008 WL 2663750 (4th DCA 2008): The child has a right to be at a restitution hearing and must receive notice. The amount of restitution can not exceed an amount the child and the parent or guardian could reasonably be expected to pay or make. Reversed and remanded for new restitution hearing.

SUBSTANTIVE CASE LAW

Battery on Law Enforcement Officer

[C.M.M. v. State](#), 2008 WL 2309010 (5th DCA 2008): Law enforcement officer, who was working as a school resource officer, was executing a legal duty at the time he encountered and detained the child on school grounds since he was acting on a request from the administrative dean. Conviction for battery on a law enforcement officer upheld.

[C.B. v. State](#), 979 So. 2d 391 (2d DCA 2008): Because the record shows there was no lawful justification to detain the child until after she spit on the officer, the officers were not engaged in the exercise of their lawful duties when the battery occurred. It is unlikely that this case ever became an arrest case because there was no evidence in the record that either officer ever communicated to the child that she was under arrest. Reversed and remanded to the trial court with instructions to enter a corrected order placing the child on probation for battery (instead of the felony battery on a police officer) under section 784.03(1).

Carrying a Concealed Weapon

[J.R.P. v State](#), 979 So. 2d 1176 (3rd DCA 2008): Carrying a concealed weapon charge reversed. Section 790.001(13), Florida Statutes (2006), further defines a weapon as any “dirk, knife, metallic knuckles, slingshot, billie, tear gas gun, chemical weapon or device, or other deadly weapon except a firearm or a common pocketknife, plastic knife, or blunt-bladed table knife.” This was a common pocketknife. In [L.B. v. State](#), 700 So. 2d 370, 372 (Fla. 1997), the Florida Supreme Court held that a common pocketknife was a “type of knife occurring frequently in the community which has a blade that folds into the handle and that can be carried in one’s pocket.” *Id.* The Florida Supreme Court also relied on an opinion from the Attorney General stating that a knife with a blade of four inches or less is a common pocketknife.

Criminal Mischief

[W.F. v. State](#), 979 So. 2d 1171 (3rd DCA 2008): Criminal mischief case reversed because state did not prove the 11 year old acted with malice. To act “maliciously” for purposes of this statute, the offender must act “wrongly, intentionally, without legal justification or excuse and with the knowledge that injury or damage will or may be caused to another person or the property of another person.” “While malice does not require a specific intent to damage the property, malice cannot be presumed based upon a finding of property damage.” The court “must look to the circumstances surrounding the conduct which caused the damage, to determine whether the element of malice was present.”

“...resource officers are called upon to perform many duties not traditional to the law enforcement function, such as instructing students, serving as mentors and assisting administrators in maintaining decorum and enforcing school board policy and rules.”

Possession of Cannabis

[E.E. v. State](#), 980 So. 2d 623 (4th DCA 2008): Reversal of trial court's denial of appellant's motion for judgment of dismissal, because the state presented no evidence to show that appellant, who was driving his family's car with a passenger in the front seat, had knowledge of the presence of the small baggie of marijuana found under the driver's seat of the car and or that he had dominion and control over the drugs. See [J.G. v. State](#), 881 So. 2d 25, 26 (Fla. 4th DCA 2004); [J.M. v. State](#), 839 So. 2d 832, 834 (Fla. 4th DCA 2003); [Earle v. State](#), 745 So. 2d 1087 (Fla. 4th DCA 1999); [In the Interest of E.H.](#), 579 So. 2d 364 (Fla. 4th DCA 1991); [McClain v. State](#), 559 So. 2d 425 (Fla. 4th DCA 1990); [Hively v. State](#), 336 So. 2d 127 (Fla. 4th DCA 1976).

Theft

[M.D.S. v. State](#), 2008 WL 2356691 (2d DCA 2008): The circuit court adjudicated M.D.S. delinquent for grand theft of a motor vehicle according to Florida Statute 812.014(2)(c)(6), Fla. Stat. (2004). The child was found with the keys to a stolen vehicle in his pocket and wiping down the handle of the car. Based on that adjudication, the court also revoked M.D.S.'s juvenile probation in several other cases. The state did not present any evidence that the child was at the victim's house when the burglary occurred. The evidence was insufficient to prove the theft and the adjudication and probation revocations based on this adjudication were reversed.

[K.W. v. State](#), 2008 WL 2312506 (2d DCA 2008): State presented enough evidence that cell phone was worth more than \$100 to prove 1st degree petit theft. There was testimony that the cell phone cost \$450 three months previously and was in brand new condition. According to Florida Statute 812.014(2)(e), Fla. Stat. (2006). "Value means the market value of the property at the time and place of the offense or, if such cannot be satisfactorily ascertained, the cost of replacement of the property within a reasonable time after the offense." § 812.012(10)(a)(1). When direct testimony of fair market value of the stolen item is not available, the supreme court has set forth "four factors which the trier of fact can consider in ascertaining market value . . . : (1) original market cost; (2) manner in which the item was used; (3) the general condition and quality of the item; and (4) the percentage of depreciation."

[C.G. v. State](#), 981 So. 2d 1224 (1st DCA 2008): We reverse the juvenile disposition order by Judge Dempsey adjudicating the appellant guilty of evasion of transit fare under section 812.015(1)(j), Florida Statutes, because the state failed to present any evidence of the essential element of intent.

WRIT PRACTICE

[N.J.Gv. State](#), 2008 WL 2309008 (5th DCA 2008): Offenses by juveniles under chapter 316 are to be handled in county court. They cannot be moved to circuit juvenile court.

[S.P. v State](#), 2008 WL 2544234 (5th DCA 2008): The child failed to appear five times for court and the court gave her consecutive sentences for a total of 45 days. The public defender filed a writ of habeas corpus stating this violated 985.037, Florida Statutes (2007), and [J.D. v. State](#), 954 So. 2d 93 (Fla. 5th DCA 2007). The Fifth DCA disagreed and distinguished this from JD by saying in JD there were multiple violations of one court order. In this case there were separate court orders that were violated so separate sentences could be imposed and stacked. Writ denied.

New Orleans Mission Trip April, 2008

Gerry Glynn, an associate professor at Barry Law School, and I had the opportunity to take a group of Barry Law Students to New Orleans for a Mission Trip in April, 2008 for a week. The students worked at New Orleans Legal Aid, the Public Defender's Office, the Juvenile Justice Project and the Pro Bono Project donating over 600 hours of free legal help to Hurricane Katrina survivors.



We had the opportunity to tour the Juvenile Detention Center in New Orleans that is called the Youth Study Project. The conditions were dismal as was the food and education. The youth are not allowed outside at all. The Juvenile Justice Project has filed suit against them for the abysmal conditions.

We also met with Chief Justice David Bell who is trying hard to increase zealous advocacy of the juvenile defenders. After Cathryn Crawford from Northwestern Law School spent several months in New Orleans and worked with the juvenile defenders, Judge Bell has motions to suppress and motions to determine competency on a daily basis.

Several of the Barry students worked at the Juvenile Justice Project of Louisiana and were able to assist lawyers with lobbying in Baton Rouge and working on class action suits on behalf of juveniles.



One of the programs that seems to be working is Café Reconcile. Juvenile delinquents learn how to cook, serve, bus tables and be a hostess at Café Reconcile. They work there for 12 weeks and then the staff helps them get a job in the community. There is a similar program for those who want to learn construction skills.

We toured the Ninth Ward which was one of the hardest hit areas by Hurricane Katrina. Despite being over two years ago, the area is still devastated. For every block, there is perhaps one house that has been rebuilt.

If any of you are interested in planning a mission trip to New Orleans, please feel free to email me.

Polly McIntyre
Director, Juvenile Justice Center

Juvenile Court Rules Committee**Three-year cycle amendments**

The Juvenile Court Rules Committee invites comment on proposed three-year cycle amendments to the Florida Rules of Juvenile Procedure shown below. The full text of the proposals can be found on The Florida Bar's web site at <http://www.FloridaBar.org>. Interested persons have **until August 1, 2008, to submit comments** electronically to David Silverstein, Chair, at David.Silverstein@myfloridalegal.com.



RULE/FORM	VOTE	EXPLANATION
Ineffective Assistance of Counsel	18-2-3	Committee voted not to submit a rule to the Court because the issue is substantive rather than procedural.
		NOTE: Some amendments to <i>Rules</i> 8.010, 8.070, 8.080, 8.100, and 8.115 are in response to the National Juvenile Defender Center's (NJDC) Assessment
8.010	22-0-1	Adds sentence in subdivision (b), incorporating requirements of §985.255(3)(a), Fla. Stat. In response to the NJDC Assessment, creates a new subdivision (e) requiring that the child be advised of the right to counsel at the detention hearing and that counsel be appointed unless waived under Rule 8.165 . Deletes current subdivision (e)(2) and renumbers subsequent subdivisions.
8.070	19-1-2	In response to the NJDC recommendations, amends subdivision (a) to require appointment of counsel at the arraignment hearing if the child qualifies for appointment and does not waive counsel under <i>Rule</i> 8.165. Amendments to new subdivision (b), Pleas, conform to <i>Fla.R.Crim.P.</i> 3.160. New sentences have been added regarding reading of the charges and the filing of written plea agreements. A sentence has also been added providing the child a "reasonable time to prepare for trial."
8.080	21-0-1; 17-11-1	In response to the NJDC recommendations, subdivision (b) has been amended to require that the court determine that the child understand the "rights and consequences of entering a guilty or nolo contendere plea." A requirement has been added to subdivision (b)(2) that counsel be appointed for a child who qualifies and has not waived counsel under <i>Rule</i> 8.165. New subdivision (b)(9) adds a requirement that the child be advised of the effect of a nolo contendere or guilty plea on immigration status, conforming to <i>Fla.R.Crim.P.</i> 3.172(c)(8). Subdivision (b)(8) has been amended to conform to <i>Fla.R.Crim.P.</i> 3.172(c)(9), by advising the child that a plea may subject the child to possible involuntary civil commitment as a sexual predator. Subdivision (f) has been amended to conform to <i>Fla.R.Crim.P.</i> 3.172(h), allowing a plea to be withdrawn if the judge does not concur.
8.100	12-11-1	Amended to conform to the NJDC report by providing that restraints, such as handcuffs, chains, irons, or straitjackets, may not be used during a court appearance unless the use is required by one of three factors and there is no less restrictive means to prevent physical harm to the child or others or flight by the child.
8.115	23-0-0; 28-0-0	In conformance with the NJDC recommendations, subdivision (b) has been created to require that counsel be appointed at a disposition hearing, including hearings when the case has been transferred for disposition, if the child qualifies for appointment and has not waived counsel under <i>Rule</i> 8.165. Subdivision (d)(2) has been amended to require that the disposition order specifically list any credit for time served in secure detention before disposition.
8.130	27-5-2	Amends subdivision (b)(3) to state that a motion for rehearing tolls the time for taking an appeal. See also <i>Rule</i> 8.265.
8.225	17-4-3	Subdivisions (a)(4)(A)(iii), (a)(4)(B) and the last sentence of (a)(4)(C) have been amended to eliminate the use of mail to serve summons and other process on persons outside the state. Conforms to requirements for service in the state. Grammatical corrections.
8.235	33-0-1	Amends subdivision (b) to provide that a motion to dismiss may be to dismiss the petition or the allegations against a particular party. Amends subdivision (c) to make the same change for a sworn motion to dismiss.
8.257	16-7-1	Amends subdivisions (b)(3)(A), (e)(2), and (g) to permit the movant to provide a transcript, an electronic recording, or a stipulation by the parties of the evidence considered by the general magistrate when filing exceptions to the magistrate's report.

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“New Hope
for Youth
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Get a FREE copy of the ABA DVD on [Interviewing The Child Client](#)
This is a project of the Children’s Rights Litigation Committee of
The American Bar Association Section of Litigation. This video
provides practical guidelines and demonstration of techniques
that can help you work effectively with your child clients.

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Mark Your Calendars!

Zealous Advocacy for Kids

December, 5th & 6th 2008 in Orlando.

Lunch N Learn Schedule always at 12:30:

7/25/08 "Psychological Evaluations: What to ask for and how to understand what you get "by Dr. Randy Otto

8/22/08 "Special Education" by Joe Tulman

8/29/08 School Discipline by Professor Gerry Glynn

9/26/08 Disposition Advocacy by Marie Osborne

10/31/08 Connecting With Your Child Client and Witnesses by Angela Vigil

11/18/08 Representing Girls: The physical and emotional differences by Dr. Marty Beyer

12/18/08 Education Issues: IEPs and how they can help you by Mark Kamleiter, Esq.

A web site designed just to help you! You can obtain sample motions, writs, appeals, fact sheets from our [Information Bank](#).

User id: lawjic

Password: Ju5t1ce (case sensitive)

Free motion and fact sheet bank for Florida juvenile defenders

Check out the [Practical Disposition Solutions for Kids](#) to connect kids to their communities and rehabilitate them rather than committing them. It is on the website!

Director, Polly McIntyre



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