

Case Law Update January 2008- January 2009
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Appeal

S.R.J. v. State 2008 WL 5262712 (Fla. 5th DCA 2008)

Judge inadvertently turned off the audible recording of a VOP hearing. The parties tried to reconstruct the hearing but were unable to do so. With no ability to review any portion of the adjudicatory hearing on appeal, no meaningful appellate review can occur in the case. Reversed and remanded to conduct a *de novo* VOP hearing.

T.A.R. v. State of Florida 2008 WL 4891112 (Fla.2d DCA 2008)

The trial court denied a portion of a motion to suppress. The child pled no contest to the charges and the public defender indicated on the plea form that the child was reserving the right to appeal. Under Florida Rule of Criminal Procedure 9.140(b)(2)(A)(i), a defendant may not appeal from a guilty or nolo contender plea unless the defendant expressly reserves the right to appeal a “dispositive order of the lower tribunal, identifying with particularity the point of law being reserved.” Since that was not done, and the record did not reflect that the trial court’s ruling on the motion to suppress was dispositive, the trial court’s order was affirmed.

Behavior Orders/Pretrial Detention

C.A.F. v. State, 976 So.2d 629 (Fla. 5th DCA 2008): The Court stated that the trial court does not have statutory authority to impose a release order with pretrial conditions that the child must comply with while released.

J.S. v. State, 975 So.2d 1214 (Fla. 5th DCA 2008): The Court upheld the issuance of the behavior order when the child scored secured detention and the trial court ordered a less restrictive placement by releasing the child from detention. The child is also entitled to credit for time served over a weekend.

X.R. v. State, 2008 WL 611610 (Fla. 5th DCA 2008): The Court upheld the finding of contempt because the child failed to appear for the order to show cause even though the show cause hearing was based on a violation of a behavior order.

Certified Legal Intern

C.B. v. State, 973 So.2d 1285 (Fla. 4th DCA 2008) The record must contain an executed written form by the child consenting to the representation by a certified legal intern.

Closing

D.B. v. State, 979 So.2d 1119 (Fla. 3rd DCA 2008): The Court reversed because the child is entitled to the first and last closing when the child did not present any testimony on his behalf during the trial.

Detention

B.M. v. State, 979 So.2d 308 (Fla. 2nd DCA 2008): The Court granted the writ of habeas corpus because the child was illegally detained without a risk assessment instrument and the Court found the child to not be an absconder merely b/c she was away from home several days at a time. (This case is great for analysis on absconder status).

MP v State 2008 WL 3978209 (Fla. 5th DCA 2008)

The child violated several provisions of the same probation order and the judge ordered consecutive sentences. Reversed. This violates Section 985.037(2). Only one five day detention is allowed for one contempt sanction for any and all violations of a single court order. Strong dissent by Judge Sawaya.

K.O.S. v. State, 975 So.2d 536 (Fla. 1st DCA 2008): The Court affirmed the imposition of eighty days in secure detention stating that the trial court can stack detention for multiple instances of contempt. This holding is in contrast to **J.D. v. State**, 954 So. 2d 93 (Fla. 5th 2007).

Discovery

D.G.B., v. State 982 So.2d 1240(Fla. 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.

V.L. v. State, 2007 WL 4322268 (Fla. 3d DCA Dec. 2007): Court vacated the finding of guilt stating that the child is entitled to a new trial because court excluded a defense witness as a result of a discovery violation. This should only occur if the court conducts a proper inquiry as to other alternatives than exclusion.

Disposition

A.T. v. State, 2008 WL 1806118 (Fla. 4th DCA 2008): Sixteen year old girl committed to level 8 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.

E.A.R. v. State, 975 So.2d 610 (Fla. 4th DCA 2008): The Fourth District Court did not require the lower court to specifically identify “the characteristics of the restrictiveness level imposed vis-à-vis the needs of the juvenile” during disposition. The Court certified conflict with the Second District Court of Appeal in **M.S. v. State**, 927 So. 2d 1044 (2d DCA 2006).

L.O.J. v. State, 974 So.2d 491 (Fla. 4th DCA 2008): The adjudication was reversed with the disposition to be corrected because the Fourth District Court held that the child cannot be found delinquent of both the dealing in stolen property charge and the three counts of grand theft when the petition charges both of the crimes and they are related to “one scheme or course of conduct.”

T.D.D. v. State, 981 So. 2d 674 (Fla. 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 or

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.

[X.H. v. State](#), 985 So.2d 684 (Fla. 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.

Double Jeopardy

[A.M.W. v. State](#) 980 So. 2d 1219 (Fla. 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](#), 983 So.2d 761 (Fla. 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.

Hearsay

[NS v. State](#) 2008 WL2986441 (Fla. 3rd DCA 2008)

The state did not lay a proper predicate for a record exception under the hearsay rule. The state is required to have testimony that the statement was generated by a person with knowledge, that the information contained in the statement was kept in the course of the bank's regular business activity and that it was the regular practice of the bank to prepare such statements. The error was harmless though in light of overwhelming evidence against the juvenile. Affirmed.

Illegal Stop

[CEL v. State](#) 2008 WL 4092820 (Fla. 2nd DCA 2008)

Child who lived in a "high crime area" ran when he saw police officers wearing vests with "sheriff" written on them. The officers ordered the child to stop but he kept running. They arrested him and he had an outstanding warrant. He was adjudicated guilty of obstructing a police officer without violence. The child appealed stating the motion for dismissal should have been granted because the state failed to prove the flight obstructed the officers in their legal duties and the flight cannot be both the basis for detention and the obstruction itself. The fleeing was not a crime but the refusal to stop once an order to stop was made was a crime under 843.02. Strong concurring opinion by Judge Altenbernd who says this is a discriminatory decision that targets the poor and minorities who live in "high crime neighborhoods".

[CHC v. State](#), 2008 WL2941158 (Fla. 2nd DCA 2008)

Conviction for resisting an officer without violence was overturned because there was no proof that the police officer was engaged in the lawful execution of a legal duty. The State had to prove that the deputy would have been justified in detaining the child based on a founded suspicion that the child was engaged in criminal activity. The child was standing around cursing and ran from the police officer. Reversed and remanded for judgment of dismissal.

[J.C. v. State](#), 2008 WL 3360956 (Fla. 3rd DCA 2008)

When a policeman in a public area observes two people are using the same restroom stall and not using it for its intended purpose, the police officer may take further reasonable steps to investigate. Affirmed.

Incompetency to Stand Trial

[DCF v B.N. and State](#), 979 So.2d 1110 (Fla. 4th DCA 2008): The Fourth granted the writ of certiorari and the writ of habeas releasing the child from the juvenile detention center. The trial court found the child incompetent and ordered the immediate placement of the child to Apalachicola Forest Youth Camp. As a result of no beds being available, the trial court ordered DCF to take immediate custody of the child. The court granted the habeas writ because the child cannot be detained for more than twenty one days for the offenses. The Fourth granted cert because the order of immediate placement constituted a violation of the separation of powers clause.

Ineffective Assistance of Counsel

[D.E.R. v. State](#), 2008 WL 199902, (Fla. 2^d DCA 2008): The Court held that the remedy to challenge the voluntariness of his plea is to file a motion to withdraw the plea and if that is not done the remedy is to file a petition for writ of habeas in the circuit court. The Court also stated the 3.850 motions are not applicable in juvenile cases.

[S. G. v. State](#), 2008 WL 4260869 (Fla. 2nd DCA 2008)

The juvenile appealed his adjudication of delinquency and a disposition order after violating concurrent terms of probation. His appellate lawyer filed an Anders brief however supplemental briefing was ordered to address disposition errors. The supplemental brief had a meritorious argument concerning these errors but the court declined to address them because no motion to correct a disposition order was filed pursuant to Florida Rule of Juvenile Procedure 8.135. Therefore, the errors were not preserved for appeal. Affirmed without prejudice for the juvenile to file a rule 8.135 motion for ineffective assistance of counsel.

Jurisdiction:

[N.J.G v. State](#), 987 So.2d 101 (Fla. 5th DCA 2008): Offenses by juveniles under chapter 316 are to be handled in county court. They cannot be moved to circuit juvenile court.

Motions to Suppress

C.A. v. State, 977 So.2d 684 (Fla. 3rd DCA 2008): The Court held that it was error to deny the motion to suppress because the school did not have reasonable suspicion to search the student. The teacher did not smell the odor of marijuana around the child and she “simply associated” the child with the other student that possessed marijuana. The Court stated “suspicion by association or transference is not “reasonable suspicion.””

R.B. v. State, 975 So.2d 546 (Fla. 3rd DCA 2008): The Court affirmed the denial of the motion to suppress stating that the officer did have reasonable suspicion to search the child based upon the fact the officer observed the child several weeks prior under the influence and on the day of the incident the child showed his cupped hand to another student and then withdrew it in a furtive manner.

E.P. v. State 2008 WL 5412062 (Fla. 3rd DCA 2008)

Court denied motion to suppress drug paraphernalia found on a child after a pat down with followed a Terry stop justified under section 984.13, Florida Statutes (2007) (officer had reasonable grounds to believe child absent from school and was delivering the child to the appropriate school). Sufficient basis for protective pat down. Affirmed.

S.E.B. v. State of Florida 2008 WL 4891029 (Fla. 2nd DCA 2008)

The child was a front seat passenger in a car that was stopped for speeding. The trooper smelled raw and burnt marijuana and saw two partially smoked marijuana cigarettes in the cup holder of the center console. A K9 dog alerted on the center console and 99 grams of marijuana was found underneath the console. Child appealed the denial of her motion for judgment of dismissal because the evidence did not establish constructive possession of the marijuana under the console. There was no evidence that the child knew of the contraband and had the ability to exercise dominion and control over it. Reversed as to possession of more than 20 grams of marijuana but upheld as to possession of marijuana.

T.R.T. v. State 982 So.2d 1209 (Fla. 2nd 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.

Probation

J. W. J. v. State of Florida 2008 WL 4899179 (Fla. 1DCA 2008)

Child appealed special conditions of probation because they were not orally pronounced during sentencing. The higher court found there does not have to be an oral pronouncement if the conditions of probation if the conditions are explicitly authorized for juvenile cases under the statutes. The higher court upheld 25 hours of community service, a curfew, counseling, random

UAs because all are authorized under 985.435(2)-(3). \$50 of the fine was authorized under 938.03(1). \$3.00 was authorized under 938.19(2). The \$65 in costs under 939.185(1) was not appropriate because the case of TLS v. State, 949 So.2d 290(Fla. 5thDCA 2007) says it is not intended for juveniles.

Recantation Defense

[MG v. State](#) 2008 WL3913970 (Fla. 1st DCA 2008)

Recanting of giving false name and information to police is a valid defense but once arrested, recantation is not a good defense. Also, police officer said he was 9 out of 10 percent sure that the juvenile in court was the same person he arrested. The identification in court was ok. Affirmed conviction.

Re-opening case

[S.R. v. State](#) 2008 WL 5233794 (Fla. 3rd DCA 12-17-08)

Child brought a gun to school. Another student told the school security guard who told the school resource officer. The resource officer patted the child down and found the gun in one of his pockets. The defense moved to suppress the gun as being the fruit of an illegal search. During the suppression hearing the only witnesses were the officer and the child but the security guard who received the tip was right outside the courtroom. After the close of the evidence, the judge posited that the tip may have been stale and suppressed the gun. The state asked to call the security guard as a witness and the judge denied it. Reversed. The judge should have let the state re-open their case. "Essentially the judge caused the record to be incomplete and then complained of an incomplete record".

Restitution

[C.M.S. v. State](#) 2008 WL 5412326 (Fla. 2nd DCA 12-31-08)

Child stole work tools. Victim replaced most of the tools for \$575 and then recovered all of his tools from a pawn shop for \$70. The court ordered restitution for \$645, the replacement cost. Child appealed arguing the restitution has to be based on fair market value. The higher court found that fair market value is not the only standard for determining restitution. See Florida Statute 775.089(1) (2006). The amount of restitution should have been reduced by the value of the recovered property though. Reversed for new hearing.

[C.Y. v. State](#) 2008 WL 2663750 (Fla. 4DCA 2008): The child has a right to be at a restitution hearing and must receive notice. Opinion withdrawn on denial of rehearing September 10, 2008. For substituted opinion, see [2008 WL 4146850](#). District Court of Appeal held that juvenile's failure to inform court of his correct address did not waive his right to be present at restitution hearing. Reversed and remanded for new restitution hearing.

[E.J. v. State](#) 2008 WL 5412057 (Fla. 3rd DCA 2008)

Child pled to battery and judge ordered restitution of \$21,474 for medical bills without evaluating the child's present or future ability to pay. Court ordered review of case every six months. Reversed because state did not present evidence as to what the child could reasonably be expected to earn. Child was 15, with no job prospects and in detention waiting for disposition on

another case. Court cannot defer the “ability to pay” fact finding by setting case every six months. Court could order restitution to begin within 60 days of the child turning 16 or finding employment. Reversed and remanded. See section 985.231(1)(a)1.a Florida Statutes (2006).

G.P. V. State 2008 WL 5070296 (Fla. 4th DCA 2008)

The child entered a plea to grand theft and after a hearing was ordered to pay \$1225 in restitution for a purse, three pairs of sunglasses and 60 CDs. The CDs were not in the charging document. Restitution can not be ordered for a theft not encompassed by the charging document so that part of the restitution order is reversed.

JAB v. State 993 So.2d 1150 (Fla. 2nd DCA 2008) Child was adjudicated for battery and ordered to pay \$1479 in restitution at \$50 a month, starting in 4 months. The court heard the case en banc and retreated from three prior cases to the extent those cases held that a trial court issuing a restitution order with a monthly payment schedule against an unemployed juvenile cannot specify a commencement date for the payments but must make payment contingent upon the juvenile actually obtaining employment that would enable the juvenile to afford the payment. Rather they now hold that the trial court may set the restitution amount and payments in a reasonable amount based upon evidence regarding the earnings the juvenile may reasonably be expected to make and may set a commencement date for the payments so long as the court provides a reasonable amount of time for the kid to get a job. If the kid can’t get a job, then the child can present that evidence at the enforcement hearing. Section 775.089(7) provides that the court must determine restitution based upon a preponderance of the evidence with the burden of establishing the amount of restitution on the state but the burden of proving inability to pay on the child. The court concluded that a hard and fast rule prohibiting a judge from setting a commencement date for monthly payments of juvenile restitution and requiring that such payments can only be ordered contingent upon the juvenile actually obtaining a job is inappropriate. Note also that parents can be asked about their ability to pay and who may be required to cosign a promissory note. 985.231(1)(a)(1)a,(6).

K.W. v. State, 983 So.2d 713 (Fla. 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."

L.S. v. State, 975 So.2d 554 (Fla. 4th DCA 2008): The Court reversed to the trial court because the trial court imposed a restitution amount without giving the child an opportunity to have a formal hearing.

Speedy Trial

T.G. V. State, 2008 WL 4224343 (Fla. 3rd DCA 2008)

Trial was set during window period and the state provided late prejudicial discovery right before trial. Defense asked that continuance be charged to the state which was granted and then judge discharged the juvenile on speedy trial. The general rule that a defense continuance waives speedy trial has some exception such as inexcusable delay in providing discovery). Judge Langer found that the discovery was inexcusably late, substantial and prejudicial to the defense. Affirmed.

Substantive Offenses:

Aggravated Assault

D.B.B. V. State of Florida, 2008 WL 5234181 (Fla. 2d DCA 2008)

The child threw his bicycle at his mother and cursed at her. The trial court adjudicated him guilty of aggravated assault however the bicycle was not measured or entered into evidence. To prove aggravated assault, the State must show the defendant committed an assault with a deadly weapon without an intent to kill. Florida statute 784.021(1)(a) Fla. Stat. (2007). A deadly weapon is an item which, when used in the ordinary manner contemplated by its design, will or is likely to cause death or great bodily harm; or any instrument likely to cause great bodily harm because of the way it is used during a crime. Whether an item is a deadly weapon is a factual question to be determined under the circumstances, taking into consideration its size, shape, material and the manner in which it was used or was capable of being used. Bicycle is not likely to cause death or great bodily harm. Reversed as to this part. Child still committed assault which supported VOP.

Battery on Law Enforcement Officer

C.B. v. State, 979 So. 2d 391 (Fla. 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).

C.M.M. v. State, 983 So.2d 704 (Fla. 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.

Burglary

P.D.T. v. State 2008 WL 5070330 (Fla. 4th DCA n 2008)

Child adjudicated guilty of burglary of a dwelling. He went to a party at the home that was thrown by another child without the owner's permission. The state did not prove he entered the home with intent to commit an offense. Therefore, the case was reversed and remanded to adjudicate him guilty of trespass.

[S.W. v. State](#), 2008 WL 5233707 (Fla. 3rd DCA 2008)

Police saw child exiting driver's seat of stolen Saturn car. The next day the police found a key to a Saturn where child was sitting in police car. The police did not test the key to see if it went to the stolen Saturn. There was testimony that the child was unable to drive. The trial court found him not guilty of theft but guilty of burglary and the child appealed the burglary. The DCA affirmed the trial court saying the trial court may have concluded that the child entered the car with intent to steal it and was guilty of burglary but may not have driven the car so was not guilty of stealing it. Strong dissent stating the "case was as flimsy as tissue paper".

Carrying a Concealed Weapon

[J.R.P. v State](#), 979 So. 2d 1176 (Fla. 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 (Fla. 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."

Disruption of School Function

[M.M. v. State](#), 2008 WL 5188829 (Fla. 5th DCA 2008)

Child found guilty of disruption of a school function under 877.13 even though this was after school and disruption of bus transportation. Affirmed. Dissent by Judge Griffin stating child is mentally ill. This statute seeks to prohibit acts specifically and intentionally designed to stop or impede the progress of a normal school function. The fact that we are reduced to contorting a statute that is not designed to criminalized the garden-variety misbehavior of a child, much less a mentally ill child, in order to assert control says more about us than it does about the child!

[M.S.G v. State](#), 2008 WL 59995 (Fla. 1st DCA Jan 2008): Court reversed the trial court holding that the evidence was insufficient to support the disruption of a school function because the evidence did not show that the child acted with deliberate intent to disrupt.

Evasion of Transit Fare

[C.G. v. State](#), 981 So. 2d 1224 (Fla. 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.

Loitering and Prowling

[D.S. D. v. State](#), 2008 WL 5262709 (Fla. 5th DCA 12-19-08)

Elements of loitering and prowling not met in this case. Presence in a residential neighborhood early in the morning, without more, does not support the charge. Reversed. Case has good review of Florida loitering cases.

Possession of Alcohol by a Minor

[P.N. v. State](#), 976 So.2d 90 (Fla. 3rd DCA 2008): The Court reversed the adjudication because no evidence existed that the child admitted to the bottle containing alcohol nor did the officer testify that the contents had alcohol in the bottle.

Possession of Cannabis

[E.E., v. State](#), 980 So. 2d 623 (Fla. 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).

Robbery

[N.H.M. v. State](#), 974 So.2d 484 (Fla. 2d DCA 2008): The Court reversed because the charge of battery is not necessarily a lesser of the charge of robbery and the petition must specifically allege the elements of battery or it is a denial of due process. The Court further stated that the use of force does not include an intentional touch or the infliction of bodily harm without consent.

Sexual Offense

[MS v. State](#) 987 So.2d 774 (Fla. 4th DCA,2008)

The child was originally charged with making a false fire alarm and was placed on probation. The state filed a violation of probation based on a lewd and lascivious charge and a battery charge. DJJ filed a disposition report and recommended DNA testing and a residential environment for juvenile sex offenders. The trial court said it was departing from the guidelines and committed him to a high risk residential program and ordered a sex offender program and DNA testing. The court did not give an explanation as to why the commitment level recommended by DJJ was inadequate. Reversed the commitment to a high risk residential program. The trial court also erred in imposing a sex offender program since the underlying offense was not sexual. The DNA testing was also improper because he was adjudicated of the

underlying charge of making a false fire alarm. Affirmed the revocation of probation but error in disposition order and reversed.

Stalking

T.B. v. State, 2008 WL 4147113, (Fla. 4th DCA 2008) T.B. went by the victim's kiosk at the mall and taunted the victim with the words, "faggot, queer" three times within 90 minutes. Two of the incidents were heard by others. The crime of stalking is defined in 784.048(2) (2007) of the Florida statutes and states: "Any person who willfully, maliciously, and repeatedly harasses....another person commits the offense of stalking, a misdemeanor of the first degree....." Affirmed.

Theft

C.G. v. State, 981 So. 2d 1224 (Fla. 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.

K.W. v. State, 2008 WL 2312506 (Fla. 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 for the "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."

M.D.S., v. State, 982 So.2d 1282 (Fla. 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.

Trial procedure (Sandwich at Closing)

BS v. State 2008WL2744310 (Fla. 3rd DCA 2008)
Trial court failed to allow the juvenile opening and final arguments as required by Florida Rule of Juvenile Procedure 8.110(d). Remanded for further proceedings.

JC v. State 2008 WL 3360956 (Fla. 3rd DCA 2008)
Trial court failed to allow the juvenile the opening and final arguments. The error is procedural rather than substantive if the original judge is available. Reversed and remanded.

Uncounseled plea

[State of Florida v. D.A.G.](#), 2008 WL 4899174 (1st DCA 11-17-08)

Child had a disposition order entered into in 1999. The current trial court set aside the disposition for failure of the prior court to make the requisite inquiry under Rule 8.080 prior to the plea. The higher court reversed the trial court. There was no evidence that the child was illegally deprived of an opportunity to be heard or that he was prejudiced by the earlier court. There was no proof that the child would not have entered into the plea had he been properly questioned. Lastly, the motion to vacate the disposition order was filed past the one year deadline so was untimely.

Writs

[C.B. v. Doubler](#) 2008 WL 5156639 (Fla. 3rd DCA 2008)

Best case of the year! Judge Langer summarily ordered an uncooperative juvenile directly to secure detention for the 12th time in 3 years. Child only scored 4 points on the RAI so this detainment violated 985.255(2), Fla. Stat. (2007). No person, not even a judge is above the law. Petition for habeas corpus granted.

[S.P. v State](#) 985 So.2d 651 (Fla. 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 was separate court orders that were violated so separate sentences could be imposed and stacked. Writ denied.

Amendment to Florida Rule of Juvenile Procedure

[RULE 8.100. GENERAL PROVISIONS FOR HEARINGS](#)

Unless otherwise provided, the following provisions apply to all hearings:

(e) **Record of Testimony.** A record of the testimony in all hearings shall be made by an official court reporter, a court approved stenographer, or a recording device. The records shall be preserved for 5 years from the date of the hearing. Official records of testimony shall be ~~transcribed~~ provided only upon request of a party or a party's attorney or on a court order of the court.

[RULE 8.165. PROVIDING COUNSEL TO PARTIES](#) (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 the child's right to 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*. The new rule is effective as of July 1, 2008.

