TENTH CIRCUIT

Legal Advisor

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JURISDICTION IN JUVENILE CASES

BY DEB OATES

How Young is Too Young?

The Juvenile Division of the Circuit Court, has original jurisdiction of all charges committed by children under the age of 18. Though there is a statutory upper limit to jurisdiction, there is no statutory minimum age for juvenile court. Prior to the formation of the juvenile court system in Florida, there was a defense of infancy that stated that anyone between the ages of 7 and 14 was presumed to be incapable committing a crime as charged in the criminal court. It was up to the State to rebut that presumption. In *State v. D.H.*, 340 So.2d 1163 (Fla. 1976), the Florida Supreme Court ruled that the defense of infancy was no longer valid in the State of Florida. Children were no longer facing criminal prosecution per se but were being considered for delinquency adjudication and juvenile sanctions. The court found that the legislature did not intend for the common law presumption to operate in delinquency proceedings. The intent of the presumption of infancy was to provide some protection for minors in the criminal process. The juvenile statutes already treat violations of law as delinquent acts and not crimes.

Clearly at common law, there was an absolute bar to the prosecution of children under the age of 7. Children under 7 were always conclusively presumed incapable of being responsible for their acts and were precluded from criminal prosecution They simply lacked the capacity to be culpable. The State Attorney's Office has a policy that we consider all affidavits that are sent for prosecution. However, it is a rare case that would warrant charges on a six year old and none for which I could foresee charges on a five year old or younger. There are more and more affidavits being filed on children six years old and younger, especially with them being involved in the school system. Just because a victim is angry about an offense does not change the fact that a child can just be too young to be charged.

Jurisdiction in Traffic Cases

Traffic Court has original jurisdiction over traffic violations committed by a minor except those that are punishable as a felony. Florida Statute 316.635 (1) states:

"(1) A court which has jurisdiction over traffic violations shall have original jurisdiction in the case of any minor who is alleged to have committed a violation of law or of a county or municipal ordinance pertaining to the operation of a motor vehicle; however, any traffic offense that is punishable by law as a felony shall be under the jurisdiction of the circuit court."

Felony traffic charges include:

316.027(1)	Leaving the scene of an accident with death or bodily injury
316.193(a)(b)(c)	DUI with serious bodily injury or death
316.1953(3)	Aggravated fleeing to elude
322.212	Unauthorized use/possession of a DL
322.33	Making a false affidavit for a DL
322.34(5)	Operating vehicle with revoked DL (Habitual)
782.07	Manslaughter with a vehicle
782.071	Vehicular homicide

Many times a number of charges are included on one traffic ticket or complaint affidavit. If some charges are criminal felonies and others are misdemeanor or non-criminal traffic, it is better to use two forms. Both the juvenile court as well as traffic court need an original affidavit in order to open a case. Problems arise when the same original paperwork is needed in two different court files.

Jurisdiction over Civil Citations

Certain civil citations as well as violations of county and municipal ordinances that are non-criminal (those resulting in a fine or other sanction) do not have their jurisdiction in the juvenile court. Examples of these include noise violations from a vehicle, possession of tobacco products by a minor, curfew violations, and littering. These citations should be filed with the county court for payment of a fine or appearance before the county court judge.

**********FROM THE COURTS**********

LAW ENFORCEMENT MAY OBTAIN PRIVILEGED INFORMATION FROM A SPOUSE EVEN THOUGH THE SPOUSE CAN'T TESTIFY TO IT AT TRIAL.

The defendant was charged with using a false statement in obtaining a driver's license, unauthorized possession of a driver's license, giving false information in an accident report, giving a false name after being detained, and driving on a suspended license. She filed a motion to dismiss and a motion to suppress evidence. The facts on which the motion was based were that the defendant was involved in an accident. Several days later, her husband went to law enforcement and told them that the defendant had given them a driver's license with a false name on it at the time of the accident and that she had obtained the license with the false name because hers was suspended. The trial court granted the motions, finding that the evidence the husband gave the police came from marital communications and thus was privileged. On appeal, the Second District reversed, holding that the marital privilege contained in section 90.504, Florida Statutes, pertains only to trial testimony and does not prevent a spouse from giving information to law enforcement. *State v. Grady*, 27 FLW D688 (Fla 2d DCA Mar. 22, 2002).

EVIDENCE ESTABLISHED RICO ENTERPRISE.

The defendant was charged with racketeering, conspiracy to commit racketeering, and multiple counts of burglary. At his trial, the evidence established that the defendant in conjunction with several others committed a series of burglaries, targeting a group of commercial businesses with high end goods. The group regularly sold the stolen goods to three fences and the fences often ordered specific goods. The defendant and his cohorts evenly split the proceeds from the sale of the stolen goods. Based on this evidence, the defendant was convicted as charged. On appeal, the Fifth District affirmed, holding that there was sufficient evidence to show that the defendant was involved in an enterprise as defined by the RICO statute. *Helmadollar v. State*, 27 FLW D675 (Fla. 5th DCA Mar. 22, 2002).

OFFICER'S OBSERVATIONS GAVE HIM PROBABLE CAUSE TO SEARCH ENTIRE VEHICLE

The defendant was charged with possession of marijuana and filed a motion to suppress. The facts on which the motion was based were that when an officer stopped the defendant for a traffic violation, the defendant got out of his car and waited for the officer to approach. Nonetheless, the officer smelled marijuana smoke coming from the car and the defendant's shirt. He also noticed a blue haze in the car's interior. As a result he searched the defendant and the car's trunk, finding marijuana in both places. The trial court denied the motion, and the defendant pled no contest. On appeal, the Supreme Court affirmed, holding that based on the totality of the circumstances, the officer had probable cause to search the defendant's entire vehicle. *State v. Betz*, 27 FLW S285 (Fla. Apr. 4, 2002).

EVIDENCE INSUFFICIENT TO ESTABLISH PARAPHERNALIA CHARGE

The defendant was charged with possession of drug paraphernalia. The evidence at her trial established that an officer observed the defendant drop a plastic bottle on the ground. He retrieved the bottle and found that it had a hole burned in the side which was of a size to allow the insertion of a glass tube. The bottle also contained the residue of some substance. He testified that he did not test the residue but knew from his narcotics training that the bottle was used as a crack pipe. The defendant was convicted as charged, but on appeal the Fourth District reversed, holding that the evidence was insufficient to establish that the defendant used or intended to use the bottle in connection with the use of controlled substances. *Goodroe v. State*, 27 FLW D772 (Fla. 4th DCA April 3, 2002).

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