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TENTH JUDICIAL CIRCUIT

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Competency and Age Jurisdiction in Juvenile Court

By: Deb Oates, Juvenile Division Director

Age Limits of Jurisdiction:

Assistant State Attorney Deb Oates is the Juvenile division director . She has been with the State Attorny's Office since March of 1985.

The Circuit Court, Juvenile Division, has original jurisdiction of all charges committed by children under the age of 18. Though there is a statutory maximum age for 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 which stated that anyone between the ages of seven and 14 was presumed to be incapable of forming the intent to commit a crime. Children under the age of seven 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. 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In State v. D.H., 340 So.2d 1163 (Fla. 1976), the Florida Supreme Court ruled that the defense of infancy was no longer valid in the State of Florida.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 as crimes.

Competency:

Florida statute 985.19 governs competency proceedings in Juvenile Court. Section 985.19(1) states:

If, at any time prior to or during a delinquency case the court has reason to believe that the child named in the petition may be incompetent to proceed with the hearing, the court on its own motion may, or on the motion of the child's attorney or State Attorney must, stay all proceedings and order an evaluation of the child's mental condition.

A competency evaluation is to be made by a minimum of two court-appointed experts who make a finding on the juvenile's competency and the need for involuntary commitment for residential competency training. The incompetence can be due to mental illness, retardation, and/or age and immaturity. Any child facing a felony charge must receive either residential or out-patient competency training with the Department of Children and Families. A child facing a misdemeanor charge can only be required to receive out-patient training. There have been a number of cases that involved a judge committing a juvenile charged with a misdemeanor for residential treatment. Appellate courts have consistently reversed those court orders.

If the incompetence is due to age and immaturity there will be no competency training at all. The court is required to have reviews every six months and if competency is not restored within two years, to dismiss the charge. As a result, charges brought against young children cost thousands of dollars in evaluation costs, usually with no restoration and no conviction.

In the past few years, it has become a general rule that defendants under the age of 10 are evaluated and most are found incompetent due to age and immaturity. Many juvenile justice programs do not accept children less than 10 years of age. In fact, Teen Court has a minimum age requirement of 11.

The State Attorney's Office in this circuit takes a very conservative approach and generally does not file petitions on children under nine years of age. However, we will continue our policy carefully considering all affidavits that come before us. We ask that if there is a particular case or child that needs special consideration that you call 534-4904 and speak with either Tammy Glotfelty, the Juvenile intake attorney, or Deb Oates, Division Director.

FROM THE COURTS...

EMPLOYEE MAY CARRY CONCEALED WEAPON AT BUSINESS.

The defendant was charged with carrying a concealed firearm and filed a motion to dismiss, asserting that the state could not establish a prima facie case. The facts on which the motion was based were that when police arrested the defendant in a business of which he was an employee, they found a firearm concealed on his person. The business was closed at the time. The trial court denied the motion, and the defendant was convicted as charged. On appeal, the Fifth District reversed, holding that under section 790.25(3)(n), Florida Statutes, an employee of a business may carry a concealed firearm at the business even though he or she does not have an ownership interest in the business. Brook v. State, 34 FLW D121 (Fla. 5th DCA Jan. 9, 2008).

ADOPTION DOESN'T COUNT FOR INCEST PROSECUTION.

The defendant was charged with incest. At his trial, the evidence established that the person with whom he had sexual relations was his adopted daughter and his niece by virtue of her being the daughter of his wife's sister. He was convicted as charged. On appeal, the Fifth District reversed, holding that a conviction for incest requires that the victim be a blood relation of the defendant. Beam v. State, 34 FLW D217 (Fla. 5th DCA Jan. 23, 2009).

TRAILER HITCH CAN OBSCURE TAG.

The defendant was charged with possession of cocaine, marijuana, and paraphernalia and filed a motion to suppress evidence. The facts on which the motion was based were that officers following the defendant's truck could not read the numbers on its license plate because they were hidden from their view by a trailer hitch. As a result, they stopped the defendant and upon approaching his truck smelled marijuana. A search and arrest followed. The trial court denied the motion, and the defendant was convicted as charged. On appeal, the Second District reversed, holding that a trailer hitch is not "obscuring matter" within the meaning of section 316.605, Florida Statutes, which requires that the numbers on a tag be visible. Harris v. State, 34 FLW D220 (Fla. 2d DCA Jan. 23, 2009).

METHADONE IS NOT SYNTHETIC OPIUM.

The defendant was charged with first-degree murder and filed a motion to dismiss, asserting that the state could not establish a prima facie case. The facts on which the motion was based were that the defendant sold methadone to the victim and the victim then died as a result of ingesting the methadone. After an evidentiary hearing, the trial court granted the motion, finding that methadone is not synthetic opium as the state had argued. On appeal, the Fourth District agreed with the trial court and affirmed. State v. McCartney, 34 FLW D187 (Fla. Jan. 21, 2009).

http://www.sao10.com

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FROM THE COURTS...

ATTEMPTED SECOND-DEGREE MURDER CAN BE PREDICATE FOR FELONY MURDER.

The defendant was charged with, among other things, first-degree murder and attempted second-degree murder. The evidence presented at trial established that passengers in the defendant's vehicle fired their weapons at the driver of a passing vehicle. One of their shots hit and killed a pedestrian, who just happened to be walking by. The defendant was convicted as charged, and on appeal the Second District affirmed, holding that the attempted second-degree murder could serve as a predicate offense for the first-degree felony murder of the pedestrian. Brinson v. State, 34 FLW D282 (Fla. 2d DCA Feb. 4, 2009).

ESCAPING IN HANDCUFFS IS NOT THEFT.

The defendant, a juvenile, was charged with, among other things, petit theft. At his trial, the evidence established that an officer attempted to arrest him for trespass. After she placed one handcuff on him, he got away from her and ran. When he was subsequently arrested, he still had the handcuff on his wrist. The court found him guilty of the theft, but on appeal the Third District reversed, holding that the evidence only established that the taking of the handcuffs was incident to the defendant's flight and did not show that he had an intent to deprive the officer of her property. J.B. v. State, 34 FLW D553 (Fla. 3d DCA Mar. 11, 2009).

OFFICERS MAY ASK QUESTIONS DURING STOP

The defendant, a juvenile, was charged with possession of marijuana and filed a motion to suppress evidence. The facts on which the motion was based were that an officer stopped the defendant's car for an expired tag. After deciding not to issue a citation because the tag had only been expired 10 days, the officer asked the defendant if there was anything illegal in the car. The defendant responded that there was a bag of marijuana in the center console. The officer then seized the marijuana. The trial court denied the motion, and the defendant was convicted as charged. On appeal, the Third District affirmed, holding that there was nothing constitutionally improper about the officer asking the defendant a question unrelated to the reason for the stop. D.A. v. State, 34 FLW D867 (Fla. 3d DCA Apr. 29, 2009).

ENTRY INTO FORMER HOME WAS A BURGLARY

The defendant was charged with burglary of a dwelling. At his trial, the evidence established that the defendant and the victim leased a house together. Sometime thereafter, the victim asked the defendant to move out because they had a fight. He agreed to do so and took his property with him. The victim then had the locks changed on the house and contacted the landlord about having the defendant's name taken off the lease. After she had done this but before the landlord had acted, the defendant got into the house and took the victim's computer. He was convicted as charged. On appeal, the Fifth District affirmed, holding that the evidence was sufficient to show that the victim had a superior possessory interest in the home. Washington v. State, 34 FLW D925 (Fla. 5th DCA May 8, 2009).