

JUVENILE DELINQUENCY APPELLATE UPDATE

Pennsylvania Conference on Juvenile Justice
Juvenile Defender Training
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Juvenile Law Center
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DELINQUENCY CASES – listed chronologically
APRIL 2006-OCTOBER 2007

United States v. McNeal, Slip Copy, 2006 WL 929357 (Third Circuit Court of Appeals, April 11, 2006)
(not precedential)

Commonwealth v. D.S., 903 A.2d 582 (Pa. Superior Court, July 11, 2006)

In re J.E., 907 A.2d 1114 (Pa. Superior Court, Sept. 8, 2006)

In re J.A.K., 908 A.2d 322 (Pa. Superior Court, Sept. 12, 2006)

In the Interest of J.B., 909 A.2d 393 (Pa. Superior Court, Oct. 3, 2006)

United States v. Huggins, 467 F.3d 359 (Third Circuit Court of Appeals, Oct. 20, 2006)

United States v. Lyons, Slip Copy, 2006 WL 3057558 (Third Circuit Court of Appeals,
Oct. 30, 2006) (not precedential)

Commonwealth v. White, 910 A.2d 648 (Pa. Supreme Court, Nov. 22, 2006)

Commonwealth v. S.F., 912 A.2d 887 (Pa. Superior Court, December 01, 2006)

In re K.A.P., 916 A.2d 1152 (Pa. Superior Court, Jan. 19, 2007)

In re M.G., 916 A.2d 1179 (Pa. Superior Court, Jan. 30, 2007)

In re R.P., 918 A.2d 115 (Pa. Superior Court, Feb. 7, 2007)

Commonwealth v. Ramos, 920 A.2d 1253 (Pa. Superior Court, March 20, 2007)

In re S.R., 920 A.2d 1262 (Pa. Superior Court, March 21, 2007)

In RE S.A., 925 A.2d 838 (Pa. Superior Court, May 17, 2007).

In the Interest of A.B., No. 2149 EDA 2006 (Pa. Superior Court, June 1, 2007).

In the Interest of T.E.H., 928 A.2d 318 (Pa. Superior Court, June 28, 2007).

In re J.N.Y., 931 A.2d 685 (Pa. Superior Court, July 31, 2007).

In re R.B.G., 2007 WL 2386372 (Pa. Superior Court, August 22, 2007)

In re J.N.Y., 931 A.2d 685 (Pa. Super. July 31, 2007).

Opinion by Todd, J. Dissenting Opinion by Colville, J.

Vice Principal Of Juvenile’s High School Lacked Reasonable Suspicion Required In Order to Lawfully Search Juvenile’s Purse.

Upon receiving information from a teacher that J.N.Y. had something inappropriate on her, vice principle of high school searched J.N.Y.’s purse and discovered two marijuana pipes. J.N.Y. was adjudicated delinquent based on her possession of drug paraphernalia. She appealed.

The Superior Court held that the juvenile court erred in denying J.N.Y.’s suppression motion and adjudicating her delinquent. The court found that the school’s vice principal did not have the reasonable suspicion necessary to search J.N.Y.’s purse. Although the juvenile’s teacher claimed to have received information of J.N.Y.’s prohibited items through multiple sources, she was unable to recall the names of the individuals who provided this information.

While outside of the school context, searches must be based on probable cause to believe that the subject of the search has violated or is violating the law, in schools, the less stringent standard of “reasonable suspicion” applies. The Superior Court found that the vice principal lacked the requisite reasonable suspicion to search the juvenile as he could not recall where he received the information regarding J.N.Y.’s drug paraphernalia, and he noticed nothing unusual about J.N.Y.’s appearance or speech at any time. Thus, the Superior Court reversed the juvenile court’s adjudication of delinquency.

In re R.P., 918 A.2d 115 (Pa. Super. Feb. 7, 2007).

Opinion by Stevens, J.

Juvenile Delinquency Adjudication Affirmed Where Evidence was Seized by School Police Officers Incident to Arrest

The Superior Court affirmed the delinquency adjudication of a child, N.T. for possession of a small amount of marijuana, agreeing that the pat-down search was legal incident to arrest.

On July 13, 2005, police officer arrested N.T. and charged him with possession of a small amount of marijuana. Two school police officers testified that N.T. was engaged in a fight on a school bus when officers intervened and escorted him to the school cafeteria. They testified that he continued to be combative after being escorted away from the bus. One of the officers proceeded to conduct a pat-down search. During the search, an officer asked N.T. what was in his pocket and he pulled out a bag of marijuana.

Although N.T. was never charged with disorderly conduct, the Court held that the search was legal incident to arrest as the officers had probable cause to arrest N.T. for disorderly conduct at the time they conducted the search. The Superior Court affirmed the adjudication.

In the Interest of J.E., 907 A.2d 1114 (Pa. Super. Sept. 8, 2006).

Opinion by Johnson, J. Dissenting Opinion by McCaffery, J.

Juvenile Court Erred in Denying Youth’s Motion to Suppress a Firearm Found Pursuant to Search of Youth Where Probation Officer Lacked Reasonable Suspicion.

Probation officers arrived at the home of J.E., a minor, to serve an arrest warrant on his brother. J.E.’s stepmother informed the officers that J.E.’s brother was not home, but that J.E. was in his bedroom. The officers searched the home for J.E.’s brother and found J.E. sitting on the edge of his bed. They conducted a pat-down search. One of the probation officers knew that J.E. was on

probation and had heard from an unknown informant that J.E. may have been involved in a shooting. He stated that J.E. was very nervous and shaking during the search, raising the officer's suspicion that J.E. was hiding something. Upon lifting up the mattress where J.E. had been sitting, the officer found a gun. J.E. was subsequently charged with possession of a firearm by a minor and possession of a firearm without a license. The trial court denied J.E.'s motion to suppress the gun and adjudicated J.E. delinquent. J.E. appealed.

The Superior Court reversed the delinquency adjudication, finding that the trial court erred in denying J.E.'s motion to suppress the gun. First, the court held that the protective sweep doctrine was inapplicable in this case because the doctrine only applies to searches incident to an arrest; in this case the officers did not effectuate an arrest of J.E.'s brother. Second, the probation officers lacked reasonable suspicion to justify the search. The fact that J.E. was shaking during the pat-down search did not provide reasonable suspicion of criminal activity or a violation of probation prior to the search. And, the court was unable to determine whether the information from an informant regarding J.E.'s possible involvement in a shooting was credible because the probation officer did not identify the source of the tip or demonstrate the reliability of the tip. Third, the probation officers had to have reasonable suspicion of wrongdoing to search J.E. even though J.E. had signed a consent decree allowing probation officers to conduct warrantless searches as a term of his probation. The majority rejected the dissent's reliance on the U.S. Supreme Court's decision in *Samson v. California*, 126 S. Ct. 2193 (2006), for the proposition that juvenile probationers receive no protection from unreasonable searches under the Fourth Amendment.

In his dissent, Judge McCaffery concluded that under Pennsylvania statutory law, the probation officer had reasonable grounds to search J.E. He reasoned that the protective sweep doctrine is not limited to those instances in which officers are actually engaged in an arrest. The majority held that unlike the California statute at issue in *Samson*, Pennsylvania statute, 42 Pa.C.S. § 6304, mandates that officers possess reasonable suspicion that a child has violated the conditions of supervision before conducting a search even where the child has signed a form consenting to searches. 42 Pa.C.S. § 6304(a.1)(2) acknowledges that federal and state constitutional protections against unreasonable searches and seizures trump the statute's authorization for searches.

In re J.A.K., 908 A.2d 322 (Pa. Super. Sept. 12, 2006).

Opinion by Panella, J.

Superior Court Reversed Suppression of Evidence Obtained During Investigative Roadblock Stop.

J.A.K., a minor, was driving a vehicle at night with three passengers when he was diverted to a checkpoint stop. As the police officer approached, he saw a bag of marijuana on the floor of the car. J.A.K. was arrested and additional bags of crack and marijuana were found in his pocket and a loaded gun was found under his seat. J.A.K. was charged with drug and gun charges, but he was not charged with violating any provision of the Motor Vehicle Code. The juvenile court granted J.A.K.'s motion to suppress the physical evidence and the Commonwealth appealed.

The Superior Court reversed and vacated the trial court order suppressing the evidence. Police lack authority to stop motor vehicles solely for the failure of a driver or passenger to wear a seat belt because that does not constitute a violation of the Motor Vehicle Code. However, 75 Pa.C.S. § 6308(b) authorizes police to conduct investigative stops at checkpoints under established, systemic procedures. In this case, police officers were stopping cars at checkpoints to verbally encourage seat belt usage, not to cite drivers and passengers for seat belt violations. The investigative roadblock was proper because the police followed a systemic program. The police followed the specific procedural requirements outlined by the Pa. Supreme Court regarding permissible roadblocks, as well as the

procedural guidelines set forth for this particular roadblock. The record did not support the trial court's conclusion that the true goal of the nighttime roadblocks was to ferret out criminal activity, rather than raise seat belt awareness. Because the checkpoint was constitutionally valid, the officer's plain view of the bag of marijuana in the car constituted probable cause to search the car.

J U V E N I L E
RECORDS

In the Interest of T.E.H., 928 A.2d 318, No. 325 MDA 2006 (Superior Court of Pennsylvania, June 28, 2007).

Opinion by Panella, J. Dissenting Opinion by Colville, J.

DNA Act Applies To Juveniles On Probation For Certain Offenses And The Act's Provisions Do Not Constitute An Unreasonable Search Or A Violation Of Privacy.

T.E.H., A.M., and M.M.B. were each adjudicated delinquent for various felony offenses prior to the enactment of the DNA Act. T.E.H. was discharged from probation from his offense on March 14, 2005, while A.M. was discharged from probation on January 25, 2005 and M.M.B. was discharged from probation on August 23, 2004. Each of the three juveniles were again adjudicated delinquent in 2005 and the trial court ordered DNA samples to be taken pursuant to the DNA Act, 44 Pa. Cons. Stat. Ann. § 2316. Each juvenile filed timely motions to quash the DNA sampling, but the Juvenile Court denied their motions to quash.

On appeal, the Superior Court reversed as to A.M. and M.M.B. but affirmed as to T.E.H. According to the DNA Act, juveniles that were on probation as of the effective date for a felony offense were subject to the Act. The Superior Court found that the effective date of the DNA Act was January 31, 2005. Because A.M. and M.M.B. were no longer on probation for their felony adjudications as of that date, the DNA Act did not apply and the Juvenile Court was without authority to order them to submit to DNA sampling. However, T.E.H. was still under supervision for his felony adjudications and was thus required to submit a DNA sample. It was legally irrelevant that T.E.H. had been discharged from supervision without having submitted a sample. In regards to T.E.H.'s void for vagueness claim, the Superior Court stated that a penal statute is void for vagueness if "it fails to give a person of ordinary intelligence fair notice that his contemplated conduct is forbidden by the statute." The DNA Act, when read as a whole, was undeniably clear; thus, the Superior Court dismissed the void for vagueness claim. T.E.H.'s privacy claim and unreasonable search claim were also dismissed, with the Superior Court finding that children had no increased expectation of privacy and that any privacy concerns associated with the DNA testing would be outweighed by the public interest in maintaining an identification data bank.

Judge Colville dissented from the opinion because the juveniles had not raised their argument with the Juvenile Court that the DNA Act did not apply to them. Therefore, Judge Colville determined that the claim could not be considered on appeal and A.M. and M.M.B. should not have been afforded the relief they received from the majority opinion.

In the Interest of A.B., No. 2149 EDA 2006 (Superior Court of Pennsylvania, June 1, 2007).
Opinion by McEwen, P.J.E.

Juvenile Entitled To Expungement Of Records Upon Showing Satisfaction Of At Least One Factor In Juvenile Records Expungement Statute.

On March 8, 1999, A.B. was adjudicated delinquent for possession with intent to deliver a controlled substance and ordered into probation for six months. On April 20, 2006, he filed a petition to expunge the record, alleging he met all the statutory requirements of 18 Pa. C.S. § 9123(a) and was thus entitled to expungement. The trial court denied the petition, citing case law stating that “the remedy of expungement is rarely available” under the inherent rights of Due Process and stating that “juveniles who had been adjudicated delinquent were not entitled to expungement of their juvenile records.”

The Superior Court reversed and held that A.B. was entitled to expungement. The Court first held that the main issue in the case was one of statutory construction, which was a question of law. It then held that the standard of review was *de novo*. The Court examined the language of the statute in question. It found that the Pennsylvania Statutory Construction Act required it to give effect to all provisions of a statute and abide by the words of a statute so long as the statute was not ambiguous. Here, the relevant provisions of the statute were set out in the disjunctive, using the connector “or,” instead of using the conjunctive conductor “and.” Thus, A.B. need not demonstrate compliance with all of the conditions but was entitled to relief if he could demonstrate that he satisfied one of the statutory prerequisites. The Superior Court found that the case law cited by the trial court was inapplicable because it concerned expungement requests that were filed not under the Pennsylvania statute in question but under the due process clause, and also were in regards to adult convictions rather than a juvenile adjudication. A.B. had only to prove one of the four options in the statute and had met his burden to establish the “five year” factor set out in 18 Pa.C.S. § 9123(a)(3) requiring five years to elapse since the final discharge of the person without any further convictions or adjudications, thus entitling him to expungement. The Superior Court considered the Commonwealth’s argument that expungement should be denied based on the Controlled Substance Drug, Device and Cosmetic Act, 35 P.S. § 780-101 et seq., which provided that records of persons indicted for possession with intent to manufacture or deliver controlled substances could not be expunged. That law, however, did not address juvenile proceedings and was passed before the juvenile records expungement law had been passed. The Superior Court held that the Controlled Substance Drug, Device and Cosmetic Act therefore did not preclude the grant of relief to A.B. under the circumstances of the case. The trial court’s decision was reversed and remanded for proceedings consistent with the opinion.

United States v. Lyons, Slip Copy, Not Precedential, 2006 WL 3057558 (3d Cir. Oct. 30, 2006)
Opinion by Smith, J.

District Court Did Not Err By Attributing Points To Defendant’s Criminal History Score Based On Juvenile Placement.

Adult pled guilty to a one-count indictment of possession with intent to distribute five or more grams of cocaine base and was sentenced to 70 months by the United States District Court for the Western District of Pennsylvania. He argued on appeal that the District Court erred in adding criminal history points under U.S. Sentencing Guidelines § 4A1.2(d)(2)(A) based on his juvenile delinquency placement. The Court reviewed case law from the Third, Ninth, First, and Sixth Circuits and found that time spent in institutions similar to Defendant’s juvenile placement was routinely classified as a “sentence of confinement.” The Court therefore rejected Defendant’s argument as contrary to both mandatory as well as persuasive precedent and held that the District Court did not err in attributing additional points to adult defendant’s criminal history score based on his delinquency placement.

United States v. Huggins, 467 F.3d 359 (3d Cir. Oct. 20, 2006).

Opinion by Barry, J.

Adult Defendant's Prior Delinquency Adjudication Did Not Constitute A "Prior Conviction" For Purposes Of Applying Statutory Sentencing Enhancement.

Adult was arrested after he sold two grams of crack cocaine to a police informant. He was found at the time of arrest with an additional twenty-five grams of crack in his possession. Subsequent to the filing of an indictment, the Government notified Defendant that it intended to seek an enhanced penalty that calls for a mandatory minimum sentence of ten years for repeat drug offenders, based solely on Defendant's prior juvenile delinquency adjudication. The District Court found that Defendant's prior delinquency adjudication qualified as a "prior conviction" and sentenced him accordingly.

Defendant appealed. The Third Circuit held that Defendant's prior delinquency adjudication under Pennsylvania law did not constitute a "prior conviction" triggering the mandatory minimum ten year sentence. In particular, a "prior conviction" as used in 21 U.S.C. § 841(b)(1)(B), does not include a delinquency adjudication under the Pennsylvania Juvenile Act.

United States v. McNeal, Not Precedential, 2006 WL 929357 (3d Cir. April 11, 2006).

Opinion by: Shapiro, J.

Trial Court Properly Treated Prior Placement in a Residential Program for Delinquent Youth as a "Juvenile Sentence of Confinement" in Determining Adult Defendant's Criminal History Category.

Adult defendant pled guilty to a firearm conspiracy. In determining the criminal history category for the defendant, the District Court considered the presentence investigation report, which allocated five criminal history points stemming from the defendant's prior juvenile adjudication. Defendant appealed his sentence alleging, among other things, that the District Court erred in calculating his criminal history category because his prior placement in a residential treatment program for delinquent youth did not constitute a "juvenile sentence of confinement" under the sentencing guidelines. The Third Circuit affirmed. Relying upon language in the presentence report, the Juvenile Probation Office Family Service and Placement Plan, the program's reports, and the Juvenile Probation Office Placement Review Hearing Report, the Third Circuit rejected Appellant's argument that the program was a wilderness outward bound rehabilitation program, rather than a juvenile detention program.

K.W. v. Department of Public Welfare, No. 1857 C.D. 2006 (Appeal from Adjudication of Department of Welfare, June 28, 2006)

Twelve-Year Old Child Appeals The Requirement That He Be Listed As A Perpetrator Of Child Abuse Resulting From His Delinquency Adjudication.

In December 2006, JLC filed an amicus brief in Pennsylvania's Commonwealth Court supporting a 12-year-old boy's challenge to remove his name from a Statewide Central Register (Registry) as a "perpetrator" of child abuse. The boy, K.W., was adjudicated delinquent for indecent assault and indecent exposure against a neighbor he was babysitting. The registration was based on the premise that a one-time indecent assault and exposure incident makes him a dangerous criminal for life, who forever represents a risk to the safety of vulnerable children. JLC's brief argues that children who engage in inappropriate sexual behavior should be treated differently from adult sex offenders. Social science research reveals that juvenile sex offenders are less likely to commit a crime in the future than adult sex offenders. Unless removed, the boy's name will remain on that Registry,

thereby preventing him from ever working in fields involving children (e.g., physician, teacher, minister). This case was set to be argued before the Commonwealth Court in April 2007. However, after seeing the amicus support, DPW reversed its position and agreed to expunge K.W.'s indicated report. DPW also said it would reexamine its policy regarding youth with indicated/founded reports of child abuse.

T R A N S F E R

A N D

DECERTIFICATION

In the Interest of J.B., 909 A.2d 393 (Pa. Super. Oct. 3, 2006).

Opinion by Tamilia, J.

Having Failed to Prove His Amenability to the Juvenile System, Juvenile Should Have Been Certified as an Adult.

J.B., a 19-year old, was arrested and charged with repeatedly raping his 11-year old niece two years prior. He was additionally charged with indecent exposure, indecent assault, simple assault and harassment, sexual assault, involuntary deviate sexual intercourse and statutory sexual assault. The Commonwealth filed a notice of request to certify the case from Juvenile Court to Criminal Court. The trial court denied the Commonwealth's petition to certify J.B. as an adult. The Commonwealth appealed the denial.

The Superior Court reversed the trial court's denial and remanded the case for certification to Criminal Court. The Superior Court concluded that the trial court erred by focusing on the perceived failure of the juvenile system, rather than focusing on the statutorily required factors set forth in the Juvenile Act. Specifically, the trial court focused on the juvenile system's failure to address J.B.'s needs rather than considering his age, his prior criminal acts, the recommendation of a probation officer, and the likely unavailability of a juvenile facility to house and treat the defendant as required by the Juvenile Act. The Superior Court concluded that the trial court abused its discretion in failing to apply the law, and the defendant failed to carry the burden required of proving his amenability to the juvenile system.

Commonwealth v. In the Interest of D.S., 903 A.2d 582 (Pa. Super. July 11, 2006).

Opinion by: Gantman, J.

Superior Court Vacated Juvenile Court's Denial of Commonwealth's Motion to Transfer Case from Juvenile Court to Criminal Court; Juvenile Court Lacked Jurisdiction Over 15-Year Old Initially Charged as a 14-Year Old Due to Misinformation.

The Commonwealth charged D.S. with robbery and aggravated assault as ungraded felonies in two juvenile petitions based upon misinformation regarding D.S.' date of birth and age at the time of the offenses. Subsequently, the Commonwealth learned that D.S. was actually fifteen years old at the time of the offenses, not fourteen years old as the Commonwealth had originally determined. Upon learning D.S.' actual age at the time of the offenses, the Commonwealth petitioned to withdraw the prosecution and have D.S. re-slated as a Direct File Juvenile. The juvenile court denied the Commonwealth's petition. The Commonwealth then filed a motion to transfer the matter, on jurisdictional grounds, from the juvenile court to the criminal court division for prosecution. The juvenile court denied the transfer motion; the Commonwealth appealed.

The Superior Court held that the juvenile court was obligated to transfer the proceedings to criminal court. The Superior Court agreed with the Commonwealth's argument that under 42 Pa.C.S.A. § 6302, exclusive jurisdiction lay in the criminal court, not in juvenile court. D.S. was 15

years old and used a handgun during the commission of the robbery and aggravated assault—two offenses specifically excluded from the definition of “delinquent acts” under the Juvenile Act, when committed by an offender who is at least 15 years old. Because the offenses did not qualify as “delinquent acts,” the offenses had to be prosecuted under criminal law and procedures. The Superior Court rejected D.S.’ argument that because the Commonwealth charged him with “ungraded” felonies and failed to subsequently revise them to first degree felonies, the offenses qualified under the definition of “delinquent acts” under the Juvenile Act. The fact that the felonies were initially ungraded was not dispositive, and the Commonwealth did not waive the jurisdictional issue by learning of D.S.’ actual age late in the proceedings. The Superior Court vacated the juvenile court’s denial of the Commonwealth’s motion to transfer and remanded for proceedings in the criminal court, without prejudice to D.S. to file a petition for decertification.

Commonwealth v. White, 910 A.2d 648 (Pa. Supreme Court, Nov. 22, 2006).

Opinion by Eakin, J

Appearance Of Impropriety Warranted Recusal Of Trial Judge In Prosecution Of 11-Year-Old Defendant For Murder, Where Trial Judge Believed Defendant Was Not Suited For Adult Prison, Told Defendant That She Was Going To Work Hard To Do Things For Her, Stated That The Legal System Was Not Equipped To Deal With Case, Stated That She Could Not Be Forced To Treat This Like A Normal Case, And Vehemently Reacted To Commonwealth’s Recusal Request.

Police arrested 11-year-old Miriam White in conjunction with the stabbing death of Rose Marie Knight. White was charged as an adult for the crime of murder pursuant to Section 6355(e) of the Juvenile Act. There were several failed attempts at negotiating a plea before the Honorable Renee Cardwell Hughes of the Philadelphia Court of Common Pleas. Subsequently, White’s counsel moved to decertify the case to juvenile court before a different judge. Before the decertification motion was decided, several more attempts at negotiating a plea were made, but no agreement was reached. Ultimately, the court denied decertification, and the case returned to Judge Hughes. Defense counsel told Judge Hughes that White intended to plead guilty to murder generally and requested that the court schedule a degree of guilt hearing. The prosecutor inquired whether the judge believed a degree of guilt hearing could result in a verdict of less than third degree murder, i.e., voluntary manslaughter. Judge Hughes responded in the affirmative. One week later, the prosecutor appeared before Judge Hughes and asked that she recuse herself. The prosecutor asserted that while plea negotiations were ongoing prior to the decertification proceedings, Judge Hughes made statements which showed judicial bias. Judge Hughes denied the request for recusal. The prosecutor also requested that the Commonwealth be afforded its right to a jury trial. Judge Hughes denied the request. Finally, the prosecutor asked that the court certify both questions for immediate appeal. Again, the judge denied the request. The Commonwealth appealed the judge’s rulings. The Superior Court quashed in part and reversed in part. Commonwealth and Defendant-White petitioned for allowance of appeal.

The Supreme Court granted review on two issues. First, “whether the Commonwealth is permitted to appeal an order denying recusal of a trial judge as an interlocutory order, and if so, whether denial of the recusal motion was in error.” Second, whether the Commonwealth has a right to a jury at a degree of guilt hearing when a defendant pleads guilty to murder generally.

The Court held: (1) Commonwealth was entitled to an interlocutory appeal as of right from trial court’s denial of Commonwealth’s motion for recusal; (2) appearance of impropriety warranted recusal of trial judge; (3) Commonwealth was entitled to an interlocutory appeal as of right from trial court’s denial of Commonwealth’s request for jury at degree of guilt hearing; (4) defendant had

right to jury at degree of guilt hearing; and (5) Commonwealth had right to have a jury determine the degree of guilt.

S P E C I A L
EDUCATION

In the Interest of D.A.S., Not Precedential, No. 669 MDA 2005 (Pa. Super. April 4, 2006).
Memorandum Opinion

Superior Court Affirmed Adjudication Of Delinquency And Held That Expert Testimony Should Not Be Admitted To Prove Lack Of Intent.

In a memorandum decision, the Pennsylvania Superior Court affirmed the delinquency adjudication of an 11-year old with a neurological disability, Asperger's Syndrome. D.A.S. was charged with 14 offenses for acting out in school. Defense argued that his conduct was a manifestation of his disability and the trial court erred when it did not admit or consider relevant evidence regarding D.A.S.'s disability, including expert testimony and two special education due process hearings against the school. If introduced, the evidence would have shown that D.A.S. lacked the "intent" necessary to commit the offenses and that his conduct was not voluntary. The Superior Court rejected this reasoning finding that the issue was D.A.S.'s capacity to understand and control his actions, and not his intent to commit the offenses. JLC timely filed a petition for allowance of appeal in the Supreme Court of Pennsylvania urging the court to overturn the delinquency adjudication, but its petition was denied.

S E X U A L
OFFENSES

In RE S.A., 925 A.2d 838, No. 967 EDA 2006 (Pa. Superior Court, May 17, 2007).
Opinion by Stevens, J.

The Superior Court Affirmed An Involuntary Civil Commitment Rejecting Appellant's Claims Of It Being Retroactive, Punitive, And In Violation Of His Privacy, Equal Protection, And Due Process Rights.

Appellant was adjudicated delinquent on two counts of indecent assault in 1999 when he was fourteen years old and placed in a specialized sex-offender treatment program. He made consistent progress and was transferred to a step-down program. Six years later he absconded from treatment and the trial court determined that appellant needed involuntary treatment pursuant to the "Involuntary Treatment of Certain Sexually Violent Persons Act" (Act 21). The court held an involuntary commitment hearing and directed immediate commitment of appellant.

Appellant alleged numerous errors that the Court subsequently addressed. The Superior Court held that Act 21 is not retroactive because it relates to current and continuing status as a person who suffers from a mental abnormality or personality disorder. The Superior Court used the two-level inquiry adopted in *Commonwealth v. Williams*, 832 A.2d 962 (Pa. 2003), to determine whether or not the commitment was punishment. First, the intent of Act 21 is civil commitment not punishment. The second part of the inquiry is consideration of several factors including: whether there is affirmative restraint, whether commitment is historically considered punishment, and whether there are alternate non-punitive purposes. The Superior Court concluded that the commitment is not

punishment. The Superior Court then held that since Act 21 is non-punitive, the *ex post facto* claim is without merit.

The Superior Court affirmed the trial court's finding of a compelling state interest and agreed that any inconvenience of disclosure is "greatly outweighed" by interest in treating these juveniles and ensuring public safety. The court held that S.A.'s privacy rights had not been violated, noting that § 6307 provides for files to be inspected by the Board and appellant does not explain how disclosure to the Board violates doctor-patient confidentiality.

As to Appellant's claim of an Equal Protection violation, the Superior Court stated that the Commonwealth is not absolutely prohibited from classifying individuals (*In the Interest of K.A.P., Jr.*, 916 A.2d 1152 (Pa.Super. 2007)) and held that Act 21 survives strict scrutiny because protecting its citizens is a compelling state interest and the annual review makes it narrowly tailored. The Superior Court said that the Due Process claim that Act 21 is impermissibly vague was already addressed in *In the Interest of K.A.P., Jr.* where the court considered recent opinions rejecting similar challenges to provision of Megan's Law II and concluded that Act 21 is not unconstitutionally vague.

In re S.R., 920 A.2d 1262 (Pa. Superior Court, March 21, 2007).

Opinion by J. Klein

Statements Of Victim, A Four-Year-Old, From Her Interview With Forensic Interview Specialist Were Testimonial, And Thus, Admission Of Specialist's Statements, After Victim Broke Down On Stand And Was Determined To Be Unavailable, Violated Juvenile's Right To Confrontation

S.R., then sixteen years old, appeals his adjudication of delinquency on the charges of aggravated indecent assault and related offenses for allegedly molesting his four-year-old niece, L.K. During S.R.'s adjudication hearing, when L.K. was put on the stand she broke down and was unable to testify. Parties agreed that she was therefore unavailable. The essential testimony proffered was from L.K.'s mother, B.K., (S.R.'s older sister) and a forensic interview specialist, who interviewed L.K. under the direction of the police department and for purposes of investigation and potential prosecution. The trial court admitted both statements under the Tender Years Statute, 42 Pa.C.S.A. § 5985.1. The Superior Court reversed.

On appeal the defense does not claim that the trial court erred in finding that the testimony was admissible under the Tender Years Statute. Instead, the defense claims that admission of the testimony violated the Confrontation Clause of the Sixth Amendment of the United States Constitution. The Superior court agreed, in part. Under prior U.S. Supreme Court precedent interpreting the Confrontation Clause of the U.S. Constitution, the Mother's questioning of her daughter was not designed for prosecution and therefore her statements are non-testimonial and admissible. However, L.K.'s statements to the forensic specialist during the interview carried out under the direction of the police department and for purposes of the investigation and potential prosecution, are testimonial. The specialist's testimony violates the Confrontation Clause as interpreted by the U.S. Supreme Court. The Superior Court reversed and remanded for a new adjudicatory hearing.

In re K.A.P., 916 A.2d 1152 (Pa. Superior Court, Jan. 19, 2007).

Opinion by Lally-Green, J

Statute That Provided For The Involuntary Civil Commitment Of Juvenile Sex Offenders Did Not Violate The Federal And State Constitutions

K.A.P. was adjudicated delinquent based on a series of sexual and non-sexual acts involving five different female victims and committed to a state operated youth development center. At the

center K.A.P. assaulted two employees of the juvenile facility. The assault charges proceeded through the criminal justice system, rather than the juvenile court system. K.A.P. pled guilty to charges of aggravated assault and harassment and was sentenced to a prison term of 15 to 30 months, followed by five years of probation. When Appellant turned 20 years old he was incarcerated in SCI-Fayette after discharge from the youth development center. While incarcerated in SCI-Fayette the county solicitor's office filed a petition for involuntary commitment of K.A.P. under 42 Pa.C.S.A. §§ 6401-6409, which provides for the civil commitment of juvenile sex offenders. The Court of Common Pleas committed K.A.P. to one year of involuntary civil commitment for juvenile sexual offenders. K.A.P. appealed challenging the statute as, *inter alia*, violative of the due process, equal protection, *ex post facto* and cruel and unusual punishment clauses of the U.S. Constitution.

The Superior Court affirmed finding: (1) defendant was eligible for involuntary civil commitment program for juvenile sex offenders; (2) subsection of statute providing for the involuntary civil commitment for juvenile sexual offenders was not unconstitutionally void for vagueness; (3) statute providing for involuntary civil commitment for juvenile sex offenders was not improperly applied retroactively; (4) statutes that provided for the involuntary civil commitment of juvenile sex offenders did not violate equal protection; and (5) statutes that provided for the involuntary civil commitment of juvenile sex offenders did not violate due process.

P O S S E S S I O N

F I R E A R M S

O F

In re R.B.G., 2007 WL 2386372 (Pa. Super. August 22, 2007)

Opinion by: Todd, J.

Juvenile Could Be Adjudicated Delinquent For Both Possession Of A Firearm By A Minor And Possession Of A Firearm Without A License Because Ineligibility To Obtain A License Does Not Provide Insulation From Prosecution Under 18 Pa C.S.A. §6109(b).

R.B.G.'s father discovered a pistol, knit ski mask, and brown gardening gloves in his son's guitar case. When confronted, R.B.G. stated that he needed the handgun for his own protection. During the course of the conversation R.B.G. became increasingly angry and agitated so R.B.G.'s father contacted the police. The police suggested he search his son's room. He found a marijuana pipe, expended cartridge rounds for the handgun, and a small amount of marijuana in the bedroom.

R.B.G. was adjudicated delinquent for possession of a small amount of marijuana, possession of drug paraphernalia, possession of a firearm by a minor, possession of instruments of crime by possessing criminal instruments generally, possession of instruments of crime by possession of a weapon, prohibited offensive weapon, and possession of a firearm without a license. R.B.G. appealed.

The Superior Court reversed in part and affirmed in part. The court reversed the adjudication of delinquency with regard to Section 907(b), the possession of instruments of crime. The court reasoned that the evidence was insufficient to support R.B.G.'s adjudication because there was no evidence that the handgun was concealed on R.B.G.'s person. The court also reversed with regard to Section 908, possession of offensive weapons, because the Supreme Court previously held that handguns are not by definition prohibited offensive weapons. Lastly, the Superior Court affirmed with regard to Section 6106, possession of a firearm without a license. The court was not persuaded by R.B.G.'s argument that he was improperly adjudicated because he was too young to obtain a

firearm license. The court reasoned that ineligibility to obtain a license does not provide insulation from potential prosecution under 18 Pa C.S.A. §6109, which governs licenses for firearms.

F **A** **L** **S** **E**
IMPRISONMENT

In re M.G., 916 A.2d 1179 (Pa. Super. Jan. 30, 2007).

Opinion by Stevens, J.

Juvenile Delinquency Adjudication Affirmed Where the Record Demonstrated Sufficient Evidence of False Imprisonment

The Court affirmed a delinquency adjudication for false imprisonment. False imprisonment occurs when an individual “knowingly restrains another unlawfully so as to interfere substantially with h[er] liberty.” 18 Pa. C.S.A. § 2903(a). Viewing the evidence in the light most favorable to the Commonwealth, the Superior Court concluded that Appellant was in an area of his neighbor’s house where he was not permitted, hid behind a bedroom door and waited while D.M., a ten-year-old neighbor of Appellant took a shower. When D.M. entered the room dressed only in a towel, Appellant shut and locked the bedroom door, and then stood between D.M. and the door. He did not open the door until after D.M.’s sister banged on the door and yelled for D.M. to open it, approximately one minute.

The court concluded that appellant “substantially interfered with D.M.’s liberty.” The court held that it did not matter whether the incident occurred in D.M.’s own bedroom or a place unfamiliar to her, or that the incident was “cut short” after two minutes or less. The court also held that physical force was not a necessary element of false imprisonment, and that in any event Appellant did use physical force when he “grabbed D.M.’s private area, thereby assaulting her.”