

APPELLATE AND LEGISLATIVE UPDATE  
Pennsylvania and 3<sup>rd</sup> Circuit Law

**Search and Seizure**

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*In re R.P.*, --- A.2d --- (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.

**False Imprisonment**

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*In re M.G.* --- A.2d --- (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.”

## **Juvenile Records**

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*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 will be argued before the Commonwealth Court in April 2007.

**Transfer and Decertification**

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

Opinion by Tamilya, 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.

## **Special Education**

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*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.

## **Sexual Offenses**

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### ***Adam Walsh Child Protection and Safety Act of 2006***

42 U.S.C. §§ 16901-16962

George W. Bush signed the Adam Walsh Child Protection and Safety Act (42 U.S.C. §§ 16901-16962) into law last year, which broadens the scope of the sex offender registry. The legislation organizes sex offenders into three tiers. The law sets requirements on duration of the registration requirement, according to the classification system. Tier 1 sex offenders are required to register for 15 years; tier II for 25 years and tier III offenders must register for life. Registration periods may be reduced for completing certain programs or having a clean record for specified periods of time. Registered sex offenders are required to appear in person to verify their address and other registry information and for update of the required photo. Frequency of personal appearance is set according to the tier system. Tier 1 offenders must appear in person each year; tier II offenders every six months; and for tier III sex offenders in-person verification is required every three months. The law makes any failure to register and update information a felony.

The new law also creates a national sex offender registry and instructs each state and territory to apply identical criteria for posting offender data on the Internet (i.e., offender's name, address, date of birth, place of employment, photograph, etc.). The act also requires prompt sharing of information on registered sex offenders among state, local and federal law enforcement agencies and other entities. The national database will incorporate the use of DNA evidence and Global Positioning System (GPS) technology to track convicted sex offenders. This law will be applied retroactively. Most important to juvenile defenders, the act defines a conviction for purposes of registration and classification to include juvenile adjudications if the juvenile offender is at least 14 years of age at the time of the offense and the offense adjudicated is comparable to or more severe than the federal offense aggravated sexual abuse.