

Third District Court of Appeal

State of Florida, January Term, A.D. 2010

Opinion filed April 21, 2010.

Not final until disposition of timely filed motion for rehearing.

No. 3D09-1074

Lower Tribunal No. 08-4521

M.R., a juvenile,
Appellant,

vs.

The State of Florida,
Appellee.

An Appeal from the Circuit Court for Miami-Dade County, Lester Langer, Judge.

Carlos J. Martinez, Public Defender, and Lisa M. Pisciotta, Ross C. Paolino and Nicolas Swerdloff, Special Assistant Public Defenders, for appellant.

Bill McCollum, Attorney General, and Timothy R.M. Thomas, Assistant Attorney General, for appellee.

Before COPE and GERSTEN, JJ., and SCHWARTZ, Senior Judge.

SCHWARTZ, Senior Judge.

The conduct of the appellant juvenile, a sixteen-year-old female, which consisted only of walking down the street in a “high prostitution area” at 9:30 in the evening¹, did not give rise to the founded or articulable suspicion of unlawful activity necessary to justify the Terry stop effected by the police when, after engaging in a consensual and uneventful conversation, they placed her in their patrol car pending a “record search.” See *Terry v. Ohio*, 392 U.S. 1 (1968); *Johnson v. State*, 610 So. 2d 581 (Fla. 1st DCA 1993); *Smith v. State*, 592 So. 2d 1206 (Fla. 2d DCA 1992); *State v. Hoover*, 520 So. 2d 696 (Fla. 4th DCA 1988). Because they were thus not then acting in the lawful execution of their duties as Section 843.02, Florida Statutes (2008)² requires, she was not guilty, as a matter of law, of resisting an officer under that statute by trying to escape the confinement.³ See *C.H.C. v. State*, 988 So. 2d 1145 (Fla. 2d DCA 2008); *Davis v. State*, 973 So. 2d 1277 (Fla. 2d DCA 2008); *E.A.B. v. State*, 964 So. 2d 877 (Fla. 2d DCA 2007).

¹ The fact that M.R. was known to one of the officers as having been involved in prostitution on a previous occasion does not affect the issue of whether her conduct at the time of the incident justified the stop. See *Parsons v. State*, 825 So. 2d 406 (Fla. 2d DCA 2002); *Smith v. State*, 592 So. 2d 1206 (Fla. 2d DCA 1992); *Johnson v. State*, 610 So. 2d 581 (Fla. 1st DCA 1992).

² “Whoever shall resist, obstruct, or oppose any officer...; member of the Parole Commission or any administrative aide or supervisor employed by the commission; county probation officer; parole and probation supervisor; personnel or representative of the Department of Law Enforcement; or other person legally authorized to execute process in the execution of legal process or in the lawful execution of any legal duty, without offering or doing violence to the person of the officer, shall be guilty of a misdemeanor of the first degree...” (emphasis supplied)

³ After the search showed that she was a “runaway,” she exclaimed “I’m not going to go back” and attempted to leave the vehicle.

See also *Tillman v. State*, 934 So. 2d 1263, 1271 (Fla. 2006) and cases cited. The adjudication of delinquency entered on that basis is therefore reversed and the cause remanded with directions to dismiss the petition.

Reversed and remanded.