O.A. 1-8-99

097

IN THE SUPREME COURT OF FLORIDA

SUPREME COURT NO.: 84,021

IN RE: AMENDMENT TO THE FLORIDA RULE OF JUVENILE PROCEDURE 8.100(a)

FILED
DEBBIE CAUSSEAUX
JUL 28 1999
CLERK, SUPREME COURT
By _____

COMMENTS OF THE FLORIDA PUBLIC DEFENDER ASSOCIATION

COMES NOW the Florida Public Defender Association, by and through the undersigned counsel, pursuant to this Court's opinion of April 29, 1999 and presents the following comments and recommendations.

OPPOSITION TO AUDIOVISUAL DETENTION HEARINGS

1. In its opinion in Amendment to Florida Rule of Juvenile Procedure 8.100(a), 24 Fla. L. Weekly S196 (Fla., April 30, 1999) this Court adopted on an interim basis an amendment that permits juvenile detention hearings to be conducted by audiovisual means during which the children are not physically present before the court. The Public Defender Association remains opposed to the amendment.

2. In the majority opinion, it was noted:

> "The Court will not lightly discount the reports of these individuals who worked diligently to implement the program and who were intricately involved in its day-to-day operation. In counterpoint, we note that none of the opponents of the amendments who

> appeared before this Court professed a first-hand familiarity with the program, i.e., they did not assert that they have participated in any way - not even as observers - in the pilot program."

Id. at S198. While it is true that at the time of oral argument neither undersigned counsel representing this Association had observed any of the pilot projects in operation, our opposition stemmed from a philosophical point of view as opposed to objections to the specific implementation of audiovisual procedures. However, in the interim, undersigned counsel Ward Metzger did observe first-hand an audiovisual detention hearing in the seventeenth circuit. From the conduct of that hearing, we believe that our worst fears have been realized.

3. On June 23, 1999, audiovisual detention hearings were held in Fort Lauderdale with Judge Larry S. Seidlin presiding. The children remained in the detention center accompanied by an assistant public defender and a Department of Juvenile Justice staff member. Parents, guardians, witnesses, the prosecutor, a clerk, an assistant public defender and the judge were in a courtroom.

4. A small room in the detention center was set up for the hearings. It is approximately 18 feet long by 9 feet wide.

In the front of the room was a television, approximately 32 to 35 inches in screen size. A camera was located on top of the television. Facing the television and the camera was a podium at which counsel, the child, and the DJJ staff member stood. A microphone was mounted on the podium. At the back of the room was a table, flags, and two chairs. Mr. Metzger sat in one of those chairs approximately five feet behind the podium where there was a clear view of the podium and the television.

5. The television operated in a splitscreen mode consisting of four equal guadrants. The upper left quadrant showed a view of the judge, the upper right showed a podium, the bottom left displayed the prosecutor and the clerk, and the bottom right showed a room used in the jail for adult weekend first appearance hearings.

6. Procedurally, when a child's case was called the child would be brought in from an adjacent room where all the children awaiting their appearances were seated in rows of chairs. Judge Seidlin then asked what was DJJ's release/detain recommendation and would listen to any arguments presented by counsel who was with the child. For some children a parent, guardian or witness

appeared who may have had additional comments. The judge would then make a decision and move on to the next case.

7. Numerous problems and difficulties were observed during these hearings.

A. Only once during these detention hearings (some twelve to fourteen children) did Judge Seidlin directly address any child. There was simply no conversation between any child and the judge with the exception of a child who entered a plea.

B. At the conclusion of every hearing, every child had to ask the assistant public defender what had happened, i.e., was the child being released or being detained. No decisions of the court were clearly communicated by the court and each child had to ask the result.

C. In the overwhelming majority of cases, it appeared that Judge Seidlin did not look at any of the children that were appearing before him. The seventeenth circuit's report to this Court indicated that the courtroom was equipped with a closed circuit television so the lack of visual contact does not appear to be explained by a lack of equipment.

D. Parents, guardians, or witnesses who appeared in the courtroom were difficult to hear and frequently could not be

seen, or only partially viewed, on the television screen in the detention center. If the person was not located in precisely the correct spot, the individual would not appear on the television screen.

E. There was no contact between parents/guardians and the children. There was no opportunity for there to be a private conversation. All conversations would have been open to everyone. In no instance was an opportunity to talk to a child or parent offered or made available to the parent or child.

F. The assistant public defender in the detention center had no access to any child's court file that could contain documents or information relevant to the detention decision. While a second assistant public defender was present in the courtroom, there again was no opportunity for meaningful private communications between the lawyers.

G. There was no opportunity to approach the bench to discuss anything that should not be broadcast publicly. The DJJ staffer in one case had information to provide the court, and so indicated, but could not provide the information because of the open communication system.

H. There was no opportunity for the assistant public defender in the detention center to privately converse with parents/guardians. Again, potentially important information could not be developed because counsel could not privately discuss the situation with the parent/guardian and could not ask the other attorney to make any specific inquiry.

I. Unlike a courtroom hearing, on numerous occasions all parties were speaking at the same time leading to confusion in what was being said, discussed and decided. It appeared that it was difficult to hear who was speaking and, on occasion, to hear when someone was speaking.

J. At least one child had left the room before the court's final decision was announced. That child had no idea what had been decided in his case.

K. In at least one case, the assistant public defender in the detention center had to ask the judge to repeat his decision because she could not hear what was being said.

L. In one child's case, the court took a plea to a delinquency charge. While it may have been the correct decision because the child and his family were moving out of the state several days later, the procedure was fraught with problems.

There was no copy of a delinquency petition or arrest affidavit at the detention center. The child's counsel had no opportunity to review those documents and then discuss the case with the child. No one in the courtroom read the charges or the affidavit aloud. The entire plea proceeding essentially consisted of the child being asked if he wanted to plead guilty and be placed on probation. The plea colloquy appeared to be of a minute or less duration.

M. Unlike a courtroom, there is no security personnel located in the detention center room. While a staff member remains with the waiting children in the adjacent room, there are no one in the television room. An angry or violent child could easily injure the attorney or DJJ staff member providing recommendation to the court.

N. The audiovisual detention hearings lacked the dignity and decorum of a personal appearance before the court. Perhaps because it was difficult for the children to see, hear and understand what was occurring, they did not behave as one would in a courtroom. The hearings lacked the dignity and solemnity of court proceedings. To be fair, one child after being advised by counsel that he was being detained, punched a

detention center wall. The judge did not appear to see that occurrence. Of course, that particular outburst may have not happened in a courtroom where there may have been more direct communication and explanation between the judge and the child.

O. The entire detention hearing process was very quickly accomplished. In a typical case, a child would appear, the judge would ask for DJJ's recommendation and a decision would be given. The assistant public defender would then communicate the decision to the child. This process took virtually no time. While some cases took additional time because of argument or information being provided by parents/guardians or witnesses, in the main it was a very short process that lacked discussion with or explanations to the children.

8. As Justice Lewis noted in dissent, "…we cannot elevate the process above substance…" and "…we should correct and change these disgraceful problems rather than avoiding correction by attempting to implement robotic justice." Id. at S198. (Lewis, J., dissenting) The detention hearings observed by undersigned counsel constituted an elevation of process over substance. Basic human interaction was missing as well as any meaningful

interaction between the court and the child, the child and parents or guardians, and counsel in the courtroom and counsel in the detention center. The hearings were depersonalized in their entirety. In our opinion, the detention hearings as observed in Fort Lauderdale confirm our philosophical opposition to the concept of audiovisual detention hearings. As implemented, the hearings demonstrated that our children do not come first. Such hearings can only lead to a negative view of the juvenile justice system by the children subjected to this process. No positive, meaningful difference was made in these children's lives.

9. As Justice Anstead warned three years ago, "More attention and resources, not institutional convenience and super efficiency, should be our response to those children who so desperately need our help." Amendment to Florida Rule of Juvenile Procedure 8.100(a), 667 So. 2d 195, 198-199 (Fla. 1996)(Anstead, J., dissenting.) While the Fort Lauderdale detention hearings are institutionally convenient and super efficient it is impossible to describe them as providing justice. The Public Defender Association respectfully asks this Court to recede from its interim amendment to Rule 8.100(a) and

to not permit juvenile detention hearings to be conducted by audiovisual means.

RECOMMENDATIONS SHOULD THE AMENDMENT TO RULE 8.100(a) BE PERMANENTLY ADOPTED

10. While the Public Defender Association remains opposed to the concept of audiovisual detention hearings, we have several recommendations for additional amendments to Rule 8.100(a) should this Court adopt the interim amendment on a permanent basis. For the reasons set forth below, we recommend the rule be amended to provide:

> RULE 8.100 GENERAL PROVISIONS FOR HEARINGS
> Unless otherwise provided, the following provisions apply to all hearings:
> (a) Presence of the Child. The child shall be present unless the court finds that the child's mental or physical condition is such that a court appearance is not in the child's best interest~~, except that the child's presence may be either in person or by electronic audiovisual device in the discretion of the Court for detention hearings~~.
>
> (1) The child's presence at a detention hearing may be either in person or by electronic audiovisual device.
>
> (2) In order to utilize audiovisual detention hearings, all parties including: the court, the clerk of the court, the department, the public defender, and the state attorney must agree to conduct the

hearings by audiovisual devices. All parties must agree to the procedures to be undertaken in conducting such hearing.

(3) During the audiovisual detention hearing for any child represented by counsel or for whom counsel is appointed, counsel must be physically present with the child in the same location as the child.

(4) During the audiovisual detention hearing the child's parents or guardians shall have the opportunity to be physically present with the child in the same location as the child.

(5) Defense counsel at the location of the child shall be provided the means to communicate privately with defense counsel in the courtroom.

(6) Under no circumstances shall any other juvenile delinquency proceeding be conducted by audiovisual devices, including but not limited to: the entry of a guilty or nolo contendre plea, an adjudicatory hearing or a disposition hearing.

11. The Public Defenders request that the rule reflect that all parties must agree to conduct audiovisual detention hearings and agree to the procedures implemented to conduct those hearings. As has been recognized by this Court, the audiovisual detention hearing process places a burden on the public defender in allocating attorneys. Amendment, 24 Fla. L.

Weekly at S198 (Report of Chief Judge Alvarez) We believe that to properly represent our clients consistent with constitutional guarantees of the effective assistance of counsel, we must have an attorney physically present with our clients. This necessitates the assignment of a second attorney to be present in the courtroom to review documents and files and to converse with witnesses. Every public defender office in this state is chronically understaffed and attorney caseloads are dangerously high. It is simply unfair to the public defenders for a rule to exist that vests in the local court the exclusive authority to decide to utilize audiovisual detention hearings. While it may be more convenient for the court or the department, it is burdensome on the public defenders. We should have an equal voice in the decision making process. It is our constitutional duty to represent these children and if an administrative procedure requires a doubling of attorneys to discharge our duty, then the procedure should not be implemented in the face of hardship without the agreement of the public defender.

12. We also believe that all parties should be required to agree to the particular audiovisual procedures to be implemented. Such agreement beforehand should resolve

logistical problems and procedural questions before they arise. An agreement should ensure that the electronic devices and set-up are adequate to accomplish the intended objectives.

13. As previously discussed, we believe that our constitutional duty requires our physical presence with the child. To ensure this and to provide guidance in the future, we request that an amended rule clearly indicate that counsel must be physically present with the child.

14. We also believe that parents or guardians must have physical access to their children during these hearings. As has been previously argued, it is important for the court to observe the interaction between the parent and child. In our experience, the detention/release decision is oftentimes based in part on that interaction. As the observation of the Fort Lauderdale detention hearings amply demonstrated, there was no such interaction for the judge to observe. The solution to this problem is to provide in the rule that parents must have the opportunity to be physically present with their children.

15. We also request that this Court require that there be a means of private communication between defense counsel in the courtroom and defense counsel in the detention center. If the

parents choose to go to court instead of the detention center then, either personally or through counsel, there may be some private communications between parents and children. This requirement would also enable detention center counsel to ask courtroom counsel to review documents or files or to seek information from witnesses or other persons present in the courtroom regarding the particular child. Counsel could seek this information without running the risk of publicly broadcasting information or questions that counsel does not wish to present to the court without having previously reviewed the information or having asked the questions. This requirement would also enable the court to conduct off the record bench conferences including sensitive, confidential or embarrassing information that should not be broadcast publicly.

16. Finally, the Public Defender Association asks this Court to specifically prohibit the occurrence of any other proceeding than a detention hearing by audiovisual devices. It is not appropriate to accept pleas to charges or conduct trials or impose dispositions under circumstances where the child is not physically present before the court. Although the interim rule only allows detention hearings to be conducted by

audiovisual means, on at least one occasion a plea was offered and accepted by the court in Fort Lauderdale. While the undersigned do not know if this has occurred elsewhere, we do note that in the Sixth Circuit's 1997 report Judge Frank Quesada requested that pleas and dispositions be included in authorized audiovisual proceedings. The Department of Juvenile Justice in the thirteenth circuit made a similar request to expand the audiovisual hearings to include arraignments in that circuit's 1998 report. If an audiovisual process is to be adopted by rule, then we believe that in consideration of the fact that an audiovisual system has been utilized beyond the authorization of this court, to prevent future recurrences the rule should explicitly state limitations on usage.

Wherefore, the Public Defender Association respectfully asks this Honorable Court to recede from its interim rule and to not authorize the use of audiovisual devices in detention hearings. Should this Court adopt the rule on a permanent basis then we request it be amended as we have recommended.

Respectfully submitted,

WARD L. METZGER
APPELLATE COORDINATOR
OFFICE OF THE PUBLIC DEFENDER
Fourth Judicial Circuit
25 North Market Street
Jacksonville, Florida 32202
(904) 630-1548

FLORIDA BAR NO. 0333662

NANCY DANIELS
PUBLIC DEFENDER
Second Judicial Circuit
301 South Monroe Street
Tallahassee, Florida 32301
(850) 488-2458

FLORIDA BAR NO. 0242705

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished by U. S. Mail to: Honorable Melanie G. May, Circuit Judge, and Honorable Robert O. Collins, Administrative Judge, Juvenile Division, Seventeenth Judicial Circuit, Fort Lauderdale, Florida; Honorable F. Dennis Alvarez, Chief Judge, and David A. Rowland, Court Counsel, Thirteenth Judicial Circuit, Tampa, Florida; Honorable Susan F. Schaeffer, Chief Judge, Honorable Peter Ramsberger, Juvenile Administrative Judge, and Debra Roberts, Court Counsel, Sixth Judicial Circuit, Clearwater, Florida; Honorable William T. Swigert, Chief Judge, and David Trammell, Deputy Court Administrator, Fifth Judicial Circuit, Ocala, Florida; and Honorable Paul B. Kanarek, Chief

---

Judge, Nineteenth Judicial Circuit, Vero Beach, Florida; Edith G. Osman, President, The Florida Bar, Miami, Florida; and John F. Harkness, Jr., Executive Director, The Florida Bar, Tallahassee, Florida, this 27th day of July, 1999.