

Third District Court of Appeal

State of Florida, January Term, A.D. 2008

Opinion filed February 6, 2008.

Not final until disposition of timely filed motion for rehearing.

No. 3D07-872

Lower Tribunal No. 06-6187

B.W., a juvenile,
Appellant,

vs.

The State of Florida,
Appellee.

An Appeal from the Circuit Court for Miami-Dade County, Douglas J. Chumbley, Judge.

Bennett H. Brummer, Public Defender, and Howard K. Blumberg, Assistant Public Defender, for appellant.

Bill McCollum, Attorney General, and Juliet S. Fattel, Assistant Attorney General, for appellee.

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

SCHWARTZ, Senior Judge.

The juvenile-appellant was charged with trespass after warning (count 1) and trespass in a structure (count 2) as a result of her repeated failure to leave an

open, unfenced stairway leading from the walkway to the front porch and entrance doors of the Unity Health and Rehabilitation Center in Miami-Dade County. She was found not guilty as to count 1, but guilty as to count 2 and appeals.

As the state rightly concedes, the adjudication cannot stand because the stairway, which was plainly not within the “structure” itself, was also, contrary to the trial court’s belief, not within its “curtilage,” so as to justify such a conviction. See *Freeman v. State*, 743 So. 2d 603 (Fla. 4th DCA 1999); *L.K.B. v. State*, 677 So. 2d 925 (Fla. 5th DCA 1996).

The state bravely suggests that B.W. was actually guilty of “trespass on property other than a structure or conveyance after warning.” This claim however, is entirely unavailing. Rightly or (probably) wrongly, B.W. was acquitted of count 1, the only charge which alleges that conduct. Obviously, we have no authority to interfere with that determination in any way. See *L.F. v. State*, 859 So. 2d 1251 (Fla. 3d DCA 2003).

Accordingly, the adjudication is reversed with directions to discharge the respondent.

Reversed and remanded.