

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING
MOTION AND, IF FILED, DETERMINED.

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
SECOND DISTRICT

D.J.P., JR.,)	
)	
Appellant,)	
)	
v.)	Case No. 2D10-2439
)	
STATE OF FLORIDA,)	
)	
Appellee.)	
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Opinion filed May 6, 2011.

Appeal from the Circuit Court for
Hillsborough County; Christopher C.
Sabella, Judge.

James Marion Moorman, Public Defender,
and Karen M. Kinney, Assistant Public
Defender, Bartow, for Appellant.

Pamela Jo Bondi, Attorney General,
Tallahassee, and Danilo Cruz-Carino,
Assistant Attorney General, Tampa, for
Appellee.

PER CURIAM.

D.J.P. appeals an order adjudicating him to be delinquent after he admitted committing the offenses of burglary of an unoccupied dwelling and grand theft of a firearm. Although D.J.P. attempted to reserve his right to appeal the denial of a motion to suppress his confession, we conclude that the motion was not dispositive and

affirm. At the hearing on the motion to suppress, the trial court and the State noted that there was no stipulation that the motion was dispositive. The trial court stated, "In fact it was the State that refused to stipulate because they believe they could go forward even [if the motion had been granted]." Thereafter at the change of plea hearing, the State asserted that there were other witnesses who could identify D.J.P.

In M.N. v. State, 16 So. 3d 280, 281 (Fla. 2d DCA 2009), the appellant entered a plea to the charges contingent on his ability to appeal the denial of a pretrial motion, the trial court accepted the plea and noted the appellant's reservation of his right to appeal, but the trial court failed to expressly find that the motion was dispositive. This court affirmed in M.N., holding that the appellant's motion was not dispositive because the State could go forward at trial even if the appellant had prevailed on the appeal of the trial court's order. Id. at 281-82; see also Weber v. State, 492 So. 2d 1166, 1167 (Fla. 4th DCA 1986) (refusing to infer stipulation where there was no language in the transcript that could be construed to be a stipulation and the State's factual bases for the charge indicated that the confession was not dispositive).

Accordingly, we affirm.

WHATLEY and SILBERMAN, JJ., Concur.
VILLANTI, J., Concur specially with opinion.

VILLANTI, Judge, Specially concurring.

I fully concur in the majority opinion but write to note that D.J.P.'s failure to obtain a definitive ruling on the dispositiveness of his motion from the trial court

precludes review of the denial of that motion in this appeal. Florida Rule of Appellate Procedure 9.140(b)(2) provides in pertinent part:

A. Pleas. A defendant may not appeal from a guilty or nolo contendere plea except as follows:

(i) A defendant who pleads guilty or nolo contendere may expressly reserve the right to appeal a prior dispositive order of the lower tribunal, identifying with particularity the point of law being reserved.

(Emphasis added.) Similarly, section 924.051(4), Florida Statutes (2007), likewise provides: "If a defendant pleads nolo contendere without expressly reserving the right to appeal a legally dispositive issue, or if a defendant pleads guilty without expressly reserving the right to appeal a legally dispositive issue, the defendant may not appeal the judgment or sentence." (Emphasis added.) This rule and statute do not constitute a jurisdictional bar to appellate review, but they do expressly limit the issues that can be addressed on appeal following a guilty plea. Leonard v. State, 760 So. 2d 114, 118 (Fla. 2000).

The record in this case does reflect some initial uncertainty in the trial court's intent concerning a ruling on dispositiveness. However, at the change of plea hearing, the trial court clearly found, based on the State's representations as to other available evidence, that the denial of the motion to suppress was not dispositive of the charges against D.J.P. Because the only issue raised in this appeal hinges on a finding that the denial of D.J.P.'s motion to suppress was dispositive and because that denial was not expressly found to be dispositive below, we must summarily affirm. Id. at 119 (explaining that a district court should affirm summarily when it finds that an appeal from

a guilty or nolo contendere plea does not present an issue preserved in accordance with section 924.051(4)).