

**IN THE COURT OF APPEALS  
EASTERN DISTRICT OF MISSOURI**

<b>D.M. and J.M.,</b>	}	
Appellants.	}	
v.	}	Cause No. ED89744
	}	
<b>Philip W. Livesay, Juvenile Officer</b>	}	
<b>Tenth Judicial Circuit</b>	}	
Marion County, Hannibal, Missouri	}	
Petitioner/Respondent.	}	

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APPEAL FROM  
THE CIRCUIT COURT OF MARION COUNTY, MISSOURI  
DISTRICT 2 JUVENILE DIVISION  
TENTH JUDICIAL CIRCUIT  
Honorable David C. Mobley  
Case No. 06MR-JU00069

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**DJM's Appellants' Brief Pro Se**

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## **Jurisdictional Statement**

DJM was adjudicated a delinquent for alleged violations of Section 574.010.1(1)(c) RSMo. On appeal DJM contends that the Judgment of the Trial Court should be reversed and the case remanded because it was an uncounseled determination of delinquency. The Trial Court did not appoint counsel to represent DJM. There was no waiver of the right to counsel. The adjudication of delinquency in the absence of counsel and in the absence of a knowing and intelligent waiver of the right to counsel was void. The Judgment of the Trial Court violates the right to counsel guaranteed in the 5<sup>th</sup>, 6<sup>th</sup> and 14<sup>th</sup> Amendments to the United States Constitution and Article I, Sections 10 and 18a of the Missouri Constitution of 1945.

The case does not involve the validity of a treaty or statute of the United States or a statute or a provision of the Constitution of this State, the construction of the revenue laws of this State or the title to any state office or the imposition of the death penalty. The case is not within the exclusive jurisdiction of the Missouri Supreme Court. Jurisdiction lies in the Missouri Court of Appeals Eastern District.

## **Statement of Facts**

At the time of this trial, DJM was a 16 year old child born on June 5, 1990. (LF 18). The Amended Petition in this juvenile case alleged in Count I that he was in need of treatment because he had committed an act which would be a misdemeanor of peace disturbance if committed by an adult for knowingly threatening to commit a crime against another person. (LF 58). There was a bench trial on February 8, 2007. (LF 3). The parents were represented by counsel, Branson L. Wood III. (Tr. 6, 7). The child, DJM, was not represented by counsel. He never waived his right to counsel and did not testify at trial. (Tr. 1-142). DJM is still not represented by counsel on appeal.

DJM adopts the statement of facts from D.M. and J.M.'s Appellants' Brief.

## Point Relied On

### I

**The Trial Court erred by entering a judgment finding jurisdiction based upon the alleged criminal offense of peace disturbance. The Trial Court so erred because the Judgment was a violation of DJM's right to counsel in that DJM was not represented by counsel and did not waive his right to counsel.**

*In re D.L.*, 999 SW2d 291 (Mo.App. E.D. 1999).

*In re Gault*, 387 U.S. 1, 12, 87 S.Ct. 1428, 1436, 18 L.Ed.2d 527 (1967).

5<sup>th</sup>, 6<sup>th</sup> and 14<sup>th</sup> Amendments to the United States Constitution

Article I, Section 10 and 18a of the Missouri Constitution of 1945.

Section 211.211.1 RSMo.

Rule 116.01(h) Mo. Rules Civil Procedure

**The Trial Court erred by entering a judgment finding jurisdiction based upon the alleged criminal offense of peace disturbance. The Trial Court so erred because the Judgment was a violation of DJM's right to counsel in that DJM was not represented by counsel and did not waive his right to counsel.**

DJM is filing a separate Brief to raise the issue of the violation of his right to counsel guaranteed in the 5<sup>th</sup> and 6<sup>th</sup> Amendments to the United States Constitution and Article I, Sections 10 and 18a of the Missouri Constitution of 1945. DJM joins in the Brief of his parents challenging the constitutionality of Section 574.010.1(1)(c) RSMo. and the sufficiency of the evidence to sustain a conviction as set out in his parents' separate Brief. This Brief is filed by the child to raise an additional challenge of the violation of his right to counsel.

### **Standard of Review**

This case was a juvenile proceeding. It is a civil case and the standard of review is the same as in a court-tried case. *In re J.M.*, 847 SW2d 911, 913 (Mo.App. E.D. 1993). The Trial Court's order will be affirmed unless there is no substantial evidence to support it. It is against

the weight of the evidence or erroneously declares or applies the law. *Id.*; *Murphy v. Carron*, 536 SW2d 30, 32 (Mo. banc 1976).

### **Argument**

DJM was guaranteed the right to counsel through the 6<sup>th</sup> Amendment to the United States Constitution. This right is specifically guaranteed to juveniles in delinquency proceedings. *In re Gault*, 387 U.S. 1, 12, 87 S.Ct. 1428, 1436, 18 L.Ed.2d 527 (1967); and *In re D.L.*, 999 SW2d 291 (Mo.App. E.D. 1999). The right to counsel is also guaranteed in Article I, Section 18a of the Missouri Constitution of 1945. These rights have been spelled out explicitly in statutes. §211.211 RSMo. In addition, the right to counsel is spelled out in the Missouri Supreme Court Rules applicable to juvenile cases. Rule 116.01. DJM's rights guaranteed by constitution, statute and court rule were violated in this case. He was not represented by counsel. He did not waive his right to counsel.

This case falls squarely within prior rulings by this Court. *In re D.L.*, supra. The Eastern District, in an opinion written by Judge Rhodes Russell, sustained a challenge to a delinquency adjudication as plain error. The holding *In re D.L.* requires that the Judgment which was entered in this case be reversed.

DJM was deprived of the advice of counsel as to whether he should testify. He was a 16 year old child. His only prior contact with the juvenile court had been an informal supervision. (LF 12). He was hardly competent to represent himself in this case. The Trial Court never addressed the absence of counsel for DJM. The Trial Court never considered, much less approved the waiver of right to counsel as required in Rule 116.1(h) and Section 211.211.8 RSMo.

## **Conclusion**

The adjudication of delinquency in this case without counsel is plain error. DJM was facing and continues to face the possibility of a commitment to the Division of Youth Services. He was not represented by counsel and did not waive his right to counsel. The Judgment of the Trial Court should be reversed and the cause remanded for further proceedings

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## **Certification of Scanned Disk**

Comes now D.J.M. and certifies that the disk containing DJM's Appellant's Brief Pro Se has been scanned for viruses and it is virus-free.

## **Certification of Word Count of DJM's Appellant's Brief Pro Se**

Comes now D.J.M. and certifies that this Brief complies with the limitations contained in Rule 84.06(b), in that the Word Count for DJM's Appellant's Brief Pro Se is 1509 words, as calculated by the word count of the word-processing system used to prepare this Brief.

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