

OPINION SUMMARY
MISSOURI COURT OF APPEALS EASTERN DISTRICT

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| |) | No. ED97662 |
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| In the Interest of D.M. |) | Appeal from the Circuit Court |
| |) | of the City of St. Louis |
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| |) | Hon. Jimmie M. Edwards |
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| |) | FILED: May 29, 2012 |

Fifteen-year old D.M. appeals the judgment of the family court, juvenile division, of the circuit court finding that she committed the offense of assault while on school property in violation of §565.075 RSMo. D.M. asserts that the trial court erred by relying on evidence outside the record, specifically hearsay and propensity evidence from her abuse and neglect file, to support its finding that she committed the charged offense. D.M. further asserts that, absent such evidence, the record is insufficient to prove the charge beyond a reasonable doubt.

AFFIRMED.

DIVISION ONE HOLDS: (1) Due process prohibits the use of propensity evidence to determine guilt. Despite the practical realities of Missouri’s “one family, one judge” statutory framework, this constitutional principle applies in juvenile proceedings. D.M.’s behavioral and disciplinary history was propensity evidence and thus inadmissible in the adjudication hearing. However, in this particular case we are not persuaded that the judge relied on D.M.’s behavioral history to support his factual finding on the charged offense. Reviewing for plain error under Rule 84.13, we cannot say that any trial court error resulted in manifest injustice or a miscarriage of justice. (2) Although the court believed that D.M. “got handled” by the school security officer and didn’t mean to scratch him, the record was sufficient to support a finding that she knowingly caused him physical injury. The officer and a school principal testified that D.M. swung at and kicked the officer, and D.M. admitted that she fought back against him. Viewing this evidence in the light most favorable to the judgment and disregarding evidence to the contrary, a fact-finder could reasonably infer that D.M. knew that her actions would result in injury.

Opinion by: Clifford H. Ahrens, P.J. Roy L. Richter, J., and Gary M. Gaertner, Jr., J.,
concur.

Attorneys for Appellant: Sarah Johnson and Marsha L. Levick

Attorney for Respondent: Margaret E. Gangle

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| THIS SUMMARY IS NOT PART OF THE OPINION OF THE COURT. IT HAS BEEN PREPARED FOR THE CONVENIENCE OF THE READER AND SHOULD NOT BE QUOTED OR CITED. |
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