

IN THE DISTRICT COURT OF APPEAL  
FIRST DISTRICT, STATE OF FLORIDA

D. W., A CHILD,

Appellant,

v.

NOT FINAL UNTIL TIME EXPIRES TO  
FILE MOTION FOR REHEARING AND  
DISPOSITION THEREOF IF FILED

CASE NO. 1D09-5463

STATE OF FLORIDA,

Appellee.

/

Opinion filed April 29, 2010.

An appeal from the Circuit Court for Duval County.

Henry E. Davis, Judge.

Nancy A. Daniels, Public Defender, and Archie F. Gardner, Jr., Assistant Public Defender, Tallahassee, for Appellant.

Bill McCollum, Attorney General, and Trisha Meggs Pate, Bureau Chief - Criminal Appeals, Tallahassee, for Appellee.

PER CURIAM.

In this juvenile delinquency appeal, we accept the state's candid confession of error to the effect that our decision in Johnson v. State, 1 So. 3d 1164 (Fla. 1st DCA 2009), requires reversal of appellant's adjudication of delinquency for the offense of sexual battery by digital penetration in violation of section

794.011(2)(b), Florida Statutes (2007) (Count 3 of the petition). Accordingly, we reverse the adjudication of delinquency as to Count 3 only, and remand with directions that the trial court dismiss that count.

**REVERSED and REMANDED, with directions.**

**WEBSTER, LEWIS, and ROBERTS, JJ., CONCUR.**