

# Children's Law Center of Indiana



## Delinquency

1/05/2007

In J.D. v. State, 859 N.E.2d 341 (Ind. 2007), the Court granted transfer of J.D. v. State, 841 N.E.2d 204 (Ind. Ct. App. 2006) and affirmed the juvenile court's judgment adjudicating the juvenile to be a delinquent child for committing disorderly conduct, a class B misdemeanor when committed by an adult. The juvenile, a seventeen-year-old resident of the Marion County Guardian's Home was approached by Deputy Sheriff Sherry Gibbons, who worked onsite, to discuss some problems between the juvenile and the house parent. The officer moved the discussion to her office for privacy. The officer testified that she had not intended to arrest the juvenile but to find a "solution to this situation and try to work toward a behavior that was ... good for everybody." Increasingly louder interruptions from the juvenile met each of the officer's attempts to speak to her. The officer described the volume of the juvenile's voice as "breaking of the eardrums" and said that the juvenile responded to requests to stop hollering by stating that she "did not have to respect no one or nobody that didn't respect her." The juvenile testified that she did not raise her voice but just attempted to explain her objection to having been once written up by the house parent and regarding other occasions where the house parent promoted facility rules. After continued attempts to discuss the juvenile's behavior and to explain the potential consequences of it, the officer advised the juvenile that she would be arrested for intimidation and for disorderly conduct if she did not stop hollering. The juvenile replied that she did not care, and continued to talk over the officer, who then arrested her. The State filed a petition alleging the juvenile was a delinquent child, and the juvenile court subsequently adjudicated her to be a delinquent for commission of disorderly conduct, a class B misdemeanor if committed by an adult. The juvenile appealed. In J.D. v. State, 841 N.E.2d 204 (Ind. Ct. App. 2006), the court of appeals concluded that the juvenile was engaged in protected political speech and reversed the juvenile court's judgment.

**Inasmuch as the juvenile's alleged political speech obstructed and interfered with the officer's attempts to speak and function as a law enforcement officer, it clearly amounted to an abuse of the right to free speech and, thus, subjected the juvenile to accountability under Article 1. Section 9 of the Indiana Constitution. Id. at 344.**

Article 1. Section 9 of the Indiana Constitution provides:

No law shall be passed restraining the free interchange of thought and opinion, or restricting the right to speak, write, or print, freely, on any subject whatever: but for the abuse of that right, every person shall be responsible.

The Court discussed its decision in Price v. State, 622 N.E.2d 954 (Ind. 1993) in which it had reversed a disorderly conduct conviction based on its finding that the defendant had been engaged in protected speech. The Court distinguished Price in that there, unlike here, the defendant had not obstructed or interfered with the police. Finding that, here, the juvenile's

“abusive speech is not analogous to the relatively harmless speech in Price, and that her loud over-talking of the officer was not constitutionally-protected speech,” the Court rejected the claim of insufficient evidence. J.D. at 344.

**The trial court did not err in admitting testimony describing the manner and extent of the juvenile’s refusal to engage in a discussion with the officer and her continued voluntary shouting after the officer requested that she stop.** Id. at 345. On appeal the juvenile contended that the juvenile court erred by admitting the testimony of the officer regarding her “interrogation” of the juvenile; that her statements to the officer were made during a custodial interrogation; the juvenile was not advised of her rights to remain silent and to have counsel present; and she did not knowingly and voluntarily waive those rights. The Court discussed Miranda v. Arizona, 384 U.S. 436 (1966) and its instruction that “the prosecution may not use statements, whether exculpatory or inculpatory, stemming from custodial interrogation of the defendant unless it demonstrates the use of procedural safeguards effective to secure the privilege against self-incrimination.” Id. at 444. These “procedural safeguards” include advisement of the right to remain silent, that any statement made may be used against the person, and of the right to the presence of an attorney.” Id. The Court also noted (1) Miranda recognizes that “[a]ny statement given freely and voluntarily without any compelling influences is ... admissible in evidence;” and (2) what took place here was far less intrusive than the “[g]eneral on-the-scene questioning ... or other general questioning of citizens in the fact-finding process” left unaffected by the Miranda holding. Id. at 477-78. The Court found that, here, (1) the juvenile’s statements made during her meeting with the officer were not received in evidence as an admission to prove her prior wrongful conduct; (2) the charges do not refer to a previous incident but rather to the nature and manner of the juvenile’s behavior while she was making her statements; (3) the content of the juvenile’s shouting was not relevant to establish the charged act of delinquency; and (4) the juvenile voluntarily engaged in the conduct that included these statements. J.D. at 344-45.

**In view of the juvenile’s prior history of delinquent behavior and her failure to adequately respond to prior attempts at rehabilitation, the disposition ordered by the juvenile court was quite consistent with her best interest and the safety of the community.** Id. at 346. On appeal, the juvenile argued that the juvenile court’s dispositional order was inconsistent with the less restrictive alternative recommended by the Probation Department and contravened statutory principles. The Court (1) discussed I.C. 31-37-18-6 regarding juvenile court dispositional decrees; (2) noted that under the statute, placement in “the least restrictive (most family like) and most appropriate setting available” applied only “[i]f consistent with the safety of the community and in the best interest of the child;” and (3) noted that the juvenile court’s disposition differed from that recommended by the Probation Department only in that the court committed the juvenile to the Department of Correction and then suspended that commitment, before placing her on the recommended formal probation. Id.