

Children's Law Center of Indiana



Delinquency

12/05/2006

In **J.D.P. v. State**, 857 N.E.2d 1000 (Ind. Ct. App. 2006), the Court affirmed the juvenile court's delinquency adjudication for committing an act that would be aiding in arson as a class B felony if committed by an adult. On May 21, 2005, the juvenile, who was on house arrest for pending charges of theft, resisting law enforcement, and minor in possession of alcohol that he was alleged to have committed while he was on probation from a separate theft disposition, and another boy were seen standing in the juvenile's backyard throwing Molotov cocktails into the parking lot of an apartment complex. The boys then took some gasoline from the juvenile's shed and went to a different apartment complex where they set the maintenance barn on fire. This fire was initially thought to be an accident. A neighbor reported the throwing of the Molotov cocktails and identified the juvenile as one of the boys doing it. The juvenile and his family denied the juvenile's involvement in the Molotov cocktail throwing and the juvenile was arrested for false informing and violating house arrest and placed in the juvenile detention facility. On May 23, 2005, the State filed a petition alleging that the juvenile was a delinquent child for committing an act that would be false informing as a class A misdemeanor if committed by an adult. On June 2, 2005, when the investigating officer located and interviewed the other boy in the Molotov cocktail incident, the other boy admitted that he and the juvenile had started the barn fire which the officer had previously believed not to be related to the Molotov cocktail incident. On June 4, 2005, the investigating officer arranged to speak with the juvenile about the barn fire. The procedural details of this interview regarding Miranda are included below. During the interview, after being informed that the other boy had given a written statement indicating that the juvenile had started the fire at the barn, the juvenile stated that he did go to the barn with the other boy who had taken gasoline out of the juvenile's shed, but that the other boy poured the gasoline on some hay behind the barn and set it on fire and then lit the barn on fire. When the investigating officer then asked the juvenile if he would make a written statement, the juvenile responded that he had an attorney and that his attorney told him not to say anything to the police. The officer ended the interview. On June 13, 2005, after a subsequent interview with the other boy, the State filed a petition alleging that the juvenile was a delinquent child for committing acts that would be aiding in arson as a class B felony and criminal recklessness as a class B misdemeanor if committed by an adult. The juvenile filed a motion to suppress all evidence of the juvenile's June 4 statement, alleging that the statement was taken in violation of his right to counsel because the police had initiated contact with him and interrogated him after he had requested appointed counsel in his false informing case. Following a suppression hearing, the juvenile court denied the juvenile's motion. Subsequent to a November 10, 2005 fact finding hearing in both Causes in which the officer testified as to the content of the juvenile's June 4 interview, the juvenile court entered a true finding of delinquency for aiding in arson and false informing, but found that the juvenile was not delinquent for the criminal

recklessness allegation. The juvenile court awarded wardship of the juvenile to the Indiana Department of Correction with a recommendation that he be placed at the Indiana Boys School. The juvenile appealed his aiding in arson adjudication.

Although the juvenile had asserted a Sixth Amendment right to counsel on his charged offense of false informing, it could not be invoked for his future prosecution on the uncharged arson offense. *Id.* at 1008. The Court stated that when the juvenile was questioned about the barn fire he had not been charged with aiding in arson and, indeed, could not have even asserted a Sixth Amendment right to counsel for that offense. See *McNeil v. Wisconsin*, 501 U.S. 171, 175 (1991) (holding that the Sixth Amendment right to counsel does not attach until a prosecution is commenced, that is, at or after the initiation of adversary judicial criminal proceedings). The Court noted that, even though the juvenile's act of aiding in arson took place on the same day as the act of false informing, they are unrelated in that they are different charges and occurred at different locations. The Court's discussion of the U.S. Supreme Court's holding in *McNeil*, includes quotes from that case which include the following differentiation:

The purpose of the Sixth Amendment counsel guarantee -- and hence the purpose of invoking it -- is to protect the unaided layman at critical confrontations with his expert adversary, the government, after the adverse positions of government and defendant have solidified with respect to a particular alleged crime. The purpose of the [Fifth Amendment] *Miranda-Edwards* guarantee, on the other hand -- and hence the purpose of invoking it -- is to protect a quite different interest: the suspect's desire to deal with the police only through counsel. This is in one respect narrower than the interest protected by the Sixth Amendment guarantee (because it relates only to custodial interrogation) and in another respect broader (because it relates to interrogation regarding any suspected crime and attaches whether or not the adversarial relationship produced by a pending prosecution has yet arisen). To invoke the sixth Amendment interest is, as a matter of fact, not to invoke the *Miranda-Edwards* interest.... [Invocation of the *Miranda* right to counsel] requires, at a minimum, some statement that can reasonably be construed to be an expression of a desire for the assistance of an attorney in dealing with custodial interrogation by the police. Requesting the assistance of an attorney at a bail hearing does not bear that construction.

Id. at 177-78. *J.D.P.* at 1007-08.

The juvenile voluntarily waived his *Miranda* rights. Contrary to his argument on appeal, under the totality of the circumstances, the juvenile's statement was voluntary and was properly admitted into evidence. *Id.* at 1010. I.C. 31-32-5-1 sets forth the requirements for a valid waiver of state or federal constitutional rights in cases involving a juvenile. The Court noted that the State bears the burden of showing that a juvenile defendant received all the protections of this statute, but that the Court reviews the evidence in the light most favorable to the trial court's decision and it reviews a trial court's ruling as to the voluntariness of a waiver by looking to the totality of the circumstances which includes consideration of the child's physical, mental and emotional maturity; whether the child or parent understood the consequences of the child's statements; whether the child and parent had been informed of the delinquent act; the length of time the child was held in custody before consulting with his parent; whether there was any coercion, force, or inducement; and whether the child and parent were advised of the child's right to remain silent and to

appointment of counsel. The Court's review of the record showed: (1) the juvenile was fourteen years old when he made his statements; (2) the juvenile's juvenile record, which included prior adjudications for theft and conversion and pending delinquency petitions for theft and resisting law enforcement, showed that he had interacted with the justice system on prior occasions; (3) the officer first met with the juvenile's mother, then retrieved the juvenile who had been held in the juvenile detention facility for about two weeks on the false informing charge and violation of house arrest; (4) at the police station, the officer informed the juvenile and his mother of the juvenile's Miranda rights and offered them the opportunity for consultation; (5) the juvenile and his mother both signed the Miranda waiver form; (6) the juvenile's mother remained with him during the interview; (7) the mother testified she believed the juvenile had done nothing wrong regarding the barn fire and told the officers that she thought it was a good idea if the truth came out during the interview; (8) the juvenile admitted that he was present at the scene when the barn was set on fire; and (9) aside from the juvenile's testimony during the suppression hearing that he "felt that [he] had to" answer the officer's questions, the record contained no evidence of police force, coercion or improper inducement to secure the juvenile's statement. Id. at 1008-10.

The evidence presented at the dispositional hearing was sufficient to sustain the juvenile court's adjudication of the juvenile as a delinquent for committing aiding in arson as a class B felony if committed by an adult. Id. at 1010. In order to sustain an adjudication for aiding in arson as a class B felony, the State had to prove beyond a reasonable doubt that the juvenile knowingly or intentionally aided, induced, or caused another person, by means of fire, explosive, or destructive device, to damage property of another person without the other person's consent and the pecuniary loss was at least \$5,000. IC 35-43-1-1(a)(3); 35-41-2-4. In finding the evidence sufficient, the Court noted that (1) the other boy testified unequivocally that he and the juvenile took some gasoline from the juvenile's shed and went to the barn where the juvenile set fire to a bale of hay that was behind the barn and the barn subsequently caught fire; (2) as the two boys were running away the juvenile told the other boy that the juvenile would beat or stab the other boy if he told on the juvenile; (3) in his statement to the officer, the juvenile admitted to being at the scene of the fire; and (4) the manager of the apartment complex testified that the fire resulted in approximately \$12,000 in damage to the barn and its contents. Id.