

Children's Law Center of Indiana



Delinquency

09/13/2007

In **T.D. v. State**, 873 N.E.2d 184 (Ind. Ct. App. 2007), the Court affirmed the juvenile court's judgment adjudicating the juvenile to be a delinquent child for possession of marijuana, a Class A misdemeanor if committed by an adult. The juvenile was the passenger in a car with a cracked windshield when the car was stopped by a police officer who had observed that the crack in the windshield was "obstructing view." When the car was stopped, the juvenile opened the passenger door and leaned out to spit something on the road. When the officer approached the car, a strong odor of marijuana emanated from it, and the juvenile had marijuana on his mouth and shirt. The juvenile moved to suppress the evidence on the ground that the stop of the vehicle violated Article I, section 11 of the Indiana Constitution. The juvenile court denied the motion, and, after hearing other evidence, found the juvenile was a delinquent child. The juvenile appealed contending that the stop of the car violated Article I, Section 11 of the Indiana Constitution.

The Court held that it could not say that the police officer's actions were unreasonable under the Indiana Constitution. *Id.* at 187. The Court initially noted that, inasmuch as the juvenile did not file an interlocutory appeal to challenge the traffic stop, but rather proceeded to trial and objected to the admission of the evidence, its standard of review was one of abuse of discretion. *Id.* at 185. The Court explained that (1) Article I, Section 11 provides "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable search or seizure, shall not be violated....;" (2) in resolving challenges asserting Section 11 violations, courts must consider the circumstances presented in the individual cases to determine whether the police behavior was reasonable; (3) to assess the totality of the circumstances, the court must consider "both the degree of intrusion into the subject's ordinary activities and the basis upon which the officer selected the subject of the search or seizure." *Myers v. State*, 839 N.E.2d 1146, 1153 (Ind. 2005); and (4) factors to be balanced are "1) the degree of concern, suspicion, or knowledge that a violation has occurred, 2) the degree of intrusion the method of the search or seizure imposes on the citizens' ordinary activities, and 3) the extent of law enforcement needs." *Id.* The Court noted that, here, the juvenile conceded that the windshield was cracked, but claimed that pursuant to *State v. Pease*, 531 N.E.2e 1207 (Ind. Ct. App. 1988), the officer's testimony regarding the windshield's condition was inadequate to demonstrate reasonable suspicion. The Court discussed *Pease* and declined the juvenile's invitation to hold that photographic evidence of damage was required to demonstrate a police officer had reasonable suspicion justifying a traffic stop. Rather, the Court held that, here, the police officer's testimony that the windshield crack obstructed the driver's view was sufficient evidence to support the officer's reasonable belief that a traffic stop was required to determine whether the obstruction made the vehicle sufficiently unsafe to warrant a traffic citation within the reasonableness factors stated in *Myers*, 839 N.E.2d at 1153. *T.D.* at 186.