

Children's Law Center of Indiana



Delinquency

08/28/2008

In **H.M. v. State**, 892 N.E.2d 679 (Ind. Ct. App. 2008), the Court affirmed the juvenile court's adjudication of Juvenile as delinquent. Juvenile, with a group of other girls, confronted two girls, L.P. and D.O., on separate occasions on December 13, 2008, and engaged in conduct alleged by the State in two separate causes. The juvenile court issued true findings in (1) cause number 4789 for conduct that, were she an adult, would have constituted Class D felony criminal trespass for entering the school without permission; Class D felony criminal confinement of L.P.; Class B misdemeanor battery of L.P.; and Class D felony attempted theft of L.P.'s property; and (2) cause number 403 for conduct that, were she an adult, would have constituted Class D felony criminal confinement of D.O.; Class D felony attempted theft of D.O.'s property; and Class A misdemeanor battery of D.O. Inasmuch as Juvenile appealed aspects of 403 only, the facts relating to cause number 4789 will be omitted here. Juvenile and several of her friends approached thirteen-year-old D.O. who was walking home from school. Juvenile demanded of D.O., "Let me see your necklace." D.O. walked on and the group of girls followed, eventually surrounding her. Juvenile smacked and punched D.O. and another girl in the group hit D.O. with a belt. Juvenile pulled on D.O.'s necklace, unsuccessfully trying to remove it, and causing D.O. pain. The necklace did not break, and D.O. was able to run away. A witness testified that Juvenile pulled D.O.'s hair, smacking and punching her, and described Juvenile's treatment of D.O. as torture. On appeal, Juvenile alleged that her adjudications for attempted theft and battery in cause number 403 constituted double jeopardy.

Given the important and significant impact that a juvenile history consisting of multiple true findings may have later in life when a trial court is evaluating a defendant's criminal history to enhance the defendant's sentence based on this history, double jeopardy principles attach where a juvenile faces multiple charges under a single adjudication as here. *Id.* at 682. The Court explained that Article I, Section 14 of the Indiana Constitution provides in part, "No person shall be put in jeopardy twice for the same offense." *Id.* at 681. Citing **Richardson v. State**, 717 N.E.2d 32 (Ind. 1999), the Court opined: (1) two or more offenses are the same offense in violation of Article I, Section 14 if, with respect to either the statutory elements of the challenged crimes or the actual evidence used to obtain convictions, the essential elements of one challenged offense also establish the essential elements of another challenged offense; (2) under the actual evidence test, the court examines the actual evidence presented at trial in order to determine whether each challenged offense was established by separate and distinct facts; (3) to find a double jeopardy violation under the actual evidence test, the court must conclude that there is "a reasonable possibility that the evidentiary facts used by the fact-finder to establish the essential elements of one offense may also have been used to establish the essential elements of a second challenged offense;" and (4) if the court concludes that true findings in a delinquency adjudication violate double jeopardy principles, the court may

reduce either true finding to a less serious classification if that will eliminate the violation or, if it will not, the court must vacate one of the true findings. H.M. at 681.

Here, contrary to the holding of D.B. v. State, 842 N.E.2d 399, 403, which cited Breed v. Jones, 421 U.S. 519, 531 (1975) for the proposition that double jeopardy protections attach to juvenile proceedings, the State contended that there can be no double jeopardy violation in this case because “the double jeopardy prohibition against multiple punishments in the same case do[es] not apply to juvenile delinquency proceedings in which there is only one finding of delinquency and one disposition.” H.M. at 681. Thus, the State analogized a juvenile delinquency proceeding – in which the court issues only one dispositional order regarding delinquency no matter how many true findings it issues – with the merger of adult criminal convictions and contends that, in both situations a defendant faces only one punishment and therefore cannot face double jeopardy. The Court declined the State’s invitation to revisit D.B. Id. at 682.

Because the Court presumed that the trial court properly applied the law and there is evidence that Juvenile battered D.O. and caused her pain separate from pulling on her necklace, Juvenile’s true findings for attempted theft and battery do not constitute double jeopardy under the actual evidence rule. Id. at 683. Juvenile contended that the juvenile court used the same evidence to reach the true findings of attempted theft and battery in violation of both Article I, Section 14 of the Indiana Constitution and Indiana’s common law prohibition of double jeopardy “prohibit[ing] ‘[c]onviction and punishment for a crime which consists of the very same act as another crime for which the defendant has been convicted and punished’” Id. The Court cited to the evidence from the witness who testified that Juvenile pulled D.O.’s hair and “tortured” her and found that Juvenile’s act in pulling on D.O.’s necklace was not required to enter true findings of both attempted theft and battery because of this additional evidence of a battery to D.O. resulting in bodily injury. Id.