

Children's Law Center of Indiana



Delinquency

07/15/2008

In ***M.S. v. State***, 889 N.E.2d 900 (Ind. Ct. App. 2008), the Court affirmed the juvenile court's adjudication of the juvenile as delinquent for committing an act that would be disseminating matter harmful to minors as a class D felony if committed by an adult. The juvenile (aged 16) was charged for driving a sports car by the Indiana State Fairgrounds, in a moderately high volume of traffic, with a DVD containing nudity and sexual content playing on a fifteen-inch video screen mounted in the rearview window and visible to the public.

The State presented sufficient evidence that the juvenile knowingly or intentionally displayed matter that is harmful to minors in an area to which minors have visual, auditory, or physical access. *Id.* at 903. The juvenile argued that the State failed to prove that he was responsible for playing the DVD containing material harmful to minors and that any minor was exposed to the DVD's contents. *Id.* at 902. The Court opined, (1) a person engages in conduct "knowingly" if, when he engages in the conduct, he is aware of a high probability that he is doing so; and (2) the "knowingly" element of an offense may be inferred from surrounding circumstances. *Id.* (citations omitted). The Court noted: (1) the juvenile was driving a sports car with a fifteen-inch television screen mounted in the rearview window and visible to the public; (2) a DVD depicting nudity and sexual content was playing on the screen; (3) a duplicate screen, to which the DVD player was attached, was located on the console between the two front seats; and (4) from the evidence and resulting reasonable inferences, a reasonable trier of fact could conclude that the juvenile knew that the DVD was playing on the screen mounted in the rearview window of the car. *Id.* As to whether minors were exposed to the DVD's contents, the Court opined: (1) the specific offense with which the juvenile was charged (IC 35-49-2-2) requires that the display be in an area to which minors have visual, auditory, or physical access; (2) "access" is defined as permission, liberty, or ability to enter, approach, or pass to and from a place or to approach or communicate with a person or thing; and (3) under this clear and unambiguous definition of "access," the minor need not be present, but minors only need the ability to see or hear the conduct or the ability to be present. *Id.* at 903 (citations omitted). The Court concluded that the juvenile was driving a sports car on a busy street near the Indiana State Fairgrounds, an area which was a public area to which minors had both auditory and visual access to what occurred in the rearview window of the juvenile's vehicle. *Id.*