

# Children's Law Center of Indiana



## Delinquency

03/09/2009

In **J.D. v. State**, 902 N.E.2d 293 (Ind. Ct. App. 2009), the Court affirmed the juvenile court's judgment adjudicating Juvenile a delinquent child based on the juvenile court's finding that he committed an act that if committed by an adult would be Resisting Law Enforcement, a class A misdemeanor. On August 27, 2007, three police officers on routine patrol saw two juveniles and asked them to stop, but they walked away instead. A short time later, the officers approached a house, recognized these two juveniles, and observed open and empty containers of alcohol on the porch and suspected marijuana leaves on the walkway. Juvenile was sitting next to several of the empty and half-empty containers of alcohol. The officers instructed all of the individuals on the porch to walk out to the curb and sit down with their legs straight, and advised that they were going to administer portable breath tests. Juvenile took off running, was tasered, fell, got back up and ran away. Two officers followed and ordered Juvenile to stop, but he did not comply. One of the officers came upon Juvenile beside a shed and ordered him to the ground, but he "came at" the officer instead. The officer shoved Juvenile to the ground, grabbed him, and attempted to handcuff him, but he struggled and attempted to elbow the officer, eventually hitting him on the vest. Juvenile was tasered three more times before he could be subdued and handcuffed, and continued to fight, scream, and cuss as he was escorted back to the house where the chase had started. Juvenile was alleged to have committed acts that would constitute two counts of resisting law enforcement and one count of battery on a police officer, all as class A misdemeanors if they had been committed by an adult. At the fact finding hearing, Juvenile moved twice to suppress the evidence related to the stop and anything that ensued, on grounds that the stop was illegal. The juvenile court denied the motions and entered a true finding with respect to one allegation of resisting law enforcement. Juvenile appealed, contending that the juvenile court erred in admitting the testimony about what occurred on the evening in question because it flowed from the seizure of Juvenile, which he contends was in violation of the Fourth Amendment to the U.S. Constitution and article I, section 11 of the Indiana Constitution.

**The Court held that, considering the totality of the circumstances, the facts then known to the officers were sufficient to create a reasonable suspicion of criminal activity, regardless of whether the officers actually saw Juvenile drinking the beer or holding the can in his hands, and thus Juvenile's detention did not offend Fourth Amendment principles.** *Id.* at 296. The Court stated Juvenile's Fourth Amendment claim as being that the police officers took Juvenile into custody when they directed him to sit on the curb, and they did so without reasonable suspicion to justify the detention under the Fourth Amendment. The Court opined: (1) the Fourth Amendment protects citizens from unreasonable searches and seizures; (2) without violating the Fourth Amendment, an officer may briefly stop a person for investigative purposes if the officer has reasonable suspicion of criminal activity, a so-called Terry stop; (3) reasonable suspicion exists where the facts known to the officer, along with the reasonable inferences drawn therefrom, would cause an ordinarily prudent person to believe that criminal activity has or is

about to occur; (4) reasonable suspicion is determined on a case-by-case basis by examining the totality of the circumstances; (5) reasonable suspicion must be an objective determination that is more than an inchoate and unparticularized suspicion or hunch, but less than proof of wrongdoing by a preponderance of the evidence; (6) the requirements of the Fourth Amendment are satisfied if the facts known to the officer at the moment of the stop are such that a person of reasonable caution would believe that the action taken was appropriate; (7) a stop made for investigative purposes must be temporary and last no longer than is necessary to effectuate the purpose; and (8) a police officer's subjective motives are irrelevant in Fourth Amendment analysis, and a stop will be valid provided there is an objectively justifiable reason for it. J.D. at 296 (citations omitted). The Court held that, here, inasmuch as the officers observed Juvenile and other juveniles sitting on a porch with open and empty containers of alcohol sitting around the porch and Juvenile "was sitting right next to some of the empty cans and some cans that had some alcohol in them, although the officers did not witness Juvenile actually drinking beer, the fact that he is a minor, coupled with his close proximity to the open cans of beer on the porch, was sufficient to cause an ordinarily prudent person to believe that criminal activity had or was about to occur. Id.

**Juvenile's detention did not contravene article 1, section 11 of the Indiana Constitution and the juvenile court did not err in failing to exclude the evidence on that basis.** Id. at 297. The Court opined: (1) the analysis under the Indiana Constitution is much the same as that under the Fourth Amendment; (2) article 1, section 11 of the Indiana Constitution guarantees the rights of liberty, privacy, and free movement and investigatory stops constitute a seizure, invoking the protections of that provision; (3) those rights are not absolute, however, but must be balanced against society's right to protect itself; (4) the Court must balance these sometimes competing rights by considering the reasonableness of the intrusion and, where appropriate, permit brief investigatory stops based upon reasonable suspicion of criminal activity; (5) a brief police detention of an individual during investigation is reasonable if the officer reasonably suspects that the individual is engaged in, or about to engage in, illegal activity; (6) the Indiana Supreme Court enunciated a separate and distinct method of analysis for claims of search and seizure violations of the state constitution, stating "Rather than employ federal concepts like the warrant requirement and probable cause requirement, we require instead that the State bear the burden of showing that, in the totality of the circumstances, the intrusion was reasonable;" (7) a brief police detention of an individual during investigation is reasonable if the officer reasonably suspects that the individual is engaged in, or about to engage in, illegal activity; and (8) "reasonable suspicion exists where the facts known to the officer, together with the reasonable inferences arising from such facts, would cause an ordinarily prudent person to believe that criminal activity has or is about to occur." Id. at 296-97 (citations omitted). The Court held that, here, the officers' observation of Juvenile sitting in very close proximity to open beer cans, with what appeared to be marijuana strewn about on the ground, would cause an ordinarily prudent person to believe that criminal activity (minor consumption of alcohol) had or was about to occur, thus giving rise to the requisite reasonable suspicion under Terry. J.D. at 297.