

Children's Law Center of Indiana



Delinquency

02/19/2009

In **R.W. v. State**, 901 N.E.2d 539 (Ind. Ct. App. 2009), the Court reversed the trial court's judgment adjudicating the juvenile to be a delinquent child for committing the offense of public intoxication, a Class B misdemeanor when committed by an adult. The juvenile was taken into custody after admitting at school that he had been drinking. His blood alcohol content measured to be 0.06%. The State filed a petition alleging him to be a delinquent because he had committed the offense of public intoxication. The Court's decision quotes substantial portions of the transcript of the juvenile's initial hearing illustrating the trial court's exchanges with the juvenile and his mother regarding, among other things, the charges and whether he would waive representation by counsel. The transcript shows both the juvenile and the mother indicating that they waived counsel for the juvenile. At the disposition hearing the juvenile was represented by counsel for other petitions against the juvenile, but the trial court expressly informed the juvenile's counsel that he was "not appointed" to address the public intoxication charge. The trial court accepted the State's recommendation that the juvenile be made a ward of the Department of Correction, and entered its disposition order accordingly. Neither the parties nor the trial court referenced or inquired into the predisposition report, which, apparently had not been prepared as ordered, but instead was filed with the trial court four months later with a recommendation that the juvenile "remain on task at the Alternative School and that he remain in the Wyandotte House." After the trial court denied the juvenile's motion to correct error, the juvenile appealed.

The Court held that, inasmuch as there was no evidence in the record to demonstrate that the juvenile was given any opportunity to consult with his mother, the State did not meet its "heavy burden" to demonstrate that the juvenile satisfactorily waived his right to counsel. Therefore, the juvenile's subsequent confession to the allegations against him at the initial hearing were not given in accordance with IC 31-32-4-1, and the adjudication must be reversed. *Id.* at 545. On appeal, the juvenile contended that he was denied his right to counsel at the initial hearing because he was not given an opportunity to meaningfully consult with his mother about waiving that right. The State responded by quoting the portions of the record in which the trial court informed the juvenile of the allegations against him and their possible penalties and in which the juvenile and his mother repeatedly stated that the juvenile did not want counsel. The Court opined that (1) IC 31-32-4-1(2) provides that a juvenile's constitutional rights may be waived by the child's custodial parent, guardian, custodian, or guardian ad litem only if that person knowingly and voluntarily waives the right, that person has no interest adverse to the child, meaningful consultation has occurred between that person and the child, and the child knowingly and voluntarily joins with the waiver; (2) the Indiana Supreme Court has held that the meaningful consultation requirement of the statute is a matter peculiar to juvenile waivers and it is a safeguard additional to those requirements common to adult waivers – that they be knowingly, voluntarily, and intelligently made; (3) the meaningful consultation

requirement will be met when the State demonstrates actual consultation of a meaningful nature or the express opportunity for such consultation, which is then forsaken in the presence of the proper authority by the juvenile, so long as the juvenile knowingly and voluntarily waives his constitutional rights; (4) the consultation requirement is designed to afford the juvenile a stabilizing and comparatively relaxed atmosphere in which to make a serious decision that could affect the rest of his life; (5) the preferred practice is to provide consultation after advising the juvenile and his or her parents of the rights to be waived; (6) the State bears the heavy burden of proving that the meaningful consultation requirement has been met; and (7) the appeals court reviews the evidence in the light most favorable to the trial court's decision. *Id.* at 543-44 (citations omitted). The Court noted that, here, (1) if the juvenile were an adult, it would be inclined to agree that he knowingly and voluntarily waived his right to counsel; (2) inasmuch as the juvenile is not an adult, the State must additionally demonstrate that he was given the opportunity to meaningfully consult with his mother before he could waive his constitutional rights; (3) the record is devoid of any evidence that the trial court provided the juvenile with an opportunity to meaningfully consult with his mother about the waiver of his right to counsel before he stated his desire to waive that right; and (4) accepting the State's argument on appeal would nullify the distinction between the requirements for a juvenile's waiver of his or her fundamental rights and the requirements for an adult's waiver of those rights. *Id.* at 544. Additionally the Court observed that, in other cases, either an express, but declined, opportunity to consult or anywhere between fifteen and forty-five minutes of actual consulting time between parent and child has been held to be sufficient, and those circumstances did not occur here. *Id.* at 545.

In a footnote, the Court held that, given its conclusion that the juvenile did not waive his right to counsel at the initial hearing, it did not need to reach the juvenile's additional assertion that he was denied the right to counsel at the disposition hearing because the trial court did not renew his supposed waiver. However, the Court did note that "[a] juvenile is entitled to assistance of counsel at every stage of the juvenile proceedings, including the disposition hearing," and that "[t]he record must show either that the juvenile was represented by counsel or that the juvenile waived representation." *Id.* at 545 n.2 (citations omitted).