

Children's Law Center of Indiana



Delinquency

6/22/11

In ***D.M. v. State***, 949 N.E.2d 327 (Ind. 2011), the Court affirmed the juvenile court's decision to admit the child's confession and the juvenile court's finding that the child is a delinquent child for acts that would constitute Class B felony burglary and Class D felony theft if committed by an adult. On January 13, 2010, the thirteen-year-old child and his friend entered a firefighter's house without permission, while no one was home; using the garage door code they had obtained from the firefighter's sons. The child and his friend took several items of the firefighter's personal property. The firefighter was notified of the apparent break-in and left work, calling the police while in route to his house. When the police arrived, they were given information that implicated the child and his friend in the break-in. Sometime after 2:00 p.m., two uniformed police officers went to the home of the child's friend, arrested the child and his friend, and brought them to the firefighter's house. Shortly after 3:00 p.m., a uniformed officer went to the child's house and informed Mother that the child had been arrested. Mother went down the street to the firefighter's residence where the child was being held in a police cruiser. According to Mother, the child attempted on several occasions to speak to her through the window of the police car, but the police officers told her she could not speak to him until the detective arrived because they did not want the investigation impaired. Mother also testified that the officers told her that she would not be permitted to speak to the child until she signed the waiver form. Mother alleged that there were several firefighters on the scene who were glaring at her and making hostile comments. Around 4:00 p.m. the police detective arrived at the firefighter's residence and spoke briefly with Mother, who advised him that the child would make a statement. The detective then took the child and Mother to his car and advised them of their rights, reading to them from the "Juvenile Waiver" form. The detective had the child and Mother read the form. After the child and Mother signed the top part of the form acknowledging that they had been advised of and understood the child's rights, the detective told them that they could have as much time as they wanted to talk alone. When the detective returned several minutes later and asked if they were done talking, Mother said yes. The detective then had them read the waiver-of-rights section at the bottom of the waiver form, and Mother and the child both signed it. The child then confessed in detail and told the detective where he had hidden one of the stolen items.

On January 14, 2010, the State filed a petition in Marion Superior Court, Juvenile Division, alleging the child to be a delinquent child for committing acts that would constitute Class B

felony burglary and Class D felony theft if committed by an adult. At the factfinding hearing on April 1, 2010, the child's confession was admitted over objection, and the juvenile court found that the allegations in the petition were true. At the dispositional hearing on April 29, 2010, the court placed the child on probation until October 28, 2010, with special conditions. The Court of Appeals affirmed in a 2-1 unpublished memorandum decision. The child sought, and the Supreme Court granted transfer, thereby vacating the Court of Appeals opinion.

The Court found that there is substantial evidence of probative value that the child and mother were afforded an opportunity for meaningful consultation free of police pressure.

Id. at 338. The Court observed that the Fifth Amendment, the Due Process Clause of the Fourteenth Amendment, and Article I, Section 14 of the Indiana Constitution protect the privilege against self-incrimination and ensure that only a person's voluntary statements can be used against that person in a criminal prosecution. Id. at 332-33. The Court noted that in Lewis v. State, 288 N.E.2d 138 (Ind. 1972), it held that Indiana law requires the use of procedural safeguards in addition to those required by Miranda v. Arizona, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966), when a juvenile is subjected to custodial interrogation. D.M. at 333. The Court noted that IC 31-32-5-1 provides in relevant part that any of a juvenile's rights under the federal or state constitutions, or under any other law, may be waived only:

(2) by the child's custodial parent, guardian, custodian, or guardian ad litem if:

- (A) that person knowingly and voluntarily waives the right;
- (B) that person has no interest adverse to the child;
- (C) meaningful consultation has occurred between that person and the child; and
- (D) the child knowingly and voluntarily joins with the waiver.

The Court stated that there are four requirements that must be satisfied before a juvenile's statements made during a custodial interrogation can be used in the State's case-in-chief:

- (1) both the juvenile and his or her parent must be adequately advised of the juvenile's rights;
- (2) the juvenile must be given an opportunity for meaningful consultation with his or her parent;
- (3) both the juvenile and his or her parent must knowingly, intelligently, and voluntarily waive the juvenile's rights; and
- (4) the juvenile's statements must be voluntary and not the result of coercive police activity. Id. at 333-34. The Court observed that the State bears the burden of proving beyond a reasonable doubt that the juvenile received all of the protections of IC 31-32-5-1. Id. at 334.

The child contended that the juvenile court erred in admitting his confession because the State failed to prove that he had the opportunity for meaningful consultation with a parent before waiving his rights. The Court stated that, to prove that "actual consultation of a meaningful nature" occurred, the State needs only to prove that the police provided a relatively private atmosphere that was free from police pressure in which the juvenile and the parent could have

had a meaningful discussion about the “allegations, the circumstances of the case, and the ramifications of their responses to police questioning and confessions.” Trowbridge v. State, 717 N.E.2d 138, 148 (Ind. 1999). D.M. at 335. Citing Patton v. State, 588 N.E.2d 494, 495 n.3 (Ind. 1992), the Court said that, once such an opportunity is provided, it is up to the juvenile and the parent to use this opportunity to their advantage. D.M. at 335-36. The Court noted that the State need not show that the consultation was beneficial in helping the juvenile and his or her parent decide whether to waive or stand on the juvenile’s rights, and the extent to which the conversation aids in the waiver decision “is a circumstance among many others which the trial court may consider in arriving at its decision as to whether the waiver is voluntary and knowing.” Fortson v. State, 385 N.E.2d 429, 436 (Ind. 1979). D.M. at 336.

The Court was not persuaded by the child’s primary argument that the “uncontested evidence” establishes that mother was told that she could not talk to her son until she signed a waiver, and, therefore, the decision to waive his rights was made prior to the opportunity for consultation. Id. at 336-338. In response to this argument, the Court noted that the State attempted to impeach Mother’s credibility, and the juvenile court reasonably could have found that she was not a credible witness. Id. at 336. The Court further said that other facts in the record demonstrate that the actual procedure used was sufficient to show that the child’s rights were not waived until after an opportunity for meaningful consultation had been provided, namely: (1) the detective advised the child and Mother of the child’s rights before the child had waived any rights or been interrogated; (2) the detective told the child and Mother that they could have as much time to talk as they needed; (3) the detective showed the child and Mother that he was turning off the tape recorder and told them he would take it with him while they talked; (4) the detective left the child and Mother sitting in his car, alone, while he walked about 20 feet away from the car to talk to some of the uniformed officers; (5) the detective could not hear their conversation at this distance, and there is no evidence that any other police officer was near the car or could overhear their conversation. Id. at 336. The Court noted that the detective began the child’s interrogation after the consultation was done and the waiver was signed. Id. at 336-37. The Court concluded that the child’s rights were not waived until after he and Mother had an opportunity for a meaningful consultation free of police pressure. Id. at 337. The child argued that the atmosphere was too intimidating for a “meaningful consultation” because he and Mother were in the backseat of a police car, there were many uniformed officers and firefighters on the scene, and some of the firefighters were glaring at and making hostile comments to Mother before the detective arrived. The Court cited Fowler v. State, 483 N.E.2d 739 (Ind. 1985), as an analogous case on atmosphere for a consultation. D.M. at 337. The Court concluded in Fowler that the juvenile and his mother had sufficient privacy to discuss the waiver decision even though they talked in a laboratory reception area at the police station where people were “coming and going” while the interrogating officer stood on the opposite side of a sliding-glass window. Fowler at 743. D.M. at 337. The Court then said that the child and mother arguably had more privacy and less intimidating surroundings than the juvenile in Fowler. D.M. at 337. The Court said that the alleged conduct of the firefighters *prior* to the consultation does not amount to impermissible *police* pressure because the firefighters were on scene in their capacity as private citizens and friends of the victim. Id. The Court said that there is nothing in the record to suggest that the

child and Mother were deprived of a private conversation by the actions of the police or anyone else. *Id.* The Court noted that, assuming that the police were required to inform the parent of the reason for the consultation, the record reflects that Mother was so advised—the last sentence of the advisement of rights form provided that the purpose of allowing her and the child to talk was to discuss the waiver of the child’s rights before signing the waiver of rights. *Id.* at 338.

The Court opined that the juvenile court did not error in admitting the child’s confession because there is substantial evidence of probative value that the child’s rights were waived knowingly, intelligently, and voluntarily under the circumstances. *Id.* at 341. The child also challenged the juvenile court’s decision to admit his confession on the grounds that the State failed to carry its burden in proving that the waiver of his rights was knowing, intelligent, and voluntary. The Court, citing *Moran v. Burbine*, 475 U.S. 412, 106 S.Ct. 1135, 89 L.Ed.2d 410 (1986), said that in determining the voluntariness of a *Miranda* waiver, the Court examines the totality of the circumstances surrounding the interrogation to determine whether the suspect’s choice “was the product of a free and deliberate choice rather than intimidation, coercion, or deception” and whether the waiver was “made with a full awareness of both the nature of the right[s] being abandoned and the consequences of the decision to abandon [them].” *Burbine*, 475 U.S. at 421. *D.M.* at 339. The Court noted that relevant considerations include the juvenile’s physical, mental, and emotional maturity; whether the juvenile or his or her parents understood the consequences of the juvenile’s statements; whether the juvenile and his or her parent were informed of the delinquent act for which the juvenile was suspected; the length of time the juvenile was held in custody before consulting with his or her parent; whether there was any force, coercion, or inducement; and whether the juvenile and his or her parent had been advised of the juvenile’s *Miranda* rights. *D.M.* at 340. The Court found that the following circumstances supported the juvenile court’s determination that the child knowingly, intelligently, and voluntarily waived his rights: (1) Mother had been informed of the reason for the arrest when the uniformed officer came to her house; (2) the child was detained for only two hours, at most, before he was permitted to talk to Mother; (3) both the child and Mother were advised of the child’s *Miranda* rights, and they acknowledged an understanding of those rights, signed the advisement section of the juvenile waiver form, consulted with each other in private, and read and signed the actual waiver of rights; (4) neither the child nor Mother asked any questions concerning the child’s rights and never displayed any hesitation or uncertainty with regard to their rights or the procedure used; (5) the child and Mother never invoked their rights; (6) the child gave a detailed confession in response to the detective’s first question; (7) the child was a thirteen-year-old seventh grader when interrogated and there is no evidence that his mental and emotional maturity were hindered by anything other than his youth. *Id.* In response to the child’s argument that the waiver was obtained through an improper inducement because uniformed officers allegedly told Mother that she was required to waive the child’s rights in order to speak to him, the Court opined that the juvenile court reasonably could have concluded that any confusion created by the officers’ alleged statements was sufficiently cleared up by the procedure actually utilized by the detective. *Id.* at 341. In response to the child’s argument that the atmosphere was intimidating and coercive, the Court observed that this is not a case where the police attempted to wear down the juvenile’s will by subjecting him to prolonged

interrogation or holding him incommunicado. Id. The Court said that there is no evidence that the presence or alleged actions of the firefighters, whom the child concedes were present in their capacities as private citizens, had any impact on the child. Id.

The Court concluded that the juvenile waiver form used by the police in this case should be clarified. Id. at 331. The Court stated that a more accurate title for the form is “Juvenile and Parent (or Guardian) Advisement and Waiver of Rights,” and that the form should have a subheading such as “Advisement of Rights” for the top part of the form and “Waiver of Rights” for the bottom part of the form. Id. at 342. The Court also said that the “Advisement” portion of the form should be amended to read that the child and parents *will be* allowed time for consultation to discuss the waiver of rights before signing the waiver of rights. Id. at 341-42. The Court said that the police officer should separately acknowledge the child’s and parent’s signatures for both the “Advisement” and “Waiver” portions of the form and provide the time at which each signature occurred. Id. at 342. The Court said that the “Waiver” section should clearly indicate that both the juvenile and the parent are required to waive the juvenile’s rights, and the form could more clearly indicate the parent’s role. Id. at 342-43. The Court requested that the Judicial Conference of Indiana’s Juvenile Justice Improvement Committee develop a form for juvenile and parent (or guardian) advisement and waiver of rights. Id. at 343 n.21.