

Children's Law Center of Indiana



Delinquency

5/2/11

In **State v. C.D.**, 947 N.E.2d 1018 (Ind. Ct. App. 2011), the Court reversed the trial court's judgment which granted the child's motion to suppress evidence. The Court remanded the case for further proceedings consistent with the opinion. On January 8, 2010, the child, a high school student, was brought to the office of the high school Assistant Principal because a teacher reported that the child appeared to be under the influence of some substance. Assistant Principal, who had interacted with the child on prior occasions, noted that the child's speech and mannerisms were "slower than normal." Assistant Principal requested the assistance of school Security Officer, a "drug recognition evaluator," and asked Security Officer to examine the child to determine whether the child was under the influence of drugs. Security Officer was also a Mooresville Police Department Officer and on that day he was wearing his Mooresville Police Department uniform. The child was examined in Assistant Principal's office, and only the child, Assistant Principal, and Security Officer were present. Security Officer observed that the child was very lethargic, his eyes were bloodshot, his pupils were dilated, and that he had heat bumps on his tongue, which is consistent with smoking something hot. Security Officer had the child perform some balance tests, and asked the child if he was on prescription medication, if he had contact lenses in his eyes, and if he had any medical problems with his hips, legs, knees, or ankles. After the ten minute examination, Security Officer told Assistant Principal that he thought the child was under the influence of marijuana and had smoked it that day. The child stated that he hadn't smoked marijuana that day but had smoked some the previous night. Assistant Principal told the child he would be suspended from school. Assistant Principal searched the child's backpack and discovered two pills that were identified as Adderall, a controlled substance. Assistant Principal gave the pills to the Security Officer and contacted the child's mother.

The State filed a delinquency petition alleging that the child committed an act that would constitute possession of a controlled substance on school property, a Class C felony if committed by an adult. The child filed a motion to suppress, and the trial court held a hearing. After the hearing, the trial court issued an order ruling inadmissible all evidence "obtained from the child prior to the child and parent having an opportunity for meaningful consultation outside the presence of school officials and the police...." Subsequently, the State filed a motion to dismiss without prejudice, which the trial court granted. The State appealed the trial court's grant of the child's motion to suppress pursuant to IC 35-38-4-2(5). This statute provides that the State may

appeal from “an order granting a motion to suppress evidence, if the ultimate effect of the order is to preclude further prosecution.”

The Court of Appeals, in reviewing a trial court’s motion to suppress, determines whether the record discloses substantial evidence of probative value that supports the trial court’s decision. State v. Washington, 898 N.E.2d 1200, 1203 (Ind. 2008). C.D. at 1021. The Court said that the State, appealing from a negative judgment, must show that the trial court’s ruling on the suppression motion was contrary to law. Washington at 1203. C.D. at 1021.

The Court opined that the child was not deprived of his right to meaningful consultation with his parents when Security Officer examined him. Id. at 1023. The child’s motion to suppress claimed that Assistant Principal and Security Officer erroneously interrogated the child without giving him an opportunity to consult his parents. The Court observed that Miranda warnings and the safeguards set forth in IC 31-32-5-1 (which requires meaningful consultation between a child and parent before a child can lawfully waive his rights) apply only to a child who is subject to custodial interrogation. Id. at 1022. Citing P.M. v. State, 861 N.E.2d 710, 713 (Ind. Ct. App. 2007), the Court said that to determine whether a person is in custody, the Court asks whether a reasonable person under the circumstances would consider himself free to resist the entreaties of the police. C.D. at 1022. The Court noted that under Miranda, “interrogation includes express questioning and words or actions on the part of the police that the police know are reasonably likely to elicit an incriminating response from the suspect.” C.D. at 1022. The Court cited G.J. v. State, 716 N.E.2d 475, 476-77 (Ind. Ct. App. 1999), a case where: (1) the police told school officials they had heard that the child had brought marijuana to school; (2) that same day, the child was brought to the dean’s office, where the dean asked the child if he had marijuana; (3) in response, the child pulled a vial of marijuana from his pants pocket; (4) on appeal, the child argued that the dean should not have questioned him without providing him with a meaningful opportunity to consult with his parents; (5) the Court determined that the child was not subject to custodial interrogation when the dean questioned him because the child was questioned in his school by a school official; (6) consequently Miranda safeguards and the safeguards of IC 31-32-5-1 did not apply. C.D. at 1022. The Court concluded that the child’s case resembles that of G.J. because: (1) the environment in which the child was questioned was no more coercive than in G.J., as both were questioned at school; (2) the child was not free to leave Assistant Principal’s office, but the child was detained for an educational purpose of keeping possibly intoxicated students out of the classroom; (3) the child admitted to drug use without being directly questioned on that point by Security Officer or Assistant Principal; (4) after the examination, Assistant Principal told the child that he would be suspended from school, which further demonstrates that the child’s examination was intended to carry out a school purpose, not to further a criminal investigation. C.D. at 1022-23. The Court observed that, in the child’s case, unlike in G.J., the child was examined by a school security officer in police uniform rather than a school administrator, but concluded that, under the circumstances of this case, the difference is not significant because the evidence indicates that Security Officer was acting to fulfill an educational purpose. Id. at 1023. The Court opined that the fact that

Security Officer, rather than Assistant Principal, examined and questioned the child did not transform the examination into a custodial interrogation. Id. The Court concluded that the child was not undergoing custodial interrogation when he answered Security Officer's questions and made an incriminating admission; therefore, Miranda warnings and the safeguards of IC 31-32-5-1 are inapplicable here. Id.

The Court found that it was reasonable for Assistant Principal to check the child's backpack for more marijuana or for paraphernalia. Id. at 1023. The child's motion to suppress claimed that Assistant Principal erroneously searched the child's backpack without a warrant. The Court, citing Myers v. State, 839 N.E.2d 1154, 1159 (Ind. 2005), noted that school children have a legitimate expectation of privacy in items of personal property carried on campus. C.D. at 1023. The Court said that where a school official initiates a search of a student's personal property, the search must be reasonable under the circumstances. Id. To determine whether a school search is reasonable under the Fourth Amendment, the Court considers whether the action was justified at its inception and whether the search conducted was reasonably related in scope to the circumstances that justified the interference in the first place. Id. The Court opined that the search of the child's backpack for controlled substances was justified and was reasonably related in scope to the circumstances based on: (1) the child appeared impaired to Assistant Principal; and (2) Security Officer told Assistant Principal that he thought the child was under the influence of marijuana and had smoked it that day. Id.

The Court concluded that the State has demonstrated prima facie error, and the trial court's suppression of all evidence obtained prior to the child's consultation with parents is contrary to law. Id.