



## Delinquency

1/18/2006

In **M.Q.M. v. State**, 840 N.E.2d 441 (Ind. Ct. App. 2006), the Court affirmed in part, vacated in part and remanded the juvenile court's order adjudicating the juvenile to be a delinquent child for committing possession of a substance represented to be a controlled substance and auto theft, a class C misdemeanor and a class D felony, respectively, if committed by an adult. In February 2004, the juvenile told students at his junior high school that he had cocaine in his locker. The students reported this to school officials who confronted the juvenile and found in his locker a clear plastic bag containing both a white powdery substance and a package commercially labeled as grits. The juvenile admitted that he told other students he had cocaine. In May 2004, the State filed a delinquency petition alleging that the juvenile committed possession of a substance represented to be a controlled substance, a class C misdemeanor if committed by an adult. In August 2004, the juvenile and two friends who were attending a birthday party, and none of whom were licensed to drive, went to the juvenile's house and took the juvenile's parents' automobile for a twenty-minute drive. They returned the car to its garage, then decided to take it out again. This time, one of the friends lost control of the car and crashed it into a fence. The juvenile and his friends exited the car and ran through a nearby cornfield, where police apprehended them. In September 2004, the State filed a delinquency petition alleging that the juvenile committed auto theft, a class D felony if committed by an adult, and leaving the scene of a property damage accident, a class A misdemeanor if committed by an adult. In July 2005, the juvenile court held a dispositional hearing and entered its order, among other things, adjudicating the juvenile a delinquent, placing him in Kokomo Academy for five months, placing him on probation for two years, and ordering him to pay fees. The juvenile appealed.

**It is undisputed that the juvenile knowingly or intentionally possessed the corn grits and that he expressly represented them to be cocaine, a controlled substance. This is all that is required to sustain a true finding of possession of a substance represented to be a controlled substance pursuant to I.C. 35-48-4-4.6(b).** *Id.* at 445. The Court stated that the plain language of that statute dictates that we disregard the "delivery/finance/dealing" language in I.C. 35-48-4-4.5, referenced by I.C. 35-48-4-4.6(b), and focus on the description of the substance itself, as the crime of dealing is separate and distinct from the crime of possession.

**The State failed to prove beyond a reasonable doubt that the juvenile intended to deprive his parents permanently of the value or use of the car. Consequently, the Court vacated the juvenile court's true finding for auto theft, but remanded to the juvenile court to enter a true finding for conversion, a lesser included offense which is a class A**

**misdemeanor if committed by an adult.** Id. at 446-47. The juvenile did not dispute that he knowingly exerted unauthorized control over his parents' car as the State alleged, only that the State failed to prove that he intended to deprive his parents of the car's value or use. The Court noted that, although the general theft statute was amended in 1971 to delete the word "permanently," the Indiana Supreme Court has continued to read "permanently" into the theft statute to distinguish theft from criminal conversion, which I.C. 35-43-4-3(a) defines as the knowing or intentional exertion of unauthorized control over property of another person. According to the Court, the auto theft statute was first enacted in 1985, and the Court saw no reason to interpret it differently from the general theft statute in this respect. Citing supporting cases, the Court also noted that it generally may order a modification of a conviction to that of a lesser included offense because of the insufficiency of evidence on a particular element of a crime, and criminal conversion is a lesser included offense of theft. Id. at 445-47.

**The juvenile court was under no obligation to revisit failed strategies before placing the juvenile in a highly structured environment outside his community.** Id. at 448. The Court noted that I.C. 31-37-18-6 sets forth factors that a juvenile court must consider when entering a dispositional order:

If consistent with the safety of the community and the best interest of the child, the juvenile court shall enter a dispositional decree that:

- (1) is:
  - (A) in the least restrictive (most family like) and most appropriate setting available; and
  - (B) close to the parents' home, consistent with the best interest and special needs of the child;
- (2) least interferes with family autonomy;
- (3) is least disruptive of family life;
- (4) imposes the least restraint on the freedom of the child and the child's parent, guardian, or custodian; and
- (5) provides a reasonable opportunity for participation by the child's parent, guardian, or custodian.

The Court found that, in view of the concerns expressed by the doctor who performed the juvenile's psychological assessment, which resulted in the doctor's statement that the juvenile "may be a candidate for residential care," it could not be said that the juvenile court abused its discretion in placing the juvenile in Kokomo Academy. The juvenile's local counseling had not stopped the escalation of his antisocial, attention-seeking behavior that culminated in making false statements about possessing cocaine and joyriding in his parents' car. Id. at 447-48.

**The Court found that the juvenile court improperly ordered the juvenile to pay fees without inquiring as to his or his parents' ability to pay and, therefore, ordered the juvenile court to conduct an indigency hearing on remand.** Id. at 449. The Court noted that IC 31-40-2-1(a) allows a juvenile court to order a delinquent child or the child's parent to pay an initial and a monthly probation user's fee and an administrative fee, subject to I.C. 31-40-1-3(a) which states that a parent of a delinquent child "is financially responsible ... for any services ordered by the court." Id.