

# Children's Law Center of Indiana



## Delinquency

10/03/2007

In **C.L.M. v. State**, 874 N.E.2d 386 (Ind. Ct. App. 2007), the Court reversed the juvenile court's judgment adjudicating the juvenile to be a delinquent child for committing what would have constituted Class C felony child molesting if committed by an adult. The juvenile's mother walked into the room and saw the juvenile, then nine years old, sitting on the couch with his three-year-old half-sister lying on top of his stomach, and his five-year-old half-brother sitting at the other end of the couch. The stomachs of the juvenile and his half-sister were touching and both had their pants, but not their underwear down. According to the mother, the juvenile's hands were on the half-sister's hips pushing her down, and they were "in a motion." The mother did not see their "private parts touching," and immediately "yanked" the children off each other. The mother was directed to take the children to the Child Advocacy Center a few days later for an interview with a child advocacy team. She did, and she was informed that the purpose of the interview was to investigate allegations of child molesting. The mother told the team what she had observed. Then the police detective on the team interviewed the juvenile alone, telling him that there were allegations that the juvenile had touched his half-sister inappropriately. The juvenile responded that it was the half-sister's idea that they "hump." He also made some vague allegations that his stepbrothers had attempted to molest him in the past. After the half-sister and half-brother were interviewed, the detective interviewed the juvenile alone a second time to address some inconsistencies in the children's statements and to further explore the juvenile's allegations with regard to his stepbrothers. During the second interview, the juvenile admitted that he had initiated the contact with his half-sister and that he had touched her "crotch" with his hand. When the detective asked how it felt when the juvenile and the half-sister were "humping," the juvenile said, "I don't know." After the interviews, the juvenile left with his mother. The State filed a Petition Alleging Delinquency alleging that the juvenile was a delinquent child for committing what would have constituted Class C felony child molesting if committed by an adult. The juvenile filed a motion to suppress his statements to the detective on grounds that he was in custody and had not been given a Miranda warning. The trial court denied the motion; after a hearing, adjudicated the juvenile to be a delinquent child; and, after a dispositional hearing, continued the juvenile's placement in foster care and ordered him to serve twelve months of probation. The juvenile appealed.

**The trial court abused its discretion in admitting the juvenile's statements into evidence because he was in custody at the time and therefore should have been given a Miranda warning.** *Id.* at 388. The Court reviewed the law requiring when Miranda warnings must be given. It noted that, for an interrogation to be custodial in the non-arrest context, the interrogation must commence after the person's freedom of action has been deprived in any significant way, and that this is determined by examining "whether a reasonable person in

similar circumstances would believe he is not free to leave.” Luna v. State, 788 N.E.2d 832, 833 (Ind. 2003). Id. at 389-90. The Court reviewed the circumstances here and concluded that a reasonable person in circumstances similar to those of the juvenile when he made his statements, would not believe that he was free to leave. The Court pointed to the circumstances that the juvenile was (1) nine years old; (2) driven to the Child Advocacy Center by his mother after a police officer came to their house to ensure their attendance at the interview; (3) was never told that he was free to leave; (4) was interviewed alone on two separate occasions by that same police officer regarding allegations that he molested his half-sister; and (5) at one point during the interview process, when the juvenile indicated that he did not want to talk anymore, the detective did not tell him he was free to leave, but instead changed the topic of discussion. Id. at 390. The Court found that, because the juvenile was in custody, he should have been given a Miranda warning. Id. at 391.

**The State has not shown that the admission of the juvenile’s statements did not contribute to his adjudication.** Id. at 388. The State argued that admission of the statements was harmless error. The Court, however, held that, given the incriminating nature of the juvenile’s statements to the detective, the State had not shown that the admission of the statements was unimportant in relation to everything else considered by the trial court on the issue in question. Id. at 391.