

Children's Law Center of Indiana



Delinquency

12/2/10

In **C.T. v. State**, 939 N.E.2d 626 (Ind. Ct. App. 2010), the Court affirmed the child's delinquency adjudication for committing what would be Class B misdemeanor public nudity if committed by an adult. An Indianapolis Metropolitan Police Officer responded to a report of three females exposing themselves to passing vehicles on June 16, 2009, at 4:30 a.m. Police Officer observed the sixteen-year-old child and a companion "pulling their bra[s] and their shirt[s] down over their exposed breast[s]." The next day the State filed a delinquency petition, alleging that the child had committed what would be Class B misdemeanor nudity if committed by an adult. At the hearing on the delinquency petition, Police Officer was asked if he had seen the child's nipple during the June 16, 2009, incident, and he responded, "As I recall, yes." The child moved to dismiss on the basis that Indiana's public nudity statute violates the Equal Protection Clause of the Fourteenth Amendment. The juvenile court dismissed the child's motion, found that the child had committed what would be public nudity if committed by an adult, and discharged the child to her mother. The child appealed.

The Court found that the State produced sufficient evidence to sustain the juvenile court's true finding on the delinquency petition. *Id.* at 627-28. The Court observed that "[i]n addressing a claim of insufficient evidence, an appellate court must consider only the probative evidence and reasonable inferences supporting the judgment, without weighing evidence or assessing witness credibility, and determine therefrom whether a reasonable trier of fact could have found the defendant guilty beyond a reasonable doubt." *Fajardo v. State*, 859 N.E.2d 1201, 1208 (Ind. 2007). *C.T.* at 627. The Court said that, in order to sustain a true finding that the child committed public nudity, the State was required to show that she "knowingly or intentionally appear[ed] in a public place in a state of nudity with the intent to be seen by another person[.]" IC 35-45-4-1.5. "Nudity" is defined at IC 35-45-4-1(d) as "the showing of the female breast with less than a fully opaque covering of any part of the nipple[.]" *C.T.* at 627. The Court was not persuaded by the child's evidentiary arguments that: (1) the State did not call the driver of a pickup truck to testify when the driver was in a much better position to see if the child exposed her nipples; and (2) Police Officer's testimony was equivocal on whether the child showed her breasts with less than a fully opaque covering on her nipples. The Court responded that, when asked if he saw the child's nipple, Police Officer responded in the positive, and any inconsistencies in Police Officer's testimony were for the juvenile court to resolve. *Id.* at 627-28. The Court declined the child's invitation to reweigh the evidence. *Id.* at 628.

The Court concluded that Indiana’s public nudity statute does not violate the Equal Protection Clause of the Fourteenth Amendment. *Id.* at 630. The child argued that Indiana’s public nudity statute violates the Equal Protection Clause because it criminalizes the public display of female, but not male nipples. *Id.* at 628. Quoting Romer v. Evans, 517 U.S. 620, 621, 116 S.Ct. 1620, 134 L.Ed.2d 855 (1996), the Court observed that the Fourteenth Amendment’s promise that no person shall be denied the equal protection of the laws must coexist with the practical necessity that most legislation classifies for one purpose or another, with resulting disadvantage to various groups or persons. *C.T.* at 628. The Court also observed that: (1) a gender-based discriminatory classification is subject to an intermediate level of scrutiny; (2) the State must show that the challenged classification serves important governmental objectives and that the discriminatory means employed are substantially related to the achievement of those objectives; (3) the justification must be genuine and not rely on overbroad generalizations about the different talents, capacities, or preferences of males and females; (4) physical differences between men and women are enduring; (5) neither federal nor state government acts compatibly with the Equal Protection Clause when a law denies to women, simply because they are women, full citizenship stature and equal opportunity to aspire, achieve, participate in and contribute to society based on their individual talents and capacities. *Id.* at 628-29. (Multiple citations omitted.) In response to the child’s claim that the stated justification for public nudity laws involving the display of female nipples is a vague notion of public or moral sensibilities, the Court said that the United States Supreme Court has “implicitly accepted that a legislature could legitimately act...to protect ‘the social interest in order and morality.’” *Id.* at 629. (Multiple citations omitted.) The Court concluded that preserving order and morality remains an important governmental object. *Id.*

The child also suggested that there is really no difference between male and female breasts, save for the female breast’s lactation capability. The Court responded that Hoosier society, in general, considers the female breast to be an erogenous zone but does not consider the male breast to be one: public display of the former is almost certain to cause offense and unease while public display of the latter is not. *Id.* The Court concluded that: (1) Indiana’s public nudity statute furthers the goal of protecting the moral sensibilities of that substantial portion of Hoosiers who do not wish to be exposed to erogenous zones in public; (2) the public nudity statute does not seem to disadvantage women in any significant way; (3) the public nudity statute does not demean women or materially affect their “equal opportunity to aspire, achieve, participate in and contribute to society based on their individual talents and capacities.” U.S. v. Virginia, 518 U.S. 515, 532, 116 S.Ct. 2264, 135 L.Ed.2d 735 (1996). *C.T.* at 630.