This Case Law Update Provided by:

Children's Law Center of Indiana

Delinquency

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In **J.S. v. State**, 843 N.E.2d 1013 (Ind. Ct. App. 2006), the Court affirmed in part, reversed in part, and remanded with instructions to vacate the juvenile court's true finding of disorderly conduct and to set aside the parental participation order. The juvenile was adjudicated a delinquent child for committing Resisting Law Enforcement and Disorderly Conduct, Class A and Class B misdemeanors, respectively, if committed by an adult. Following a disposition hearing, the court released the juvenile under the supervision of the probation department, provided for several conditions of probation, and upon the petition of the probation officer regarding the juvenile's mother, the court entered a parental probation order pertaining to the juvenile's father and mother.

A school police officer observed, at school, the juvenile who was in a crowded hallway, grabbing a boy's hair and "smacking him with an open hand" three times across his face. The officer, assuming this was a fight, intervened by grabbing the juvenile by the upper arm and attempting to separate her from the students in the hall. According to the officer, the juvenile tried to "pull [ ] away" and "jerk [ ] away" from him telling him to get away from her, to get his hands off of her, and not to touch her. The officer testified that he then attempted to place the juvenile under arrest and put her in handcuffs, and that this was made difficult by her continuing efforts to pull away from him. A second officer testified that when she came upon the scene she observed the first officer struggling to handcuff the juvenile and that the juvenile was "flailing her arms," "squirming her body," and "making it impossible for him to hold her hands," so the second officer assisted by placing the juvenile's arm behind her back. The juvenile testified that (1) she did grab a boy by his hair and hit him in the face, but that she was doing this in a playful manner as a response to his hitting her on her bottom moments earlier; and (2) she tried multiple times to telling the first officer that the two of them were "just playing," not fighting, but the officer would not listen to her. A classmate testified that (1) she witnessed the event; (2) the juvenile was hit on her bottom by the boy before she hit him back; and (3) the juvenile "yank[ed]" herself from the first officer as he grabbed her arm and was trying to get ahold of her. A second classmate testified that (1) she had observed the boy "grab[ ]" the juvenile's bottom, prompting the juvenile to hit him; (2) all of this was "playing;" (3) the juvenile who was saying, "[W]e was just playing," pulled away from the first officer but did not "yank away," in an attempt to free her arm; and (4) the first officer "slammed" the juvenile up against the wall and placed her in handcuffs.

The juvenile contended on appeal that the evidence was insufficient to establish either disorderly conduct or resisting law enforcement. He argued that the officer's mistaken belief about the juvenile's flirtatious behavior was not evidence of fighting to support an

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adjudication for disorderly conduct, and that the juvenile did not use the strong, powerful or violent means to evade a law enforcement official necessary to support the resisting law enforcement adjudication.

The Court concluded that there was insufficient evidence to support the disorderly conduct adjudication beyond a reasonable doubt given the lack of evidence from the hearing to establish that the juvenile was acting with hostility toward the boy and therefore was "fighting" with him as charged. Id. at 1016. The Court noted that I.C. 35-45-1-3 provides in relevant part that "[a] person who recklessly, knowingly or intentionally … engages in fighting or in tumultuous conduct … commits disorderly conduct," and that the juvenile's charge for disorderly conduct specified that she was "fighting at school." Referencing the definition for "fight" in Black's Law Dictionary at 565, the Court stated that the juvenile court appeared to find that the mere act of hitting constitutes "fighting" per se, negating the requisite element of hostility necessary for the finding of "fighting." The Court held that, in view of the great deal of evidence in the record that the juvenile's actions were not hostile, such as the testimony that she and the boy were playing, and that her actions were in response to the boy's hitting her on the bottom, the officer's testimony that he "assume[ed] that it could have been a fight," without more, did not establish beyond a reasonable doubt the necessary element that the juvenile's motivations included hostility. Id.

The Court concluded that, given the evidence that the juvenile flailed her arms, pulled, jerked, and yanked away from the officer, there was sufficient evidence to uphold her adjudication based upon the crime of resisting law enforcement. Id. at 1017. The Court noted that: (1) I.C. 35-44-3-3 provides that the crime of resisting law enforcement requires that a person knowingly or intentionally "forcibly resists, obstructs, or interferes with a law enforcement officer" who is engaged in the execution of his duties; and (2) the Court had previously interpreted that statute as not requiring the application of an "overly strict definition of 'forcibly resist,'" citing Johnson v. State, 833 N.E.2d 516, 519. J.S. at 1017.

Parental participation orders found invalid inasmuch as clear statutory requirements were not met, where the petition for parental participation did not even name the juvenile's father and the juvenile's mother who was named in the petition but was not advised of her right to contest allegations concerning her participation and financial responsibility as provided for in I.C. 31-37-12-6. Id. at 1018. The Court noted that statutes require that a proper verified petition be filed in order for a juvenile court to have the jurisdictional authority over a parent to affirmatively order the participation of a parent in a disposition order. See I.C. 31-37-15-1; M.T. v. State, 787 N.E2d 509, 514-15 (Ind. Ct. App. 2003). Also, it is error for the juvenile court not to advise a juvenile's mother of her rights regarding the effects of adjudication, including the right to dispute allegations which concern participation and financial responsibility, even if the mother agrees to participate in probation as the juvenile's mother did here. S.S. v. State, 827 N.E.2d 1168 (Ind. Ct. App. 2005), *trans. denied;* M.T. at 515-16. The Court pointed out, however, that common sense dictates that both parents would be well-advised to monitor the juvenile and ensure that she adheres to the conditions of her probation. J.S. at 1018.

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