

Children's Law Center of Indiana



Delinquency

11/10/2009

In **R.H. v. State**, 916 N.E.2d 260 (Ind. Ct. App. 2009), the Court affirmed the trial court's adjudication of delinquency for class A misdemeanor possession of marijuana. At 11:40 p.m., a police officer in a marked police car had responded to a 911 call reporting that a suspicious white vehicle with four males inside of it was parked in front of the caller's house. The officer observed the vehicle parked on the street and activated his emergency lights because it was dark and he wanted to be visible to other vehicles. The officer approached the vehicle, observed heavy smoke inside it, knocked on the rear right passenger window, and a large amount of smoke came billowing out of the window which the officer recognized as the smell of burnt marijuana. The juvenile was in the driver's seat and the vehicle was registered to the juvenile's father. The officer had the four occupants exit the vehicle and read them their Miranda warnings. The officer observed what was left of a burnt marijuana cigarette in the front console's ashtray and two bags containing what appeared to be marijuana in the passenger foot well. The bags "would have been at the passenger's feet." Subsequent tests revealed that one bag contained 23.37 grams of marijuana, the other bag contained 9.37 grams of marijuana, and the cigarette contained .07 grams of marijuana. The State filed a petition alleging the juvenile to be a delinquent child for committing an act that would constitute class A misdemeanor possession of marijuana if committed by an adult. The juvenile was adjudicated delinquent after a denial hearing and was placed on probation for six months and ordered to complete thirty hours of community service.

The Court did not find that the officer's approach and initial contact with the juvenile amounted to a seizure under the Fourth Amendment; therefore, the Court found no abuse of discretion in admitting evidence of marijuana. Id. at 266. The juvenile argued that the seizure of the marijuana resulted from a detention that violated the Fourth Amendment to the United States Constitution and Article 1, Section 11 of the Indiana Constitution. Specifically, the juvenile contended that "[a]ctivation of a cruiser's emergency lights is a significant show of authority that would convey to any reasonable person he is not free to leave an officer's presence." The Court likened the fact situation in Finger v. State, 799 N.E. 2d 528 (Ind. 2008) to the juvenile's case in that responding to a dispatch report of a suspicious vehicle, activating emergency lights of the police vehicle, and approaching the juvenile's vehicle to ask the occupants questions or request their identification are all procedures that an officer would be expected to do upon finding an occupied vehicle parked on the street late at night. The Court opined that these procedures "do not indicate to a reasonable motorist that the officer intends to detain him." R.H. at 265, quoting Finger at 533. The Court went on to say that an officer investigating a concerned citizen's call at a very late hour would be remiss in not activating his or her emergency lights because failing to do so would put other drivers and the officer at risk.

R.H. at 265. The Court opined that the circumstances of the juvenile's case, unlike those cited by the juvenile in Bentley v. State, 799 N.E. 2d 70 (Ind. Ct. App. 2002), did not suggest that the officer seized the juvenile when he activated the lights because he in no way hindered traffic or the juvenile's vehicle nor was there evidence that any other officer approached the juvenile's vehicle.

The Court was not persuaded that activation of emergency lights "constituted an intrusion on one's freedom of movement" as argued by the juvenile. The Court noted that the record was clear that the vehicle was already parked when the officer approached it. The Court opined that because the initial encounter did not constitute an investigatory stop, the Court need not address whether the officer had the requisite reasonable suspicion required under Terry v. Ohio, 392 U.S. 1, 88 S. Ct. 1868, 20 L. Ed. 2d 889 (1968).

The Court found that the State presented sufficient evidence to support the adjudication as a delinquent for possession of marijuana. Id. at 268. The juvenile argued that the State failed to prove that he knew of or had the ability to control the bags of marijuana and the marijuana cigarette. The Court cited Holmes v. State, 785 N.E. 2d 658, 660-61 (Ind. Ct. App. 2003), which states that constructive possession is established by showing that the defendant has the intent and capability to maintain dominion and control over the contraband, and that the following additional circumstances should be considered when possession of the premises is non-exclusive: (1) incriminating statements by the defendant; (2) attempted flight or furtive gestures; (3) a drug manufacturing setting; (4) proximity of the defendant to the contraband; (5) contraband is in plain view; and (6) location of the contraband is in close proximity to items owned by the defendant. The Court found that, although the juvenile did not exercise exclusive control of the vehicle, the following evidence of additional circumstances supported the juvenile's knowledge of the presence of the marijuana and his ability to control it: (1) the vehicle was filled with smoke that smelled like burnt marijuana; (2) the juvenile was sitting in the driver's seat; (3) the burnt marijuana cigarette was in the ashtray between the driver and passenger seats and was in plain view within the reach of the juvenile; (4) two bags of marijuana were sitting out in the passenger's foot well. The Court opined that the fact-finder could reasonably infer that the juvenile was aware of the bagged marijuana's presence and that he had the ability to control it given his close proximity to the bags and the size of the vehicle. Id. at 268.