



## Delinquency

5/18/2006

In ***S.D. v. State***, 847 N.E.2d 255 (Ind. Ct. App. 2006), the Court affirmed the juvenile court's adjudication of the juvenile as delinquent for committing acts that would be intimidation as a class D felony if committed by an adult. The juvenile, a fourteen-year-old student, was told by her algebra teacher to return class papers that did not belong to her. Although the teacher did not accuse the juvenile of cheating, she responded with a series of adamant denials of cheating. "[The juvenile's] concern was plain: if this incident were to be deemed cheating... this would constitute her second cheating infraction and would result in her expulsion from the class and a failing grade." *Id.* at 256. The algebra teacher took no official action at this point, but sent the juvenile to her resource teacher's room to complete her assignment. In the resource teacher's room, the juvenile (1) continued her adamant denial that she had cheated; (2) threatened to kill her algebra teacher; (3) threatened she would "mess up" the school and use "grenades" to blow up the school; and (4) in front of six other students and the resource teacher, stated that she did not care who heard her and "didn't care if [the resource teacher] told [the algebra teacher]." The resource teacher reported the juvenile's statements to the school administration. The next day, a school assistant principal questioned the juvenile concerning her statements and she admitted that, in front of her class, she had threatened to kill her algebra teacher. That same day, the algebra teacher was informed of the threats and became nervous and uncomfortable. The State filed a petition alleging that the juvenile committed a delinquent offense by committing intimidation in violation of I.C. 35-42-2-1. The juvenile appealed the juvenile court's finding, asserting that the evidence was insufficient to show that her threat to kill the algebra teacher and harm the school was "communicated" within the meaning of I.C. 35-42-2-1.

**The Court held that, inasmuch as it was reasonably probable that the juvenile's threat would be brought to the attention of the teacher she was threatening, the juvenile's threat was communicated within the meaning of I.C. 35-42-2-1, and there was sufficient evidence to adjudicate the juvenile a delinquent for intimidation as a class D felony if committed by an adult.** *Id.* at 259. The Court noted: (1) intimidation occurs when a person "communicates a threat to another person, with the intent that the other person engage in conduct against the other person's will" (I.C. 35-42-2-1(a)); (2) a "threat" means "an expression, by word or action, of an intention to ... unlawfully injure the person threatened or another person, or damage property ... (or) commit a crime...." (I.C. 35-42-2-1(c)); and (3) the offense "is a D felony if ... the person to whom the threat is communicated; ... is an employee of a school corporation.... (I.C. 35-42-2-1(b)). The Court distinguished *J.T. v. State*, 718 N.E.2d 1119, 1121 (Ind. Ct. App. 1999) which was relied upon by the juvenile and in which the appeals court had held that there was insufficient evidence to conclude that the

threat was communicated in that it was not shown that the document containing the threat was intended for distribution or to be discovered by any member of the school faculty or administration. Here, however, the Court noted, rather than being faced with a privately made threat which was not intended to reach the ears of the target of the threat as in J.T., the Court is faced with the juvenile's threat which was made in a classroom of students in front of another school employee and, regarding which, she informed the resource teacher that she did not care if the resource teacher told the algebra teacher (the target of the threat). The Court relied on Ajabu v. State, 677 N.E.2d 1035, 1042 (Ind. Ct. App. 1997), *trans. denied*, in which the appeals court determined that "'communicate' encompasses those threats made known or transmitted to another person, and [I.C. 35-42-2-1] does not limit the means utilized to convey the threat." The Court noted that the Ajabu court drew an appropriate distinction between those public threats in which the individual making the threat "knew or had good reason to believe" the threat would reach the intended party, and those idle comments that are intended to remain private. Id. at 1043. The Court pointed out that, here, (1) while the juvenile's statements that she was going to kill her algebra teacher, use hand grenades, and harm the school, were not made directly to her algebra teacher, there is no reason to believe that the resource teacher would not report this information either to her fellow teacher or to individuals who would; and (2) the public nature of the threat about which the juvenile told the entire classroom, "I don't care who hears it," was of the same nature and tenor as those in Ajabu, to "serve notice" upon the target of the threat. S.D. at 257-59.

Judge Sullivan dissented with a separate opinion, holding that he would reverse the delinquency determination. He asserted that it was not enough that the juvenile did not care who heard her threat or that she did not care whether the resource teacher communicated the threat to the algebra teacher, the statute required the juvenile to have communicated the threat to the algebra teacher in order for it to be a violation. Id. at 259.