

Children's Law Center of Indiana



Delinquency

7/21/10

In **T.J. v. State**, 932 N.E.2d 192 (Ind. Ct. App. 2010), the Court affirmed the eleven-year-old child's delinquency adjudication for animal fighting (IC 35-46-3-9), which would have been a class D felony if committed by an adult. On August 28, 2009, Leah Slate was driving her car in Indianapolis and noticed the child and his thirteen-year-old male companion standing in Felipa Maleonado's fenced in yard and hitting a large brown dog that resembled a pit bull with a stick. About this same time Felipa Maleonado heard a commotion in her back yard, looked out the window, and saw the two children in her back yard, watching a dog attack her small dog. Mrs. Maleonado heard one of the boys saying, "[g]et 'em, get 'em." Slate got out of the car and noticed that the large dog was attacking a small dog, and the two children were making "sss, sss" sounds. Maleonado's husband came out of his house, and the children left, leaving the gate open. Slate helped Maleonado's husband get the larger dog to stop attacking the small dog. While separating the dogs, Slate told the children that she was going to call the police, to which one of the children responded with an obscenity. The larger dog left Maleonado's yard and followed the children onto the front porch of a neighboring house. The small dog was mangled from the attack and died from its injuries. On September 4, 2009, the State filed a petition alleging the child to be delinquent in four class D felony counts; Count I, possessed an animal for fighting (IC 35-46-3-8); Count II, promoted or staged an animal fighting contest (IC 35-46-3-9); Count III, promoted an animal fighting contest (IC 35-46-3-9.5); Count IV, cruelty to an animal (IC 35-46-3-12). A denial hearing was held on October 26, 2009, and Maleonado and Slate were called as witnesses. At the close of evidence, the child moved for a dismissal of the allegations pursuant to Ind. Trial Rule 41(B), which the juvenile court granted with respect to all allegations except Count II, promoting or staging an animal fighting contest. The juvenile court found that allegation to be true and ordered the child to: (1) undergo home-based therapy and casework services; (2) have no unsupervised contact with the thirteen-year-old child who was involved in the incident; (3) complete 30 hours of restitution work; and (4) pay \$151 in restitution. The child appealed, alleging that the evidence was insufficient to prove beyond a reasonable doubt that he had committed the offense.

The Court concluded that the State presented sufficient evidence to support the juvenile court's finding that the child knowingly or intentionally promoted or staged an animal fighting contest. *Id.* at 195. Quoting from **Perez v. State**, 872 N.E.2d 208, 212-13 (Ind. Ct. App. 2007), trans. denied, the Court said that, in reviewing a sufficiency of the evidence claim,

the Court considers only the evidence most favorable to the verdict and reasonable inferences drawn therefrom and will affirm if the evidence and those inferences constitute substantial evidence of probative value to support the judgment. T.J. at 193. The Court considered Count II of the delinquency petition which alleged that the child had knowingly or intentionally promoted or staged an animal fighting contest (emphasis in original). The Court declined the child's request to construe the statute and define the terms "promotes" and "stages," noting that a statute is susceptible to judicial interpretation only when it is ambiguous. Id. at 194. The Court looked to prior legal precedent considering the sufficiency of evidence for a conviction pursuant to IC 35-46-3-9 and found only one published appellate decision considering sufficiency of the evidence, Fuller v. State, 674 N.E.2d 576 (Ind. Ct. App. 1996). T.J. at 194. In Fuller evidence was presented concerning injured pit bulls with wounds that were still bleeding, expert testimony that the dogs were involved in organized dog fighting given the nature and severity of their wounds and the conditions under which the dogs were kept, and the presence of several dead pit bulls on the property. Fuller at 578-79. T.J. at 194. This evidence was sufficient to sustain Fuller's conviction. Fuller at 579. T.J. at 194. The Court contrasted the Fuller case with the instant case, noting that witnesses saw the dog attack, and their testimony supported a reasonable inference that the child and his companion were encouraging the larger dog to attack the smaller dog. T.J. at 195. The Court also noted witness testimony that the gates on Maleonado's fence had been closed, but when the boys left her yard, one had been opened. Id. at 194. The Court observed that this evidence supported a reasonable inference that the children let the larger dog into Maleonado's backyard to attack the smaller dog. Id. at 195. The Court said that the evidence in the instant case varies greatly from the purely circumstantial evidence of an ongoing dog fighting operation relied upon in Fuller. T.J. at 195. The Court concluded that the eye-witness testimony supported a reasonable inference that the child made possible and encouraged the dog fight. Id.