Indiana Public Defender Council
Juvenile Defense Project
Improving Juvenile Defense Services in Indiana

LAST WEEK IN REVIEW: JUVENILE DELINQUENCY NEWS AND UPDATES

May 7, 2018
May 14, 2018

"I try to make a difference for the kids."

Mark F. James has been a juvenile public defender in St. Joseph County for over 20 years.

Mark graduated from Purdue University in 1982 and Valparaiso University School of Law in 1985. He is a part-time public defender with a private practice focused on family law. As part of Mark's private practice, he is a guardian ad litem for children in family law cases and meets kids from all backgrounds who have unique stories to share. Mark feels It is important for their voices to be heard.

Mark became a juvenile public defender in 1995 when St. Joseph County's local program was expanding due to the need for additional public defenders. Mark considered himself fortunate to be offered a juvenile position and believes juvenile law is a specialized area of law that many people don't recognize. He says, "I have always wanted to work with children, and this gave me another way to be involved. "

Mark and his wife Lisa will celebrate their 30th anniversary this October. They have three children: Adam is a firefighter in Muncie, IN; Lauren works with a company in Madison, WI implementing e-filing in the Wisconsin courts; and Allison is a second year student at the University of Louisville School of Dentistry. In his free time, Mark likes to hike, kayak and standup paddle board.

In This Issue

Juvenile Law News

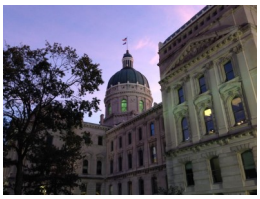
Indiana Supreme Court sets oral argument in delinquency case

R.R. v. State of Indiana Oral argument May 31, 2018, 9:45 a.m.
http://mycourts.in.gov/arguments/?court=sup

The Indiana Supreme Court has granted transfer and will hear oral argument in the case of *R.R. v. State of Indiana*, 93 N.E.3d 768 (Ind. Ct. App. 2018), vacated http://www.in.gov/judiciary/opinions/pdf/01111802tac.pdf

In a published decision on January 11th, the Court of Appeals upheld R. R.'s juvenile adjudication following a trial in absentia. R.R. argued on appeal he had a constitutional right to be present at the hearings, and under the juvenile waiver statute, Indiana Code Section 31-32-5-1, he could not validly waive that right because he was not emancipated. The Court of Appeals agreed that juveniles have a constitutional right to be present at factfinding hearings in delinquency and probation proceedings, but held the trial court had the authority to find R.R. to have procedurally defaulted where R.R. knowingly and intentionally refused to appear.

Chief Judge Nancy Vaidik dissented and would have reversed because R.R. did not waive his right to be present pursuant to one of the ways set forth in IC 31-32-5-1.



No Published Opinions, but some Memorandum Decisions* of note:

Insufficient Evidence:

N.M. v. State, 49A05-1711-JV-2539
https://www.in.gov/judiciary/opinions/pdf/05091802mpb.pdf
5/9/18 (Ind.Ct.App.) (Memorandum Dec.)

Adjudications for receiving stolen auto parts (L6 felony); theft (L6 felony) and criminal trespass (A misdemeanor) REVERSED.

Facts: N.M., along with two other juveniles, was found sleeping in the back seat of a stripped and "trashed" van that had been reported stolen the day before.

Court of Appeals, relying on *Fortson v. State*, 919 N.E.2d 1136, 1143 (Ind. 2010), held the evidence was insufficient to prove that N.M. committed Level 6 felony receiving stolen auto parts where the State failed to present evidence that he acquired possession or control of the van or that he knew it was stolen. Ind. Code § 35-43-4-2.5(c). The Court reiterated that knowledge that property is stolen cannot be inferred solely from the accused's unexplained possession of the property. Here, there was no evidence that N.M. tried to conceal the property or any other suspicious actions by N.M. that would support the inference that he knew the van was stolen.

Court also held the evidence was insufficient to support Level 6 felony theft where there was no evidence that N.M. had physical contact with the parts of the van that were missing and no circumstantial evidence to support the inference that he knew beyond a reasonable doubt the van was stolen. Finally, the Court reversed N.M.'s adjudication for criminal trespass, holding "the State's evidence that N.M. was found asleep in the rear of the Schott's 'trashed' van twelve hours after it was stolen from Skateland is insufficient to prove that he knowingly or intentionally interfered with the possession or use of Mr. Schott's van."

P.R.M. v. State*,* 32A04-1710-JV-2301
https://www.in.gov/judiciary/opinions/pdf/05091801lmb.pdf
5/9/18 (Ind. Ct. App.) (Memorandum Dec.)
REVERSED

Facts: P.R.M. was adjudicated delinquent for what would be dealing in a controlled substance if committed by an adult. Brownsburg High School assistant principal saw P.R.M. standing in the doorway of a restroom stall, passing a baggie to another student. The asst. principal did not see what was in the bag. P.R.M. was questioned by school administrators and drug screened. No drugs were found on P.R.M. or the other student. The other student later testified that he purchased three Adderall pills from P.R.M. for twenty dollars and then swallowed them. The student also testified he had taken Adderall twice before. "When asked to describe how Adderall pills look, [the other student] testified that '[t]hey were blue and circular.'"

Court of Appeals reserved, holding although the state can prove the identity and quantity of a controlled substance through witness testimony and circumstantial evidence, the State had not met its burden of proof here where it was unclear whether the testimony was that Adderall pills are blue and circular or the pills that the witness took were blue and circular or that the pills that he took were, in fact, Adderall. That the other student had taken Adderall twice before, standing alone, did not make him "sufficiently experienced with the drug," to support the conclusion that the pills were actually Adderall

Note: Oral argument was held on April 12th at South Dearborn High School. Watch at:
https://mycourts.in.gov/arguments/default.aspx?&id=2213&view=detail&yr=&when=&page=1&court=app&search=&direction=%20ASC&future=False&sort=&judge=&county=&admin=False&pageSize=20

S.W. v. State, 79A05-1712-JV-2915
https://www.in.gov/judiciary/opinions/pdf/04301801rs.pdf
4/30/18 (Ind.Ct.App.) (Memorandum Dec.)
AFFIRMED

Facts: 16-year-old S.W. was adjudicated delinquent for child exploitation, a Level 5 felony if committed by an adult. He received a suspended commitment to DOC, and as a condition of probation, S.W. was required to complete a sexually maladaptive behavior treatment program, submit to polygraph examinations, refrain from possessing or consuming illegal substances, and refrain from possessing pornography. During the polygraph examination, S.W. admitted to using marijuana and Xanax. His disposition was modified and he was committed to DOC.

On appeal, S.W. argued Indiana Code section 31-37-8-4.5 (providing a juvenile's statements to an evaluator may be admitted as evidence against the juvenile in proceedings to modify a dispositional decree) violates his Fifth Amendment privilege against self-incrimination.

Court of Appeals, using the Ind. Supreme Court's reasoning in *State v. I.T.*, 4 N.E.3d 1139 (Ind. 2014), held S.W.'s Fifth Amendment rights were not violated as the statements "were used to tailor a placement to better serve his rehabilitative needs in compliance with Indiana Code section 31-37-8-4.5, not to place him in further criminal jeopardy."

US Supreme Court holds defense counsel may not pursue a defense which involves admitting guilt without client's agreement.

McCoy v. Louisiana
https://www.supremecourt.gov/opinions/17pdf/16-8255_i4ek.pdf

Robert McCoy was facing the death penalty on murder charges. Although he adamently maintained his innocence, over McCoy's objection, the court allowed his attorney to concede his guilt in an effort to avoid the death penalty. The strategy did not work, and the jury returned 3 death verdicts. The LA Supreme Court affirmed. On May 14th, the Supreme Court reversed and remanded for a new trial in a 6-3 decision, opinion by Justice Ginsburg. Justice Alito filed a dissenting opinion, in which Justices Thomas and Gorsuch joined.

Held: The Sixth Amendment guarantees that it is the defendant's prerogative, not counsel's, to decide whether to admit guilt of maintain his innocence. This violation of rights was a structural violation, so fundamental that McCoy was entitled to relief without any a showing of prejudice.

A rare plant?

Although the dissent characterized this right to make the fundamental choice of whether to admit guilt as "a rare plant that blooms every decade or so" that seems limited to the circumstances in McCoy. In any case, a good reminder by the US Supreme Court that the decision to admit guilt remains solely that of the accused.

"I like to see a man proud of the place in which he lives. I like to see a man live so that his place will be proud of him. "

-Abraham Lincoln

IPDC Executive Director Larry Landis will retire 41 years after establishing agency.

July 2nd, 2018 will mark the end of an era.

Larry Landis will be retiring after decades of working to improve public defense in Indiana. Larry established the Indiana Public Defender Council in 1977 and has served as the agency's Executive Director for four decades.

Upon Larry's retirement, Bernice Corley, IPDC's Assistant Director, will become the new IPDC Executive Director .

Larry's retirement plans include … working! As he told the Indiana Lawyer, he plans to stay involved in public defense work after stepping down from IPDC.

Read the Indiana Lawyer article here:

https://www.theindianalawyer.com/articles/46882-landis-longtime-head-of-public-defender-council-to-retire-in-july?utm_source=il-daily&utm_medium=newsletter&utm_campaign=2018-05-04

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Oh Yes! IT'S FREE

Indiana Public Defender Council (IPDC) Free Regional Juvenile Trainings

Register for "To Plea or Not to Plea"

June 1 Hamilton County

June 15 Vigo County

June 22 Lake County

https://www.in.gov/ipdc/2447.htm