

Children's Law Center of Indiana



CHINS (Child Abuse Reporting)

3/27/14

In **Smith v. State**, 8 N.E.3d 668 (Ind. 2014), the Indiana Supreme Court affirmed a high school principal's (Principal's) conviction and sentence for failing to immediately report suspected child abuse occurring at Muncie Central High School to the Department of Child Services or law enforcement. The child abuse victim (Victim), a sixteen-year-old female student at Muncie Central High School, had previously been found to be a CHINS, was a ward of the Madison County Office of the Indiana Department of Child Services (MCDCS), and resided at the Youth Opportunity Center (YOC) in Muncie. YOC served as Victim's custodial parent, and provided care, room, and board to her pursuant to a contract with DCS. Between 12:20 and 12:25 p.m. on November 9, 2010, a fellow student brought Victim to the office of Assistant Principal. Victim told Assistant Principal that she had been raped during lunchtime by a fellow student (Perpetrator) in a school bathroom. Assistant Principal immediately went to Principal's office and told him of the rape allegation. Principal and Assistant Principal returned to Assistant Principal's office, where Victim repeated the allegation. Principal contacted the school nurse and the Associate Principal at approximately 12:40, asked them to come to Assistant Principal's office, and informed them of the allegation. The school nurse sat with Victim, and at some point during that time, Victim was directed to provide a handwritten statement of her allegation, which she did.

At that time, there were between three and five commissioned and sworn police officers on the high school grounds, who were serving as security officers. Associate Principal asked Principal if she should contact one of those officers, call YOC, or find Perpetrator. Principal directed her to call YOC. Associate Principal spoke to the YOC staff member responsible for Victim's cottage, and informed her of the alleged rape. The staff member called Associate Principal shortly before 1:00 p.m. and explained that YOC would send a driver to take Victim to the hospital emergency room. Associate Principal and the staff member also discussed Victim's credibility, including an incident earlier that year in which the school nurse believed Victim had faked a seizure, and an attendance issue in which Victim lied about where she had been. After the conversation concluded, Associate Principal told Principal that YOC was coming to take Victim to the hospital emergency room. The YOC driver arrived at the high school a little before 2:00 p.m., the driver and Victim arrived at Ball Memorial Hospital at around 2:30 p.m., the hospital's staff contacted the police to report the possible sexual assault within an hour, and the police officers arrived at the hospital just before 4:00 p.m.

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At about 1:25 p.m., Principal directed Associate Principal to get Perpetrator and bring him to Principal's office. Principal asked the school athletic director (Athletic Director) to be a witness while he questioned Perpetrator. Athletic Director asked Principal if this should be a police matter instead, but Principal said that it was still a school matter. Principal questioned Perpetrator, but Perpetrator denied raping Victim. Perpetrator was not asked to provide a written statement. Perpetrator was then allowed to return to his class and, at the end of the school day, eventually went home. Principal asked Athletic Director to search Perpetrator's and Victim's lockers because Perpetrator indicated during the questioning by Principal that he and Victim had exchanged several notes, but that Perpetrator had thrown them away. Principal and Athletic Director believed the letters would still be in Victim's and Perpetrator's lockers. Athletic Director contacted one of the school's security officers, an officer of the Muncie Police, and asked the officer for assistance in the search. Athletic Director did not tell the police officer that there had actually been an allegation of a rape occurring on school grounds. Later that afternoon, the officer's police department supervisor informed him of the rape, and that it had occurred at Muncie Central. The officer immediately went to the hospital and served briefly as lead investigator before another officer, a detective, assumed that function two days later.

Principal and other school system administrators proceeded to conduct interviews with candidates for an open administrator position. The interviews took place until after 4:00 p.m. At the conclusion of the second interview, Principal called the school district assistant superintendent (Assistant Superintendent) and explained that Victim had reported that she had been raped, and that she was at the hospital. Assistant Superintendent told Principal to contact DCS. A little after 4:30 p.m., Principal spoke to the DCS Child Abuse Hotline operator and explained the circumstances of Victim's allegations. The operator indicated that, because Perpetrator was also sixteen, "this would be something I believe that we would probably refer to law enforcement," and that "this looks like something we are going to screen out on our end," but she would forward the report to her supervisors. Principal contacted the YOC driver to ask if YOC intended to report the allegation, or if Muncie Central should do it. The YOC driver replied that she assumed Muncie Central should make the report, as the rape occurred at the school.

The director of human resources for the school district called the district's chief of security, and asked him what his response would be if a student were sexually assaulted at school. The security chief responded that he would call the police. The human resources director then informed the security chief of Victim's allegations, and that she was now at the hospital. The security chief went to the hospital, where he met with the investigating police officer. Principal arrived at the hospital at about 5:30 and remained until about 6:10, then left for a school board meeting. The security chief remained for another thirty minutes, until Victim was taken back to the YOC. At no time did Principal, Muncie Central, or the school district ever directly contact the Muncie Police Department to report the rape.

On November 11, 2010 the police detective began his investigation into the alleged rape. Six days later, Perpetrator admitted to raping Victim, and he was arrested and later pleaded guilty. The State eventually charged Principal with failing to report Victim's allegations to DCS or local law enforcement, a class B misdemeanor, IC 31-33-22-1(a). Principal was convicted following a bench trial, and was sentenced to 120 days in jail, all suspended to probation, ordered to serve 100 hours of community service, and ordered to pay a fine of \$100 along with court and

probation costs. Principal appealed claiming that the criminal statute was unconstitutionally vague and that the evidence was insufficient to sustain his conviction. In a split opinion, the Court of Appeals reversed and vacated his conviction at Smith v. State, 982 N.E. 2d 348 (Ind. Ct. App. 2013). The Indiana Supreme Court granted transfer, thereby vacating the Court of Appeals opinion.

The Court said that, in order to successfully convict Principal of the class B misdemeanor offense of failure to report child abuse or neglect, the State was required to prove beyond a reasonable doubt that Principal: (1) had reason to believe (2) that Victim was a victim of child abuse or neglect as (a) a victim of rape (b) who needed care, treatment, or rehabilitation that she was not receiving and that was unlikely to be provided or accepted without the coercive intervention of the court; and (3) Principal knowingly failed to immediately make a report to DCS or a local law enforcement agency. *Id.* at 675-76. The Court noted that: (1) IC 31-33-1-1 states, inter alia, that the purpose of the statutory structure governing the reporting and investigation of child abuse or neglect is to encourage effective reporting of suspected or known incidents of child abuse or neglect; (2) IC 31-33-5-1 states that “an individual who has reason to believe that a child is a victim of child abuse or neglect shall make a report”; (3) IC 31-33-5-2(a) states that if an individual is “a member of the staff of a medical or other public or private institution, school, facility, or agency, the individual shall immediately notify the individual in charge”; (4) IC 31-33-5-2(b) states that the “individual in charge... shall report or cause a report to be made”; (5) IC 31-33-5-4 states that the report must be made immediately... to (1) the department [DCS]; or (2) the local law enforcement agency.” *Id.* at 673-74. The Court observed that IC 31-9-2-101 states that an individual has “reason to believe” a child is a victim of child abuse or neglect when the individual is presented with “evidence that, if presented to individuals of similar background and training, would cause the individuals to believe that a child was abused or neglected.” *Id.* at 674. The Court noted that, at the time of the incident in this case, a “victim of child abuse or neglect” was defined at IC 31-9-2-133(a) as “a child described in IC 31-34-1-1 through IC 31-34-1-5”. *Id.* The Court observed that IC 31-34-1-3 applied in this case, and it provides that a child is a child in need of services if the child is a “victim of a sex offense under IC 35-42-4-1 [rape]... and the child needs care, treatment, or rehabilitation that: (A) the child is not receiving; and (B) is unlikely to be provided or accepted without the coercive intervention of the court.” *Id.* The Court noted that in 2012, the General Assembly amended IC 31-9-2-14 [definition of child abuse or neglect] to provide that children identified as being victims of child abuse or neglect by application of the CHINS statutes found in IC 31-34-1-1 through IC 31-34-1-5 were victims of child abuse or neglect “regardless of whether the child needs care, treatment, rehabilitation, or the coercive intervention of a court.” *Id.* at 674 n.6. The Court noted that this language did not exist in the statute at the time Principal was charged and tried. *Id.* at 675 n.6. The Court observed that IC 31-33-6-1 and IC 31-33-6-3 presume that a person making such a report is acting in good faith, and immunize such good faith conduct from civil or criminal liability, but failure to comply with the reporting statute (IC 31-33-5-1) is a class B misdemeanor. *Id.* at 675.

The Court rejected Principal’s claim that the child abuse reporting statute, IC 31-33-5-4, is unconstitutionally vague as it was applied to him. *Id.* at 679. Citing Fry v. State, 990 N.E.2d 429, 434 (Ind. 2013), the Court noted that: (1) when challenging the constitutionality of a statute,

a party must clearly overcome a presumption of constitutionality and (2) the Court observes a high level of deference with respect to the General Assembly's decision-making, and any doubts are resolved in favor of constitutionality. Smith at 676. Quoting Brown v. State, 868 N.E.2d 464, 467 (Ind. 2007), the Court observed that a criminal statute is unconstitutionally vague if the conduct sought to be prohibited is not clearly defined, and this due process flaw may be reflected in "(1) for failing to provide notice enabling ordinary people to understand the conduct that it prohibits, and (2) for the possibility that it authorizes or encourages arbitrary or discriminatory enforcement." Smith at 676. The Court will affirm a statute's constitutionality against a vagueness challenge "if individuals of ordinary intelligence could comprehend it to the extent that it would fairly inform them of the generally prescribed conduct." Smith at 677, quoting Klein v. State, 698 N.E. 2d 269, 299 (Ind. 1998).

The Court disagreed with Principal's argument that the word "immediately" in IC 31-33-5-4 is unconstitutionally vague. Id. at 677. The Court noted the trial court's finding from Webster's New World Dictionary of the American Language, College Edition (1968), which defined "immediately" as being "in an immediate manner; specifically, (a) without intervening agency or cause; directly; (b) without delay; at once; instantly." Id. The Court agreed with the trial court's assessment that the word "rather straightforwardly and fairly informs a reasonably intelligent person when suspected child abuse must be reported." Id. The Court held that, when considered within the context of Indiana's reporting statutes, the use of the word "immediately" in IC 31-34-5-4 conveys a required strong sense of urgency in action and primacy of purpose in fulfilling duty to report. Id. The Court quoted Anonymous Hosp. v. A.K. 920 N.E.2d 704, 707 (Ind. Ct. App. 2010), which states that the use of the phrase "shall immediately" in the reporting statute "makes clear that time is of the essence in such a situation." Smith at 677. The Court opined that this ordinary view of the term comports with the General Assembly's intent in enacting the reporting statutes, namely, to encourage effective reporting of potential child abuse or neglect, to facilitate quick investigation of allegations by the proper authorities, and to protect the victims. Id. The Court said that the term "immediately" is not beyond the rational understanding of a reasonably intelligent person. Id.

The Court was not persuaded by Principal's argument that the statute could be narrowly construed to mean that "immediately" could be up to twenty-four hours later, stating that it would not construe a statute in a manner so clearly contrary to the General Assembly's views. Id. at 678. The Court said that there is no rational way to permit such a universally broad view of the reporting statutes, given that they exist to quickly and effectively begin the process of investigating incidents of child abuse and removing those victims from their harmful surroundings. Id. The Court held:

"Put simply, the statutory scheme contemplates that individuals like teachers, school administrators, and hospital workers are often the first ones to become aware of serious problems in a child's life. The State therefore entrusts those people to be the first lines of defense with respect to our most vulnerable citizens, and it likewise imparts on them a sterner obligation of intervention."

Id. The Court noted that a criminal statute need not list with absolute specificity the prohibited conduct; “rather it must inform the individual of the conduct generally proscribed,” quoting Brown v. State, 868 N.E. 2d at 467 (multiple citations omitted). Smith at 678-79. The Court held that no reasonable person of ordinary intelligence would have difficulty determining whether or not Principal acted with a sense of urgency or primacy of purpose when his report came after a four-hour delay that included doing intermediary tasks such as conducting a personal interrogation of the alleged rapist, ordering the search of the involved students’ lockers for evidence corroborating the alleged rapist’s defense, *declining* to contact the police when asked (even though there were multiple police officers in the building), and most notably conducting two hours’ worth of unrelated and purely administrative job interviews (emphasis in opinion). Id. at 679. The Court did not think the case indicated that the statute was arbitrarily enforced by the police when the perpetrator of a sex crime was allowed to remain in the general student population and eventually returned home, and the scene of the assault was left open for other students to use, all things which were imminently avoidable by the more prompt involvement of law enforcement. Id.

The Court concluded that there was sufficient and substantial evidence of probative value to support the fact-finder’s determination that Principal had reason to believe that the factual circumstances alleged by Victim actually occurred and that she was the victim of a rape. Id. at 684. Principal argued that, of the five individuals who testified, namely the director of secondary education, the director of human resources, Associate Principal, Assistant Principal, and Athletic Director, none believed at the time that an allegation of a sixteen-year-old student raping another sixteen-year-old student constituted child abuse. Principal conceded that Assistant Superintendent testified that he was aware of the need to immediately report the allegation, but argued that Assistant Superintendent was not an “individual of similar background and training” because Assistant Superintendent had a much broader and lengthier level of experience in education and school administration. Principal also pointed to exhibits admitted into evidence at his trial, which were administrative guidelines and manuals promulgated by the school district, including one edited and approved by DCS and the Delaware County Prosecutor’s Office. The guidelines and manuals either did not define child abuse or defined it as a sexual act between an adult and a child. The Court noted the State’s argument that the statute’s reference to training and background as gauging “the duty to report according to the training and background of the individual with knowledge of the facts,” with the baseline standard being “a person of ordinary background and training.” Id. at 681-82. The State argued that the element refers to Principal’s knowledge of *factual* information, events and circumstances, and how he, or other school administrators, would view those facts, and it is irrelevant whether he was operating under an incorrect *legal* assessment of the scope of the child abuse definition. The Court opined that, in light of the purpose of the child abuse reporting statutes, the State’s view is correct. Id. at 682. The Court said that the General Assembly has expressly charged particular individuals, like Principal, with a significant responsibility: to serve as the first responders to incidents of child abuse and neglect, and to act swiftly to ensure the child is protected from further harm. Id. The Court observed that, in furtherance of this responsibility, the General Assembly has imposed a particular duty, with particular consequences for failure in that duty. Id.

The Court said that Principal's defense would tacitly encourage administrators and other professionals to simply not read the statutes in full, and would reward systematic ignorance in entire school districts and corporations, to the obvious detriment of the very children the statutes are supposed to be protecting. *Id.* at 683. The Court held that the statutory scheme is designed to err on the side of *over* reporting suspected child abuse or neglect (emphasis in opinion). *Id.* Citing IC 31-33-6-1 and IC 31-33-6-3, the Court observed that the statutes presume a report is made in good faith and immunize from civil or criminal liability the person who makes a report, but the statutes do not presume that a *failure* to file a report was done in good faith, or immunize from liability those persons who even in good faith, believe that a report is not necessary (emphasis in opinion). *Id.*

The Court noted the following evidence in support of its determination that Principal had reason to believe that Victim was the victim of child abuse by virtue of her rape allegation: (1) a fellow student brought Victim to Assistant Principal's office, where Victim told Principal and every subsequent administrator brought into the room, that she had been raped; (2) Victim was humped over, drawn inward, kept her face in her hands, did not make eye contact with Assistant Principal, and was crying; (3) Victim clearly articulated her attacker's identity, the circumstances, the time she was attacked, and the location of the attack. *Id.* at 683-84. The Court said that it was apparent that Principal had some doubts as to Victim's veracity, but it is equally apparent that Principal took the allegation seriously enough to summon the school nurse and direct Associate Principal to contact YOC, to call the senior administrators in the district to ask for guidance, to begin his own personal interrogation of Perpetrator, and to direct the search of student lockers. *Id.* at 684.

The Court concluded that a reasonable fact-finder could have found beyond a reasonable doubt that Principal had reason to believe Victim needed care, treatment, or rehabilitation that could only be provided or accepted through the coercive intervention of a court. *Id.* at 687. The Court acknowledged that Principal's case may be unique, in that the General Assembly's 2012 amendments to the reporting statutes mean the State no longer must prove that a defendant charged with failure to report had reason to believe the child needed care, treatment, or rehabilitation that could only be provided through the coercive intervention of a court. *Id.* at 686. The Court opined that the impact of the amendments is that going forward the duty to report for school and medical officials is significantly stricter because they must immediately report suspected child abuse or neglect to DCS or law enforcement when they have reason to believe it has occurred, regardless of whether the child is being cared for by parents, guardians, or the State, and regardless of how the official assesses the quality of that care. *Id.*

The Court looked to the statutory definition of "child abuse and neglect" at the time Principal was charged and tried, which included the requirement that Victim needed care, treatment, or rehabilitation that was unlikely to be provided or accepted without coercive intervention of a court. *Id.* at 684. The Court said that there must have been sufficient evidence on this aspect of the statute introduced at his trial for his conviction. *Id.* at 685. Principal argued that the necessity for care, treatment, or rehabilitation must arise "as a result of this incident" and that, to the extent Victim *did* receive care, treatment, and rehabilitation as a result of this incident, she received those things without the necessity of court intervention (emphasis in opinion). *Id.* The Court opined that the need for care, treatment, or rehabilitation does not have to arise "as a result of this

incident,” and there is no requirement that this be a new and distinct determination for each subsequent incident, either in the reporting statutes or the CHINS statutes. *Id.* The Court held that sufficient evidence was present on Victim’s need for care, treatment, and rehabilitation to be provided by a court because: (1) Principal knew that Victim was already subject to a CHINS decree making her a ward of DCS and ordering her to remain in the care of YOC; (2) Principal knew that, in the event Victim needed *any* care, treatment, or rehabilitation, for this incident or *any* incident, it must be provided by YOC, which would only occur as a result of the coercive intervention of the Madison Superior Court; and (3) Principal directed Associate Principal to call YOC and not Victim’s mother when he heard the allegation because he knew that YOC, not Victim’s mother, was the entity that would come to the school, pick up Victim, take her to the hospital, and get her treatment (emphasis in opinion). *Id.* at 686-87.

The Court opined that Principal’s phone call to YOC could not, and did not, satisfy his responsibility under the reporting statute. *Id.* at 688. The Court observed that the reporting statutes (IC 31-33-5-4) required Principal to make his immediate report to DCS or a law enforcement agency. *Id.* at 687. Principal argued that the evidence was insufficient to show that he failed in this obligation because he directed Associate Principal to contact YOC immediately after hearing Victim’s allegation, YOC is an agent of DCS and, pursuant to that agency relationship, notification to YOC is the legal equivalent of notification to DCS. The Court found the following reasons why Principal’s argument was incorrect: (1) the statutes explicitly designate DCS or law enforcement as agencies to which reports must be made, and both are neutral and detached entities tasked with investigating and assessing allegations of child abuse and neglect; (2) Principal’s agency theory adds another layer of bureaucracy to what is supposed to be an “immediate” report, which would not support the statutes’ purposes of encouraging effective reporting, quick investigation, and protecting children; (3) the contract between YOC and DCS specifically provides that neither YOC nor DCS are agents of one another. *Id.* at 678-88.

The Court found that Principal knowingly failed to “immediately” report the child abuse as he was obligated to do by statute. *Id.* at 692. The Court considered whether Principal’s eventual call to the DCS hotline made about four hours after he became aware of Victim’s rape allegation was sufficiently immediate as to relieve him of criminal liability. *Id.* at 688-92. The Court rejected Principal’s argument that a report made within twenty-four hours should be considered immediate. *Id.* at 688. The Court also rejected Principal’s claim that the school policy permitted him to conduct the level of investigation which he said justified his delay in reporting. *Id.* at 689. The Court further rejected Principal’s belief that the reporting statutes permit a citizen to delay reporting in order to “assess and reflect” before facing criminal liability and professional censure. *Id.* The Court opined that the statutes require immediate reporting of suspected child abuse or neglect, and, in furtherance of that aim, immunize from criminal and civil liability those who immediately report conduct that turns out after later assessment *by DCS or law enforcement* to have been innocent (emphasis in opinion). *Id.* The Court said that, under the definition of “immediately,” the Court believed that the length of the delay is not the only thing that matters, but also the urgency with which the person files the report, the primacy of the action, and the absence of an unrelated and intervening cause for delay. *Id.* at 691. The Court observed that Principal ignored repeated opportunities to contact the police, several of whom

were in his building, or to call DCS, and proceeded to instead conduct several hours of job interviews for open administrator positions. Id. The Court found it apparent that Principal failed in his duty to help protect one of his trusted charges. Id. at 692.