

## Indiana Supreme Court Affirms Admissibility of MySpace Page in Criminal Trial

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In *Clark v. Indiana*, 2009 Ind. LEXIS 1371 (October 15, 2009), the defendant was charged with brutally murdering his fiancée's two-year-old child, who had been left in the defendant's care. Among the evidence presented to the jury was the fact that, while waiting in an exam room with police at a hospital after his arrest, the defendant said, "I will f . . . ing kick your ass. I will send the Hell's Angels to kill you. F. . . it. It's only a C felony. I can beat this." *Id.* at \*4-5. When the defendant took the stand in his own defense, he testified as follows:

I was negligent. I was reckless. I was irresponsible. I was an a . . . hole. Sorry but for a lack of a better word, but, yeah. That's what I am, but I'm not an intentional killer. I mean, I don't even know how to explain this, but there's a lot better ways to kill somebody that [sic] doing it like that. You know, there's no attempt to hide the crime. I didn't clean up anything. I didn't change clothes, mens rea. People do certain things when they kill somebody. They try to hide a crime. There's no evidence. No evidence whatsoever that I tried to hide anything. And the cops, they know that. They know that.

*Id.* at \*8.

On cross-examination, the prosecutor read to the defendant his own description of himself, which was posted on his MySpace page. The description included the following text:

Society labels me as an outlaw and criminal and sees more and more everyday how many of the people, while growing up, and those who judge me, are dishonest and dishonorable. Note, in one aspect I'm glad to say I have helped you people in my past who have done something and achieved on the other hand, I'm sad to see so many people who have nowhere. To those people I say, if I can do it and get away. B. . . sh . . . And with all my obstacles, why the f . . . can't you.

*Id.* at \*6.

***[T]he Court concluded that "it was proper to permit the prosecution to confront [the defendant] with his own seemingly prideful declarations that rebutted the defense."***

Defense counsel objected to the reading of the MySpace posting and the objection was overruled. Ultimately, the jury found the defendant guilty and recommended life in prison without the possibility of parole, a sentence which the trial court imposed.

On appeal, the defendant argued the MySpace posting was inadmissible character evidence under Indiana Rule of Evidence 404(b). The Indiana Supreme Court disagreed, reasoning that the posting "contained only statements about himself and in reference to himself. Thus, the State is right to observe that this is solely evidence of his own statements, not of prior criminal acts. It was Clark's words and not his deeds that were at issue, so Rule 404(b) does not apply." *Id.* at \*7-8.

The Court went on to point out that the MySpace posting was probative of an issue at trial because the defendant himself made his character a central issue through his testimony that his actions were merely "reckless," that he was "not guilty of an intentional crime," and that he lacked the "mens rea." *Id.* at \*9-10. Accordingly, the Court concluded that "it was proper to permit the prosecution to confront [the defendant] with his own seemingly prideful declarations that rebutted the defense." *Id.* at \*10.