Police Prosecutor Update

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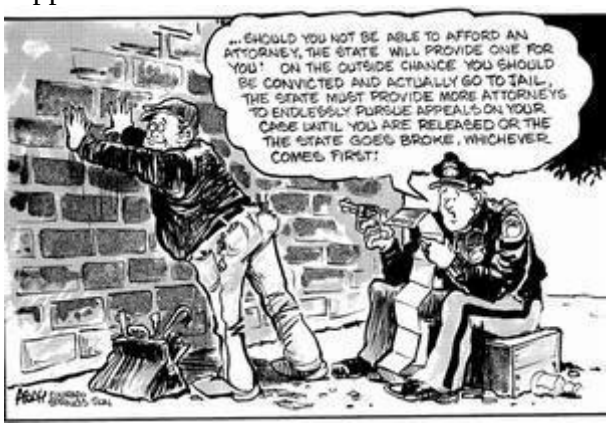
MIRANDA WARNINGS
INTERROGATION

On January 20, 2012, the Indiana Court of Appeals issued a decision in *Castillo-Aguilar v. State*, _____ N.E.2d _____ (Ind. App. 2012), REVERSING the trial court's denial of the defendant's motion to suppress evidence.



The defendant was stopped for a traffic violation and was subsequently arrested for driving without ever having received a license. He spoke very little English and provided identification cards with two different names on them. After he was brought to the police station he was asked to fill out an "information sheet" requesting the following information: full name, nicknames, complete address, telephone number, social security number, age, birthday, birth location, nationality, time living in the city, name of car insurance and name and location of his employer.

The defendant was not read his *Miranda* warnings prior to filling out this form. The "information sheet" was given to a detective for investigation into whether the defendant was using a false name for employment purposes. It turns out he was and he was charged with Forgery, a Class C felony.

There was no question that the defendant was in custody for purposes of *Miranda.* The Court went on to conclude that the defendant was subjected to interrogation by the questions on the "information sheet" and therefore should have been given *Miranda* warnings.

Under *Miranda*, "interrogation includes express questioning and word or actions by police that the police know are reasonably likely to elicit an incriminating response. Routine questions for the purpose of identification are not within the purview of *Miranda.* In this case some questions on the "information sheet" when combined with the fact that the arresting officer testified that he took the defendant to the station for purposes of investigation and not for processing of paperwork demonstrate the defendant was subjected to interrogation. Because he was not read his *Miranda* rights all of the information collected as a result of those answers should have been suppressed.

Note: The State did not file a brief for this appeal so a less stringent standard of review was applied.

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OPERATING WHILE INTOXICATED
REASONABLE SUSPICION

On January 30, 2012, the Indiana Court of Appeals issued a decision in *State v. McCaa*, _____ N.E.2d _____ (Ind. App. 2012), REVERSING the trial court's granting of the defendant's motion to suppress evidence.

On February 21, 2011 at 11:43 a.m. officers who were at the scene of a fatal accident on a highway got a dispatch with various reports of a semi-trailer truck being driven erratically towards the accident site. One officer located the truck, followed it and saw it go off the road twice in a half mile. The truck was stopped by a second officer just a few feet from the accident site, in such a manner that all southbound traffic was blocked. It was also raining hard.

The defendant said he spilled a drink in the cab of the truck causing the erratic driving. At this time, the officer did not observe slurred speech, glassy or bloodshot eyes, or manual dexterity problems. The officer decided to move the investigation to a gas station parking lot approximately two miles away. He did so because it was pouring rain, the truck was blocking traffic, the gas station gave plenty of room to park the truck, was the closest location, and a medical crew was already at the gas station (to assist with the fatality).

The officer told the defendant to drive his truck to the gas station and followed him. He observed the defendant drive his truck off the road three more times. At the gas station the defendant failed FSTs but tested 0.00 on a PBT. He was then taken for a blood draw.

The trial court granted the defendant's motion to suppress, finding that while the police officer acted in good faith, the officer was wrong when he directed the defendant to move his truck to the gas station.

The Court of Appeals disagreed with the trial court and held that reasonable suspicion still existed after the brief initial traffic stop because 1) a reasonable person would be justified in doubting the self-serving statement by the defendant about spilling a drink causing his erratic driving; 2) the absence of obvious signs of impairment did not dispel reasonable suspicion because there wasn't enough time for the officer to make proper observations of the defendant; and 3) the absence of signs of alcohol does not mean a person is not intoxicated as a result of ingesting another substance. The Court went on to hold that the traffic stop was not unconstitutionally lengthy. Finally, the Court found that the officer's conduct in asking the defendant to move his truck was not "outrageously dangerous" because the police maintained some level of control over the situation and limited the risk to a risk that the defendant would drive his truck off the road, but not into another vehicle.

The Court noted that the officer was essentially between a rock and a hard place due to the circumstances of this case. Be aware that this case is probably limited to the unique facts of this case and it is never a good idea to ask a suspected impaired driver to get back in his car and move it to another location.

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SEARCH AND SEIZURE
TRAFFIC STOP

On January 31, 2012, the Indiana Court of Appeals issued a decision in *Stark v. State,* 960 N.E.2d 887 (Ind. App. 2012), affirming the trial court's ruling denying the defendant's motion to suppress evidence.

On October 3, 2010, an officer saw a parked vehicle with four occupants inside. The car was not running, did not have lights on and was in a high crime area. The officer approached the car to investigate and asked the occupants for identification. The defendant was in the right rear passenger seat. The officer noticed that the defendant appeared to slide something under a coat on his lap and then place his hands on top of the coat. The defendant was ultimately arrested for public intoxication and possession of alcohol by a minor. When the defendant got out of the car, he slid the coat off his lap and left it in the car. The defendant was then handcuffed. The officer then retrieved the coat left by the defendant and found a handgun in it.

The defendant argued that the search of his coat was improper under *Arizona v. Gant* which came down in 2009. In *Gant*, the United States Supreme Court **rejected** the bright line rule of *New York v. Belton* (which stated that when an occupant of a vehicle is arrested, the police can search the entire passenger compartment of that automobile and any containers therein). Instead the Court said that the police may search a vehicle incident to the arrest of one of the occupants of the vehicle **only** if the person arrested is within reaching distance of the passenger compartment of the vehicle at the time of the search or if there is reason to believe the vehicle contains evidence of the offense relating to the arrest.

The Indiana Court of Appeals said this was not the same factual scenario as *Gant* because although the defendant was arrested and handcuffed outside of the vehicle, there were three other unsecured individuals remaining in the vehicle. The Court held that where unrestrained passengers remain in a vehicle, a search of the vehicle incident to the arrest of another occupant is permissible to alleviate officer safety concerns and to prevent the destruction of evidence. In this case three people remained in the car, the defendant acted suspiciously regarding the coat and this was a high crime area. Be sure to articulate why it is an officer safety issue in addition to there being unrestrained people in the car.

MIRANDA WARNINGS
RIGHT TO COUNSEL

On January 31, 2012, the Indiana Court of Appeals issued a decision in *Anderson v. State*, _____N.E.2d _____ (Ind. App. 2012), affirming the conviction for murder but reversing in part.

The defendant was found guilty at a jury trial of Murder, Burglary and Abuse of a Corpse. Among other things, on appeal he argued that the trial court should not have admitted the statement he gave to police in which he confessed to his crimes because officers continued to interrogate him despite his request for an attorney.

Two years after the murder, the defendant was linked to the murder

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through DNA. At this time the defendant was living in Texas. Detectives flew to Texas with an arrest warrant for a probation violation on an unrelated case and a search warrant to obtain a buccal swab to confirm the DNA results. The detectives met with the defendant in an interview room at a local police department in Texas. Before questioning began, the defendant signed an advisement of rights form. Detectives questioned him from approximately 5:00 p.m. until 3:00 a.m. the next day. During the questioning the defendant was permitted several breaks to use the restroom, smoke, make phone calls and eat food. He was also permitted to meet privately with his father, an ordained minister, approximately two or three times during the questioning. At one point during the questioning the defendant said "I really would like to talk to an attorney or something because I don't know where this is going". The detectives continued to question the defendant until he eventually confessed to the crimes.

The Court began by summarizing the requirements of *Miranda.* If the accused requests counsel, the interrogation must cease until an attorney is present. An accused's request for counsel, however, must be unambiguous and unequivocal. The cessation of police questioning is not required if a suspect makes a reference to an attorney that is ambiguous or equivocal in that a reasonable officer in light of the circumstances would have understood only that the suspect *might* be invoking the right to counsel. Invocation of the *Miranda* right to counsel requires, at a minimum, some statement that can reasonably be construed to be an expression of desire for the assistance of an attorney. The request must be made with sufficient clarity such that a reasonable police officer under the circumstances would understand the statement as a request for an attorney.

In this case, the Court of Appeals held that the defendant's invocation of his right to counsel was unequivocal. Once he said "I really would like to talk to an attorney or something," his right to counsel should have been "scrupulously honored." The addition of the words "or something" did not qualify or equivocate the defendant's clear statement that he "really would like to talk to an attorney." His request was made with sufficient clarity such that a reasonable police officer under the circumstances would understand that the defendant was unambiguously asserting his right to counsel.

The Court went on to discuss a few other Indiana cases that addressed similar *Miranda* issues. In *Davis*, the statement "maybe I should talk to a lawyer" was not an unequivocal request for counsel. In *Taylor*, the statement "I guess I really want a lawyer, but, I mean, I've never done this before so I don't know", was an expression of doubt, not a request and was merely the suspect choosing to think out loud about whether to exercise his constitutional right. In *Powell*, the statement "could I see about getting a lawyer or something man" was found to be ambiguous and not sufficiently clear as to constitute a request for an attorney. In that case the Court emphasized that the officers immediately followed up and asked the defendant if he, in fact, wanted an attorney. When asked the defendant did not say yes or clarify that he wanted a lawyer.

Fortunately, the Court held that the admission of the defendant's statement was harmless error as to the Murder charge because the State presented other overwhelming evidence of the defendant's guilt as to the Murder. However, the Court held that without the defendant's police statement, the jury would not have been able to conclude beyond a reasonable doubt the Burglary and Abuse of a Corpse charges. Those two convictions were reversed. The State will be free to retry those charges if they choose. Stay tuned for the final word from the Indiana Supreme Court on this case.