

Police Prosecutor Update

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The Indiana Supreme Court amended the rules of evidence to prohibit evidence of a suspect's statement taken during police station questioning unless it was electronically recorded. The new rule applies to statements made *on or after January 1, 2011*.

The rule provides, "In a felony criminal prosecution, evidence of a statement made by a person during a Custodial Interrogation in a Place of Detention shall not be admitted against the person unless an Electronic Recording of the statement was made, preserved, and is available at trial."

"Electronic recording" means an audio-video recording. "Place of detention" means a jail, law enforcement agency station house, or any other stationary or mobile building owned or operated by a law enforcement agency at which persons are detained in connection with criminal investigations. "Custodial interrogation" is basically those situations requiring *Miranda* warnings.

There are seven exceptions to the rule: (1) statements made as a part of routine processing or booking; (2) statements made when the suspect does not agree to be electronically recorded; (3) when there is an equipment malfunction; (4) when the interrogation takes place in a jurisdiction outside Indiana; (5) when law enforcement officers reasonably believe the crime under investigation is not a felony; (6) the statement made is spontaneous and not in response to a question; and (7) substantial exigent circumstances exist which prevent the recording.

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A recent Court of Appeals case provides a review of the law regarding police-citizen encounters. For purposes of this discussion, the facts reveal that a police officer was patrolling an area in which there had been a "rash of recent burglaries." He observed a gray vehicle parked on the side of the street. The vehicle was properly parked and the engine was not running. When he initially passed the vehicle, the occupants "turned their faces away" and "got further down in the seat." Several minutes later, the officer returned to the area and observed that the occupants were still in the vehicle parked on the side of the street.

The officer decided to determine the purpose of the occupants being in the area. He pulled up behind the vehicle. He was in full police uniform and driving a marked squad car. He did not activate the car's emergency lights. He did not display a weapon when approaching the vehicle. An issue in this case was whether the officer's actions constituted an investigatory stop requiring reasonable suspicion, which the officer did not possess.

There are three levels of police investigation. First, an arrest, or detention lasting more than a short period of time, must be justified by probable cause. Second, police may, without a warrant or probable cause, briefly detain an individual for investigatory purposes if, based on specific and articulable facts, the officer has a reasonable suspicion that criminal activity has or is about to occur. The third level of investigation occurs when a police officer makes a casual and brief inquiry of a citizen which involves neither an arrest nor a stop. This is a consensual encounter, which does not implicate the Fourth Amendment.

Not every encounter between a police officer and a citizen amounts to a seizure requiring objective justification. A person is "seized" only when, by means of physical force or show of authority, his or her freedom of movement is restrained. The test for the existence of a "show of authority" is an objective one: not whether the citizen perceived that he was being ordered to restrict his movement, but whether the officer's words and actions would have conveyed that to a reasonable person. Examples of circumstances that might indicate a seizure would be the threatening presence of several officers, the display of a weapon by an officer, some physical touching of the citizen, or the use of language or tone of voice indicating that compliance with the officer's request might be compelled.

It is the law that a law enforcement officer's approach to a vehicle parked in a public place does not itself constitute an investigatory stop or a seizure. In the case being discussed, given the facts, the officer's approach to the parked car in which the defendant was an occupant and initial contact with the defendant did not constitute an investigatory stop or a seizure. It was a consensual encounter. The officer did not have to possess reasonable suspicion of wrongdoing in order to park behind and approach the vehicle in order to ask the defendant his purpose for being in the area.