Police Prosecutor Update

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MIRANDA WARNINGS
REQUEST BY DEFENDANT FOR INTERVIEW

On March 2, 2012, the Indiana Court of Appeals issued a decision in *Hartman v. State*, _____ N.E.2d _____ (Ind. App. 2012), affirming the trial court's denial of the defendant's motion to suppress his statements to the police.

The defendant was incarcerated in a county jail on a burglary charge. A detective went to the jail to talk to the defendant about his missing father. The defendant was advised of his *Miranda* warnings and the defendant asked to speak to a specific lawyer. The interviewed ended.

The next day, a search warrant was executed at the defendant's property and the police discovered the defendant's father's dead body. The detective executing the warrant routinely informs individuals that their property was searched pursuant to a warrant. So, he went to the county jail and read the search warrant to the defendant. The detective asked the defendant if he had any questions about the warrant and the defendant responded by asking if the police had searched yet and if they had found anything. The detective then asked the defendant if he was indicating that the wanted to speak with the detectives and the defendant responded that he did want to talk to the police.

The defendant was taken to an interview room, read his *Miranda* warnings and made incriminating statements relating to his father's death. He was charged with the murder of his father and moved to suppress those statements.

The Court held that the process of reading the search warrant to the defendant and asking if he had any questions was NOT interrogation of the defendant. Thereafter, the defendant initiated the further communication with the police and waived his *Miranda* rights.

SEARCH AND SEIZURE
PROBATION SEARCHES

On March 8, 2012, the Indiana Court of Appeals issued a decision in *Hensley v. State*, _____ N.E.2d _____ (Ind. App. 2012), REVERSING the trial court's denial of the defendant's motion to suppress evidence.

The defendant, Pamela Hensley, was married to Robert Hensley, who was on probation. The conditions of his probation included a provision that he not possess a firearm or use alcohol or drugs. An additional condition allowed a probation officer to visit his home and conduct a warrantless search.

A local police officer received a tip that Hensley was in possession of marijuana. However, the officer took no action based on the tip. Several weeks later someone approached the same officer and told

him that Hensley was in possession of a firearm. The officer then contacted the probation officer who agreed to conduct a probation search that day.

The probation officer went to Hensley's home along with police officers. When they arrived, Hensley was not home but the defendant was. She advised probation that she slept in the bedroom and that Hensley slept on the couch. Meanwhile, the officers immediately began searching. In the bedroom they found marijuana under the mattress and one pill in a drawer. The probation officer began looking in plain view for anything that might be illegal and was so uncomfortable with the way the police were searching that she went outside and waited for them to finish. The police then got a search warrant to continue searching the remainder of the home. They found more pills and other evidence of drug use. The defendant, Pamela Hensley, was charged with drug and paraphernalia related offenses.

The Court of Appeals noted that there are two types of valid searches relating to probationers. The United States Supreme Court has held that the search of the residence of a person on probation may be done without a search warrant and without probable cause, so long as there is reasonable suspicion to believe that a probation violation has occurred. Additionally, law enforcement may conduct a search if there is reasonable suspicion to believe the person on probation has engaged in criminal activity and if the search is authorized by one of the conditions of probation.

In this case, the Court held that the search did not fall into either of these categories and was improper. The information the police and probation had did not establish reasonable suspicion to believe that Hensley had violated a condition of his probation. The Court went on to say that this was a full-blown search by police, under the guise of conducting a probation search. The police immediately began a complete search without trying to determine what areas of the home were occupied by Hensley. The Court also held that the tip was made by an unknown person, who was not established as credible and reliable, was not verified in any way and was three weeks old at the time of the search.

SEARCH AND SEIZURE
TRAFFIC STOP

On March 16, 2012, the Indiana Court of Appeals issued a decision in *McLain v. State,* _____ N.E.2d _____ (Ind. App. 2012), affirming the trial court's denial of the defendant's motion to suppress evidence.

The defendant was stopped for failing to activate his turn signal at least two hundred feet before turning. The officer issued a warning ticket and then told the defendant he was free to leave. Then the officer asked the defendant if he had any illegal substances in his car to which the defendant replied that there was not. The officer then told the defendant he was curious because of the defendant's two prior "incidences" for possession of marijuana. He then asked for permission to search the car. The defendant consented to the search and then told the officer there was marijuana in the car.

The Court held that once the defendant was given his license, registration and citation that he was free to leave and he was not required to answer the officer's questions. There is no evidence that the officer displayed a weapon or restricted the defendant's movements, or that the language and tone of the officers questions conveyed to the defendant that his compliance would be compelled. The interaction between the officer and the defendant after the termination of the traffic stop was merely a consensual encounter with no Fourth Amendment implications.

This is a publication of the Prosecutor's Office which will cover various topics of interest to law enforcement officers. Please direct any questions or suggestions you may have for future issues to the Prosecutor's Office.