

MIRANDA CUSTODIAL INTERROGATION

On August 22, 2012, the Indiana Court of Appeals issued a decision in *Bean v. State*, _____ N.E.2d _____ (Ind. App. 2012), reversing the defendant's convictions for Child Molest, Class A felony.

Detectives from two counties went to the defendant's home to speak with him about allegations of child molest by his daughter and niece. When they found the defendant at home, they told him that they were investigating possession of child pornography. The defendant agreed to go to the police station to talk about the child porn allegations and "something else...." The defendant was not handcuffed or placed under arrest but was driven by an officer to the station.

For an hour, the defendant was asked basic information and then about the pornography. After about an hour, the detective made a point to show the defendant that the door to the room was unlocked and that he could leave if he wanted to. At that point, the defendant said, "Do I need a lawyer?" The detective then informed him of his *Miranda* rights, went over a written form and the defendant signed it.

After a while a detective told the defendant he wanted to "switch gears a little bit" and talk about the molestation allegations. At one point the defendant asked about leaving but he agreed to stay longer. Soon after that the detectives started questioning him more vigorously. He eventually made some admissions regarding the molestation. After about two hours passed, the defendant said, "I mean the only thing else I can say is I want a lawyer so that way, you know, I don't have to worry about – you know – saying I don't know for the fifty-millionth time." The detective continued to press the defendant about whether he wanted a lawyer and the defendant repeatedly said he did not know if he wanted to continue talking, but he eventually did (please see the opinion for the entirety of the conversation between the defendant and the detectives).

Finally, after three hours, the defendant began making confessions regarding both girls. The defendant was charged in both counties with felony child molest. After two separate jury trials he was convicted of two A felony child molest charges against his daughter.

The Court of Appeals held that the defendant was in custody when he finally confessed because a reasonable person would not have felt free to leave. The defendant's statement that he wanted a lawyer was unequivocal and the questioning should have stopped at that point. As such the Court ruled that the defendant's confession was obtained in violation of *Miranda* and should have been suppressed.

The Court looked at the following factors when they determined that the defendant was in custody: 1) a police officer drove the defendant to the police station; 2) the officers who spoke to the defendant at his home did not tell him the real reason they wanted to talk to him; 3) the questioning was aggressive and fairly lengthy; 4) the defendant was not allowed to return home after he finally confessed; 5) the crucial factor was that he was advised of his *Miranda* rights, he invoked them and police continued questioning him anyway.

The Attorney General's Office is likely going to seek transfer to the Indiana Supreme Court on this case so stay tuned.

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