

Police Prosecutor Update

Issue No. 252
June 2013

IMPLIED CONSENT

On May 24, 2013, the Indiana Court of Appeals issued a decision in *Hassfurther v. State*, _____ N.E.2d _____ (Ind.Ct. App. 2013), affirming the trial court's denial of the defendant's Petition for Judicial Review, relating to the suspension of the defendant's driver's license resulting from a refusal to take a chemical test.

The police received a 911 call from a concerned citizen reporting a suspected drunk driver. The caller told dispatch she followed the Toyota truck to a gas station where the driver went inside. She described the truck including a sticker of a fox on the back. She also described the driver. The police arrived at the gas station shortly after and located the defendant who showed all the signs of being drunk. While talking to the defendant, he admitted he had been drinking and he had driven his truck there.

The officer asked the defendant if he would submit to a PBT and he refused. The officer then read the implied consent from his card advising the defendant that "refusal to submit to a chemical test will result in the suspension of your driving privileges for one year". The defendant refused. The defendant was transported to the jail and was read the implied consent information again but the officer included that refusal would result in a two year suspension due to the defendant's prior conviction.

The defendant challenged his license suspension on the grounds that the officer did not have probable cause to offer the test and that he wasn't properly advised of the consequences of refusing to take the test.

The Court held that the information from the concerned citizen was corroborated by the police and because of that, the police could assume the rest of the information given was correct also. Additionally, the defendant admitted that he had driven and was drinking the night before. Based on all of the facts and circumstances, the officer had probable cause to offer the defendant a chemical test under the implied consent law.

The police must advise a person of the consequences of refusing to submit to a chemical test. The Court held that the later warning given that advised the defendant that he could lose his license for two years was sufficient. The Court did suggest that it would be better practice for police departments to include the two-year suspension provision on the implied consent card.



MIRANDA WARNINGS
REQUEST BY DEFENDANT FOR INTERVIEW

On May 31, 2013, the Indiana Supreme Court issued a decision in *Hartman v. State*, _____ N.E.2d _____ (Ind. 2013), **reversing** the Indiana Court of Appeals decision.

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 interview 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 testified that he 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 he wanted to speak with the detectives and the defendant responded that he did want to talk to the detectives.

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 trial court denied the motion to suppress and the Indiana Court of Appeals affirmed that decision.

The Indiana Supreme Court reversed the decision of the Indiana Court of Appeals and found that the police impermissibly questioned the defendant after he had requested a lawyer. The Indiana Supreme Court noted the well-settled federal constitutional law that when an individual in custody invokes his 5th Amendment right to counsel, all interrogation must cease until an attorney is present. Interrogation refers to "either express questioning or its functional equivalent." The functional equivalent of express questioning has been defined as "any words or actions on the part of police (other than those normally attendant to arrest and custody) that the police should know are reasonably likely to elicit an incriminating response from the suspect."

However, even after a suspect has invoked his 5th Amendment right to counsel, if the suspect initiates further communication with the police, the suspect may be further interrogated without counsel present. In addition, even if counsel is not immediately provided to a suspect who requests counsel, the police are free to inform the suspect of the fact of a second investigation, so long as such communication by the police does not constitute interrogation.

The Indiana Supreme Court reviewed the facts and circumstances of the case at bar and concluded that there was a *Miranda* violation and that the defendant's incriminating statements to the police must be suppressed. The Indiana Supreme Court found the following factors to be significant in reaching this decision:

1. The defendant remained in custody from the time that he invoked his 5th Amendment right to counsel until he agreed to talk to detectives.

2. The defendant was not given an opportunity to consult with a lawyer, family or friends prior to being read the warrants.
3. The early morning timing of the detective's initiation of a conversation with the defendant. The Indiana Supreme Court stated that the timing of this conversation with the defendant "strongly suggests that the defendant's willingness to converse with police notwithstanding his prior request for counsel, was likely the result of police coercion."
4. The defendant's question was in direct response to the officer's question rather than a separate, independent initiation of further conversation by the defendant.
5. The statement by the detective to the defendant that he was required "by law" to read the defendant two search warrants that had previously been executed by the police. The Indiana Supreme Court stated, "In telling the defendant that he was required "by law" to read the already-executed warrants, the detective was engaging in a ploy that further supports our conclusion that the police were attempting to evade their obligation to cease questioning of a suspect who had unambiguously requested counsel."

Finally, the Indiana Supreme Court held that the fact the defendant was re-read his *Miranda* rights, and waived such rights, prior to making incriminating statements did not change the outcome. The Indiana Supreme Court explained that, based upon the totality of the facts and circumstances, the defendant's subsequent waiver of his *Miranda* rights was not knowing, intelligent and voluntary, but induced by police coercion. Therefore, even with the subsequent waiver of *Miranda* rights, the defendant's incriminating statements to the police must be suppressed.