

Police Prosecutor Update

Issue No. 245
November 2012

MIRANDA CUSTODIAL INTERROGATION

On October 2, 2012, the Indiana Court of Appeals issued a decision in *Joseph v. State*, _____ N.E.2d _____ (Ind. Ct. App. 2012), REVERSING the defendant's convictions.

At 7:30 a.m. three men broke into an occupied home and committed several serious crimes including burglary with serious bodily injury, armed robbery and criminal confinement. A few hours after this crime occurred, officers were dispatched to a Sonic Drive-In close to that home to investigate two suspicious vehicles. The vehicles were unoccupied and one of the plates returned to the defendant. The officer obtained the address of the defendant. Because of the timing of the crimes and close proximity of the Sonic to the home where the crimes occurred, officers went to the apartment where the defendant lived. The officers did not know anything about the home invasion, except that there had been one.



At the request of the officers, the apartment complex manager let the officers into the defendant's apartment. The officers handcuffed the defendant, read him his *Miranda* warnings and asked him where he was earlier that morning. When confronted about his car being at the Sonic, the defendant told them he was approached about buying a game system. The officers then searched the defendant's apartment and found guns and other items of interest relating to the home invasion.

The defendant agreed to go to the police station to answer questions. He was read his *Miranda* warnings again and denied any involvement in the home invasion. The defendant moved to suppress his statements and all evidence seized from his apartment. The trial court granted the motion with respect to the statements made to the officers at his apartment but not as to the statements made at the police station. The case went to trial and the defendant was convicted of all charges. The defendant then appealed his convictions arguing that the statements to police at the station also should have been suppressed.



The State conceded that the warrantless entry into and search of the defendant's apartment was without probable cause and pointed to no exigent circumstances to justify it. The Court went on to determine whether the defendant's statements to officers at the station were sufficiently attenuated to dissipate any taint of the illegal search. When evaluating the doctrine of attenuation there are three factors that should be considered in determining whether the connection has become too weak: (1) the time elapsed between the illegality and the acquisition of the evidence; (2) the presence of intervening circumstances; and (3) the purpose and flagrancy of the official misconduct. It is also important to consider whether officers have given *Miranda* warnings.

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

In this case, the defendant was in constant police custody from the time of the illegal police entry into and search of the defendant's apartment, the defendant knew what potential evidence had been discovered in his apartment, and had made prior potentially incriminating statements to officers. In light of these facts, the Court of Appeals concluded that the statements were not sufficiently attenuated from the illegal search of his apartment to dissipate any taint of the illegal police conduct and should have been suppressed. The convictions were reversed and the case was remanded to the trial court.

CUSTODIAL INTERROGATION RECORDING REQUIREMENT

On October 3, 2012, the Indiana Court of Appeals issued a decision in *Steele v. State*, _____ N.E.2d _____ (Ind. Ct. App. 2012), affirming the defendant's convictions.

The defendant was found by police slumped unconscious in the front seat of a jeep parked in the middle of a road with lights and engine off and three flat tires. Officers were unable to wake the defendant, so firefighters had to break the rear window. The dazed defendant showed all the classic signs of intoxication and was arrested for public intoxication. The officer transported the defendant to a nearby gas station with the intent to administer FSTs. While at the gas station, the officer read the defendant his *Miranda* warnings and asked if anyone else had been in his vehicle. The defendant admitted that he had been alone and had driven the vehicle to that location.



After felony drunk driving charges were filed, the defendant filed a motion to suppress the statements made to the officer at the gas station because Indiana Rule of Evidence (IRE) 617 was not followed. IRE 617 requires that 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.

The Court of Appeals held that IRE 617 does not apply in this case because the officer's interrogation of the defendant did not occur in a "place of detention". Additionally, the rule does not, either explicitly or implicitly, impose an affirmative duty on law enforcement officers to transport a person to a "place of detention" before conducting a custodial interrogation.

CRIMINAL RECKLESSNESS "PLACE LIKELY TO GATHER"

On October 9, 2012, the Indiana Court of Appeals issued a decision in *Garcia v. State*, _____ N.E.2d _____ (Ind. Ct. App. 2012), affirming the defendant's convictions.



The defendant and victim were both members of the same gang until the victim defected from the gang. The victim and his uncle were in a car driving. When they were stopped at an intersection, a car drove up beside them. The defendant was the passenger in this car and fired multiple bullets into the victim's car. The State charged the defendant with Criminal Recklessness, a Class C felony and two counts as a D felony.

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

During the trial, the defendant asked for a directed verdict arguing that a vehicle was not a “place where people are likely to gather” as required under the criminal recklessness statute. The trial court denied the motion and the defendant was found guilty. On appeal, the Court of Appeals held that a vehicle which can transport people is clearly a location where people could congregate and gather and would therefore be included as a “place where people are likely to gather.” The defendant’s convictions were affirmed.

SEARCH AND SEIZURE TRAFFIC STOP

On October 19, 2012, the Indiana Court of Appeals issued a decision in *Killebrew v. State*, _____ N.E.2d _____ (Ind. Ct. App. 2012), REVERSING the defendant’s conviction for Possession of Marijuana, a Class A misdemeanor.



An officer observed a Cadillac traveling southbound. The Cadillac had its turn signal on but continued through an intersection without turning. Based on this behavior, the officer thought the driver might be impaired and initiated a traffic stop. When asked about the turn signal, the defendant explained that sometimes the turn signal got stuck. The officer noticed an “overwhelming” smell of air fresheners coming from the car and brought his canine over to the car to do an exterior search. The dog indicated on the car, the police searched and found marijuana.

On appeal, the defendant challenged the stop of the vehicle based on the use of the turn signal. The Court of Appeals held that there was no statute that prohibited the use of a turn signal through an intersection and therefore it was not a traffic violation under the Indiana Code. The Court went on to say that the stop was not proper as a stop for a suspected drunk driver either because the officer observed no signs of impaired driving other than the use of the turn signal. The Court also said the stop was not justified under the “community caretaking function” as argued by the State, because this narrow exception has only been applied in the context of impounding vehicles.

Having ruled that the traffic stop was improper, the Court held that the marijuana seized from the defendant’s vehicle should have been suppressed and reversed the defendant’s conviction.