Police Prosecutor Update

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SUFFICIENCY OF THE EVIDENCE
DRUG FREE ZONES

On March 22, 2017, the Indiana Court of Appeals issued its decision in McAlpin v. State, ___ N.E.3d ___, (Ind. Ct. App. 2017). McAlpin was manufacturing methamphetamine in his home which was within 500 feet of Bicentennial Park. He was charged with Dealing with Methamphetamine enhanced to a Level 4 felony because of the park.

Bicentennial Park is surrounded by residential neighborhoods and has an outdoor amphitheater, but no playground equipment, benches or shade trees. It also had bathrooms and green space. The methamphetamine lab was found at approximately 10:00 a.m. on a school day. It is an enhancing circumstance if a drug offense took place within 500 feet of a park "while a person under 18 years of age was reasonably expected to be present." During closing argument, defense counsel argued that it was not reasonable to expect that children would be present in this park at 10:00 a.m. on a school day. On appeal McAlpin alleged the evidence was insufficient to prove the enhancing circumstance.

The Court concluded that the state failed to prove that children were likely to be present in a park with such limited facilities at 10:00 a.m. on a school day. It rejected the notion that home-schooled or pre-school-aged children could be expected to visit the facility to exercise or "run around in the open space." It apparently was not argued that at the time the drug manufacturing activity actually took place, children could reasonably be expected to be using the park. The Court reversed the conviction and remanded the case to the trial court to enter conviction to a Level 5 felony.

This outcome of this case suggests that appropriate investigative practice should include activities like officers' making and recording their visual observations of children in parks or at school facilities, obtaining the activity schedules of parks and schools, and monitoring the home-school networks and pre-school calendars for events and outings in order to prove when it is reasonable to expect that children are using parks and schools.

CUSTODIAL INTERROGATION
SOBRIETY CHECKPOINTS

On March 2, 2017, the Indiana Supreme Court issued its decision in State v. Brown, ___ N.E.3d ___, (Ind. 2017). Police officers set up a sobriety checkpoint at the back of a well-lit Arby's parking lot. Checkpoint officers were instructed that they had no more than two minutes to discern impairment before they had to release the motorists. Brown was driving a motorcycle when he entered the checkpoint. The officer asked Brown for his license and observed signs of alcohol impairment and smelled the odor of alcohol. The officer asked Brown if he had been drinking, and Brown admitted that he had. After further investigation, Brown was arrested and charged with operating while intoxicated.

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 bench trial, Brown's counsel asked the officer whether Brown had been Mirandized prior to his admission of drinking and whether he was free to go when that question was asked. The officer responded to both questions in the negative. Brown then objected to the officer's testimony, and the trial court granted Brown's motion to suppress. After the court denied the state's motion to correct errors, the state appealed. The Court of Appeals dismissed the state's appeal on procedural grounds, and the state then petitioned for transfer.

Miranda v. Arizona, 384 U.S. 436 (1996) required "that a person questioned by law enforcement officers after being 'taken into custody or otherwise deprived of his freedom of action in any significant way' must first" be advised of specific constitutional rights. The state conceded that the officer, when he asked Brown about drinking, knew he was eliciting an incriminating response. The question, then, was whether Brown was in custody at the time of questioning. The test is not whether a defendant feels free to go, but rather whether there was "formal arrest or restraint on freedom of movement." In Berkemer v. McCarty, 468 U.S. 420 (1984), the Court concluded that "a traffic stop is a 'seizure' within the meaning of the Fourth Amendment." However, it was not a seizure for Miranda purposes. A seizure under the Fourth Amendment is not akin to custody under the Fifth Amendment. "[L]ooking at the circumstances in this case, including the short duration of the stop and the public nature of it, we cannot say that Brown was in custody for Miranda purposes. We find this safety checkpoint questioning was no more custodial than a routine traffic stop or a Terry stop." The trial court's order of suppression was reversed.