Police Prosecutor Update

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SEARCH AND SEIZURE
KNOCK AND TALK

On March 30, 2017, the Indiana Court of Appeals issued its decision in Warren v. State, ___ N.E.3d ___, (Ind. Ct. App. 2017). An Indiana state trooper and a sheriff's deputy went to Warren's mobile home on a tip that methamphetamine was being manufactured there. When they entered the curtilage, they noticed an outside light to be on and detected a chemical odor they associated with methamphetamine manufacture. They knocked on all three doors to the home and shouted loudly, but were not able to reach anyone inside. The left the curtilage and while discussing what to do next, Warren's mother arrived and inquired what was happening. She then left. The officers then walked back to the mobile home. They observed that the outside light had been turned off, and the back door appeared to be open. Thereafter, Warren and his girlfriend walked around the other side of the mobile home. The officers asked for consent to search the mobile home, but Warren indicated his mother owned it and her consent would be required. At the officer's request, Warren called his mother. She came, and they both signed consent for the search. After officers located items associated with methamphetamine manufacture, Warren questioned the consent he had just signed. The officers stopped the search and obtained a search warrant.

Warren was charged with and found guilty of dealing in methamphetamine and possession of precursors, enhanced by his status as an habitual substance offender. On appeal, Warren contended that when he did not answer the door, the officers were required to leave the property. By their continued knocking on doors and windows and yelling, they transformed an attempt to engage in a consensual encounter into an unconstitutional seizure invalidating Warren's subsequent consent to search.

It is not a search when police enter areas of curtilage impliedly open to use by the public to conduct legitimate business. In a knock-and-talk situation, occupants have no obligation to answer the door or to speak to the police. When the knock is not answered, the police are obliged to leave. However, if the police have developed probable cause based on the odors emanating from the home, that the residence contains a methamphetamine lab, they have exigent circumstances permitting a warrantless search for the occupants' safety. In this case, the officer's because of their reasonable belief that a methamphetamine lab was on the premises, could engage in a reasonable investigation to determine whether there were occupants inside the home. "At a minimum, given the volatile nature . . ., they were permitted to intensify their knocking and announcing to determine whether there were occupants at risk inside the home." Therefore, Warren's consent to search was not invalid, and the methamphetamine lab evidence found inside the home was properly admitted at trial.

SUFFICIENCY OF THE EVIDENCE
POSSESSION OF CHILD PORNOGRAPHY

On April 5, 2017, the Indiana Court of Appeals issued its decision in Eckrich v. State, ___ N.E.3d ___, (Ind. Ct. App. 2017). Eckrich was using a computer in the university library to view child pornography. A forensic examination of the computer confirmed that Eckrich had accessed child pornography websites. The computer had a cache that automatically stored images from the websites he visited. Those images were retrieved during the forensic analysis. On appeal of his conviction, Eckrich argued that there was no evidence that he knew of the caching process or that he controlled any of the images stored through that process. However, the evidence indicated that Eckrich intentionally pointed a web browser to certain websites containing child pornography images. He controlled when images of child pornography would appear on the screen, and while the image was on the screen, he was "free to use the image as he desired." The evidence was sufficient to support Eckrich's conviction.

STATUTORY CONSTRUCTION
ARMED WITH A DEADLY WEAPON

On April 12, 2017, the Indiana Court of Appeals issued its decision in McHenry v. State, ___ N.E.3d ___, (Ind. Ct. App. 2017). Police investigated a home burglary in which a handgun, three magazines, a safe containing coins, and other items had been taken. Amber McHenry was charged with burglary as a level 2 felony (because it was committed while armed with a deadly weapon) and burglary as a level 4 felony. McHenry moved to dismiss the level 2 charge because the handgun was obtained during the course of the burglary and therefore could not serve to elevate the burglary charge. The trial court granted McHenry's motion.

"Applying 'using or involving a weapon' as the plain meaning of the term 'armed,' we observe that a person is not armed merely by virtue of possessing a weapon. Rather, there must be something more indicating the use or involvement of the weapon in the crime." McHenry removed the gun from the house in the burglary and almost immediately traded it for drugs. The gun was nothing more than loot. A defendant who obtains a handgun as loot during a burglary has not "armed" herself as defined by the Indiana code. Therefore, the motion to dismiss was upheld.