Police Prosecutor Update

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SEARCH AND SEIZURE
PIRTLE WARNINGS BEFORE DRUG RECOGNITION EVALUATION

On December 29, 2017, the Indiana Court of Appeals issued its decision in Dycus v. State, ___ N.E.3d ___ (Ind. Ct. App. 2017). Police encountered Monica Dycus with one foot out of her open car door, and the other on the brake, yelling at the car in front of her. The officer on the scene noticed a strong odor of marijuana on Dycus, and called for backup. The backup officer was a drug recognition expert, who performed the SFSTs. Dycus showed no clues on the HGN, which is consistent with marijuana use, and failed the walk and turn and one leg stand. Defendant agreed to take a chemical test, and after a breath test of .00, the officer noticed a green streak on her tongue and asked for consent to perform a DRE Evaluation. Dycus agreed, and after performing the evaluation, the DRE determined Dycus was under the influence of THC. A blood draw was performed, which returned positive for THC.

The Defendant alleged on appeal that the Defendant should have been read her *Pirtle* warnings prior to consenting to the DRE evaluation. The Court ultimately found that the Defendant should have been advised of her *Pirtle* warnings prior to consenting to the DRE evaluation. The courts have previously ruled that *Pirtle* was not required when performing the SFSTs or administering a chemical test. The Court distinguished these decisions, in part, on the fact that these searches were narrow in scope, designed only to detect impairment, as opposed to the general search considered in *Pirtle*. The Court also looked at the intrusiveness of the tests, finding the SFSTs only took a 'small amount of time' and that chemical tests were done quickly.

The Court found the DRE evaluation to be different. First, the Court found that not only was the DRE evaluation designed to look for signs of impairment, but was also a quasi-medical procedure, gathering medical information on a person that pushed this evaluation from a 'specific' search into the realm of a 'general' one. In addition, the Court said the 30 minutes spent on the evaluation and the variety and nature of the tests were more intrusive than the SFSTs. The Court did not find the DRE was more intrusive than a blood test, but pointed out that there is specific statutory authority allowing for the taking of a blood sample. The Court was also concerned that the other tests were "pass/fail," as a person is either at the legal limit or not in terms of a chemical test, and the SFSTs were listed as being "failed." The Court found the DRE evaluation required a subjective determination by the officer, and as the search, in their view, was a general search as opposed to a narrow one, *Pirtle* was required.

The advice we're giving DREs is to advise the subject of both *Miranda* and *Pirtle* rights before conducting the DRE examination.

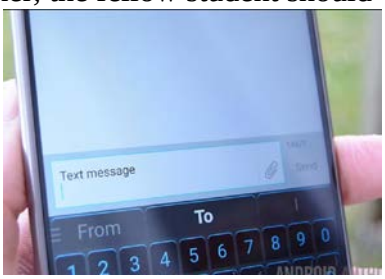
SEARCH AND SEIZURE
INVENTORY

On December 11, 2017, the Indiana Court of Appeals issued its decision in Sansbury v. State, ___ N.E.3d ___ (Ind. Ct. App. 2017). Officers stopped the vehicle defendant was driving for a moving

violation. Sansbury did not have a license, and the car was not registered in her name. Further, the car was in a spot where it potentially could block traffic. Officers decided to impound the car and conducted an inventory, during which he found 3 handguns in the passenger compartment. Sansbury was convicted of carrying a handgun without a permit. On appeal Sansbury alleged that the handguns should have been suppressed because the inventory was improper. The Court found that the officers deviated significantly from the inventory policy because the officers did not create a list of the property found. They focused only on the valuable items in the car, and ignored personal items; the policy required an inventory of all property found in the vehicle. The conviction was reversed.

SUFFICIENCY OF THE EVIDENCE
INTIMIDATION

On December 19, 2017, the Indiana Court of Appeals issued its decision in E.B v. State, ___ N.E.3d ___ (Ind. Ct. App. 2017). E.B. sent a text message to a fellow student and advised him that on the following Tuesday he intended to shoot anyone who did not wear red at school, and that the fellow student should wear red and hide under his desk when he heard music. Further, the fellow student should tell this to other students he cared about. The fellow student shared E.B.'s instructions with other students via text. The same day, E.B.'s sister overheard E.B. telling someone over the telephone that he was going to shoot the principal of the school. The principal ultimately found out E.B.'s plans from the sister after the principal questioned her about the threats to shoot students. Police investigated and searched E.B.'s bedroom. There they found a handwritten document, "Checklist for Project . . . School Shooting." On that document, "major targets" were identified, including the principal. Officers also found shotgun shells, bullets, a holster and a tactical vest. During questioning, E.B. conceded he wrote the list, put the principal's name on it because the principal did not like him, and told several people to wear red.



The state filed a delinquency petition, and E.B. was found to have committed two acts of intimidation, the first a level 6 felony regarding the principal as a victim, the second as a Level 6 felony involving interfering with the occupancy of the school. To prove intimidation, the state must show that E.B. communicated a threat. While it is not necessary that an offender speak directly to the victim in communicating the threat, the court found that E.B. did not direct his sister to communicate the threat to the principal and told no one about his plans, except the unknown person to whom was talking on the telephone. Therefore, there was no evidence of the communication of that threat.

With respect to the threat against the school, however, E.B. communicated instructions to his friend to tell others and to wear red to signal that a person should be spared. It is reasonable that E.B. would foresee that news of his plan would spread, which, coupled with his written plan, is sufficient evidence that E.B. intended to disrupt the occupancy of the school. The court reversed the intimidation adjudication regarding the principal, and affirmed the adjudication regarding the school.