

Police Prosecutor Update

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MIRANDA WARNINGS CUSTODIAL INTERROGATION IN SCHOOLS

On June 20, 2018, the Indiana Supreme Court issued its decisions in D.Z. v. State, ___ N.E.3d ___, vacating the decision of the Court of Appeals in 96 N.E.3d 595 (Ind. Ct. App. 2018), and B.A. v. State, ___ N.E.3d ___, vacating the decision of the Court of Appeals in 73 N.E.3d 720 (Ind. Ct. App. 2017).

B.A., age 13, wrote a threat involving a bomb on the bathroom wall of his school. B.A. was discovered and escorted to the vice-principal's office where he was questioned by the vice-principal while a school resource officer was seated near B.A. in the room. Another officer entered the room and had B.A. copy sentences in his own handwriting for comparison. B.A. ended up confessing, and was arrested. The state alleged he was delinquent for committing level 6 false reporting and institutional criminal mischief. B.A. moved to suppress B.A.'s statement because he had not waived his Miranda rights. The juvenile judge denied the motion and found B.A. to be delinquent. The Court of Appeals upheld the trial court's decision.

D.Z., age 17, wrote sexual graffiti on the bathroom wall of his school. D.Z. was identified as a suspect and called into the assistant principal's office, where D.Z. confessed. No police officer was in the room. After D.Z. was suspended, the assistant principal turned him over to the school resource officer, who questioned him, and D.Z. confessed again. The state filed a delinquency petition for criminal mischief and harassment. D.Z.'s statement to the school resource officer was suppressed because he had not been Mirandized. However, his statements to the assistant principal were admitted over D.Z.'s objection. He was found to be delinquent. The Court of Appeals reversed the trial court and found that his statement should have been suppressed because he was under custodial interrogation.

I.C. 31-32-5-1 allows an unemancipated juvenile to waive Miranda rights only through counsel or a custodial parent when the juvenile is the subject of custodial interrogation. If the statute is not followed, the statements must be suppressed. For there to be custody in the school situation, "the same inherently coercive pressures as the type of station house questioning at issue in Miranda" must be present. Traditional school discipline – meted out by school officials only – is not custodial as long as school officials are not acting as agents of police. Factors indicating a student is in custody include the number of officers present and their involvement, whether the setting is "police dominated," what the student is told about the interview, the length of the interview, the student's age, whether the student is arrested after the interview, and whether police officers act as teachers, counselors or law enforcement agents.

Additionally, words and actions from school officials are not interrogation, unless officials are acting as police agents. When police are present, however, whether the student is being interrogated turns on police knowledge and actions and the student's perceptions.

The Court found that B.A. was in custody because he was very young, he was escorted to the vice-principal's office by the resource officer, a police officer was present in the room at all times, he was not told he was free to leave, his mother was not called, and he was arrested immediately after the interview. The Court found that it was interrogation because the officers participated materially in his questioning in a way that was "reasonably likely to elicit an incriminating response." Therefore, B.A.'s statement should have been suppressed.

D.Z., on the other hand, was not in custody. The officer was not in the room when the assistant principal questioned D.Z., and there was no evidence that the vice-principal was acting as an agent for the police. Even if there had been an agency relationship, D.Z. had no knowledge of it. From D.Z.'s perception, he was speaking freely to someone whom he believed was not a police officer, making the encounter not inherently coercive. Therefore, the juvenile court correctly denied D.Z.'s motion to suppress.

FELONY ENHANCEMENT UNLAWFUL POSSESSION OF A SYRINGE

On May 31, 2018, the Indiana Court of Appeals issued its decisions in Knutson v. State, ___ N.E.3d ___ (Ind. Ct. App. 2018). Knutson was charged with unlawful possession of a syringe, a level 6 felony. In a separate document, the state sought to enhance the level 6 felony to a level 5 felony because of a previous conviction. Knutson filed a motion to dismiss the enhancement because there was no statutory authority to enhance the offense. The trial court denied the motion but certified the order for an interlocutory appeal. The court of appeals found that the amendment to I.C. 16-42-19-18, which prohibited the possession of a syringe for using any controlled substance, also added the level 6 penalty provision and explicitly did not include an enhancement provision. Therefore, unlawful possession of a syringe can no longer be enhanced by a prior offense.

SUFFICIENCY OF THE EVIDENCE DRIVING WITH AN OBSTRUCTED VIEW

On May 31, 2018, the Indiana Court of Appeals issued its decisions in Anthony v. State, ___ N.E.3d ___ (Ind. Ct. App. 2018). A police officer observed Anthony driving his car with "plastic bags of trash, canned goods, clothes, piled from the bottom of the floor to the ceiling . . . on the dashboard and along the side windows and rear windows." He cited Anthony with a violation of I.C. 9-19-19-3 which prohibits "non-transparent material upon the windows." The trial court found Anthony committed the violation. Noting that the statute prohibits driving with opaque materials placed on the windows, the appellate court found that none of the things that obstructed Anthony's view were actually affixed to the windows. Therefore, he did not violate the statute. It appears the officer should have cited Anthony for a violation of I.C. 9-21-8-43 (obstruction of the driver's view).