

Prosecutor Police Update

Issue No. 340
October 2020

RIGHT TO SILENCE CUSTODIAL INTERROGATION

On September 2, 2020, the Indiana Court of Appeals issued its decision in Ross v. State, ___ N.E.3d ___ (Ind. Ct. App. 2020). Ross was a suspect in a trespass at an apartment complex and had an outstanding warrant for his arrest. A police officer with that information initiated a traffic stop. When the officer confirmed Ross' identity, he also detected the odor of marijuana in the car. While other officers placed Ross under arrest, she searched the car. The officer found a Tupperware container with some contraband in it. As she removed it from the car, Ross stated, "[p]lease, ma'am, that's the only way I can, that's the only way I can pay my bills." The officer then opened the container and showed the contents to Ross, who repeated, "that's the only way I can pay my bills." The container held methamphetamine and marijuana. Ross was charged with dealing methamphetamine and possession of marijuana. He filed a motion to suppress his statements which was denied. A jury found him guilty of all charges.

Ross appealed and contended that the statements were obtained in violation of his right to remain silent because he had not been advised of that right in accordance with Miranda v. Arizona. Miranda applies only when a detainee has been subject to custodial interrogation. The Court of Appeals found that Ross was clearly in custody when he made the statements. The court found, however, that Ross was not being interrogated when he made the first statement. Ross' statement was voluntary. "There were no questions asked by the officers, and Officer Harris simply removing a piece of contraband from the vehicle cannot be regarded as an action reasonably likely to elicit an incriminating response." The Court assumed that second statement was the result of "an action reasonably likely to elicit an incriminating response," but found that it was harmless error. It was merely cumulative of his first statement. Ross' conviction was affirmed.

EVIDENTIARY FOUNDATION ADMISSION OF BLOOD DRAW EVIDENCE

On September 8, 2020, the Indiana Court of Appeals issued its decision in Martin v. State, ___ N.E.3d ___ (Ind. Ct. App. 2020). Martin's car slid off the highway and into the ditch. When the police officer arrived, he found the car by the side of the road and Martin walking away. Martin told the officer that he had been in an accident, but was not hurt. The officer called for back-up, and a sheriff's deputy arrived on scene. The deputy observed that the car was still warm and detected the odor of marijuana at the scene and the odor of alcohol on Martin. He also noticed that Martin's speech was "slow, thick and slurred" and that Martin had trouble keeping his balance. Martin failed some field tests but refused consent for additional sobriety tests. Deputies obtained a search warrant for Martin's blood and took Martin to the hospital. That blood was sent to the Indiana Department of Toxicology, and it was found to contain more than the legal limit for alcohol in the blood. Martin was charged with operating a vehicle while intoxicated and with being a habitual vehicular substance offender.

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

At the jury trial, the nurse who drew blood from Martin pursuant to the warrant testified that she had received special training in legal blood draws, that the hospital had a policy in place for these draws, that the policy was approved by a physician, and that she followed that policy. She described what the policy entails. After her testimony, the evidence of alcohol concentration was admitted over Martin's objection. Martin was convicted of all charges.

On appeal, Martin argued that the blood draw evidence was admitted in error because it lacked a proper foundation as required by I.C. 9-30-6-6(a). Specifically, Martin alleged that because the nurse was the only person to testify about the blood draw, the state failed to show that she conducted the blood draw "pursuant to a protocol prepared by a physician" as required by the statute. The court of appeals found that her testimony was "sufficient for the trial court to find that the State laid the proper foundation for the blood draw evidence." The conviction was affirmed.