Police Prosecutor Update

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MIRANDA DURING TEMPORARY DETENTIONS

On March 18, 2021, the Court of Appeals decided *Wood v Indiana* (20A-CR-1567). In *Wood*, Mooresville PD responded to a gas station for a report of suspicious men trying to buy lottery tickets with a declined credit card. After speaking with the clerk, officers found the two men at a gas pump and approached the vehicle for a "consensual encounter" – finding Wood in the driver's seat and a passenger. The officers also smelled the odor of raw marijuana coming from the vehicle. The occupants were asked to exit and were asked about the smell of marijuana – to which Wood responded there was a jar of marijuana in the car that belonged to him. Wood moved to suppress his statement (and the items found as a result) because he was not read his Miranda rights. The motion to suppress was denied, and he was convicted of Possession of Marijuana.

The Court of Appeals discussed at length the requirement of two triggers that need to happen to require Miranda: 1) when a person is in custody and 2) is subject to interrogation. In distinguishing between custodial and noncustodial encounters, the ultimate inquiry is whether there was a '"formal arrest or restraint on freedom of movement of the degree associated with a formal arrest.'" *State v. Brown*, 70 N.E.3d 331, 336 (Ind. 2017) (quoting *Stansbury v. California*, 511 U.S. 318,322 (1994). The Court went on to make clear that, while this encounter evolved from consensual into an investigatory stop after smelling marijuana, that does not generally equal custodial for purposes of Miranda. "The United States Supreme Court has repeatedly held that a person temporarily detained in an ordinary traffic stop is not in custody for purposes of Miranda." *Pennsylvania v. Bruder*, 488 U.S. 9, 10 (1988) (citing *Berkemer v. McCarty* 468 U.S. 420, 439-40 (1984)). Some factors that courts look to in order to determine when an investigatory stop turns into a custodial encounter: handcuffed, restrained in any way, told he was a suspect in a crime, vigorousness of the interrogation, police suggestion they should cooperate, consequences if they don't, and length of detention. *State v. Jones*, 102 N.E.3d 314, 318 (Ind. Ct. App. 2018). The COA concluded Wood was not in custody for purposes of Miranda and the conviction was upheld.

SUFFICIENCY OF EVIDENCE - BATTERY ON A POLICE OFFICER

Nathaniel Long kicked a Clinton County Sheriff's Deputy in the groin. He was convicted by jury of L-5 Battery and appealed the conviction, arguing that his kick was involuntary and, therefore, the State failed to prove he acted knowingly or intentionally.

FACTS: While on patrol, a deputy recognized Long as a person with a warrant. When he approached, Long refused to stop and walked away – and it eventually became a resist and struggle. He was finally cuffed and taken to jail, fighting and arguing all the way there. In the booking area, he was held against the counter so he could not move during the book-in process and apparently did not like that: he abruptly kicked his leg backward and into the deputy's groin. Long was taken to the ground while

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continuing to resist and scream and eventually the threat of a taser gained his compliance. Long was convicted of Level 5 battery by a jury and was sentenced to four years at DOC.

APPEAL: On March 15, 2021, the Court of Appeals decided *Long v. Indiana* (20A-CR-1878), and upheld the conviction in a non-published opinion. The Court reminds us of a few important definitions when you are deciding what crime to charge: 35-41-2-1(a) provides that a person commits an offense if he voluntarily engages in conduct in violation of the statute defining the offense. And as used in this statute, the term "voluntary" refers to behavior that is produced by an act of choice and is capable of being controlled by a human being who is in conscious state of mind. *McClain v. State*, 678 N.E.2d 104, 107 (Ind. 1997). More fun and useful definitions from this opinion: "A person engages in conduct 'knowingly' if, when he engages in that conduct, he is aware of a high probability that he is doing so." I.C. 35-41-2-2(b). "A person engages in conduct 'intentionally' if, when he engages in the conduct, it is his conscious objective to do so." I.C. 35-41-2-2(a).

RULING: Mr. Long claimed he did not recall kicking the Deputy, but memory loss alone does not support involuntariness as a defense. *McClain*, 678 N.E.2d at 107. Long said he had a concussion from the earlier struggle but provided no evidence of it. The COA found that since intent is a mental function, the trier of fact can infer that conduct was knowingly or intentionally from acts committed or the surrounding circumstances. The State proved that Long voluntarily kicked the deputy and the jury could reasonably infer the kick was knowing or intentional. The circumstances of Long's behavior, resistance, avoidance, and a backward kick to the groin all sufficiently supports the finding that he had the requisite criminal intent. Affirmed 3-0.

----------For those that often handle domestics: interesting discussion of what is a family or household member in *Thomas A Jackson, Jr vs State of Indiana* (Court of Appeals Case # 20A-CR-1315), decided March 19, 2021, if you would want to check it out further.

**Note that all three cases discussed in this issue are memorandum only and cannot be cited for future support.

THIS MONTH's AVOIDING SUPPRESSIONs TIPs

When discussing an inventory pursuant to a tow – do not call it a search in your PC or in court testimony. You may find illegal items while conducting the inventory – but it is not a search.

- ✓ Make sure your department has a tow/inventory policy
- ✓ Know what the policy says and follow it
- ✓ Document all items of any value in the vehicle – not just illegal items
- ✓ It is an 'inventory of items pursuant to a tow' – NOT an inventory search

Keep your head on a swivel and be safe…

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