POLICE / PROSECUTOR UPDATE

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The Indiana Supreme Court recently issued an opinion in which one of the issues was the advisement of *Miranda* warnings where there is a break in the interrogation. The facts of the case reveal that the defendant was brought into the police station for questioning. He was advised of his *Miranda* rights at the time the police started the questioning and signed a waiver. After some questioning, the police stopped the interrogation to investigate part of the defendant's story. When the questioning was resumed less than an hour later, the police did not advise the defendant a second time of his *Miranda* rights. The defendant contended that this failure rendered his later statements inadmissible at his trial. That is, he should have received a second warning.

The defendant's contention was incorrect. Although it is the better practice to reiterate the *Miranda* warnings after an interruption, a readvisement is necessary only when the interruption has deprived the suspect of an opportunity to make an informed and intelligent assessment of his interests. Here, the evidence showed that the interruption was "part of a continual effort by the police to gather information," and the trial court properly refused to suppress the statements.

Our Supreme Court has also held that where an interrogation was interrupted to transport a defendant to a hospital for the taking of blood and hair samples, the *Miranda* warnings need not be repeated. Also, an interruption to transport a defendant to a place where his interview could be recorded on tape, a second set of warnings is not required. On the other hand, the Court has held that a readvisement is necessary where the defendant is allowed to leave the place where an interrogation has occurred and go somewhere on his own *not related to the interrogation* and then brought back for further questioning.

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In June, the Court of Appeals reversed an adjudication of delinquency for carrying a handgun without a license. In that case a police officer responded to a call that shots had been fired at an under-21 nightclub. When the officer arrived at 1:00 a.m., the officer pulled over a car that did not have its headlights on. The driver of the car was 17 years old and the 14-year-old defendant was the passenger. The officer saw an open bottle of cognac on the front seat between the two, so he arrested both for curfew violation and possession of alcohol by a minor. A search of the car revealed the handgun under the defendant's seat. The gun was so far under the seat that it could not be seen by a passenger in that seat.

Indiana courts recognize constructive possession of weapons, which may be inferred when the defendant's control is not exclusive and circumstantial evidence points to the defendant's knowledge of the presence of the weapon. Here, there was an absence of circumstantial evidence that the defendant knew of the presence of the gun. The gun was in a position that it could not be seen by the defendant. There was no evidence, for example, that he had been seen carrying a gun shortly before the car was stopped or that he had previously been engaged in other criminal activity involving a handgun. Therefore, the evidence did not make out a case for constructive possession.

Miranda
Ogle v. State, ___ N.E.2d ___ (Ind. 07/29/98)
Heavrin v. State, 675 N.E.2d 1075 (Ind. 1996)
Shane v. State, 615 N.E.2d 425 (Ind. 1993)
Edwards v. State, 412 N.E.2d 223 (Ind. 1980)

Handgun possession
D.C.C. v. State, __ N.E.2d __ (Ind.App. 06/17/98).