

THE PROSECUTOR and YOUR INVESTIGATION

THE PRESENTATION TEAM

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- MARK MITCHELL/ IG
- CHARLES COFFIN/ IG

INDIANA OFFICE OF INSPECTOR GENERAL

- **OIG is a State Law Enforcement Agency IC 4-2-7-2 (b)**
 - “The IG is responsible for addressing fraud, waste, abuse, and wrongdoing in agencies.”
 - IC 4-2-7-7: “If the IG discovers evidence of criminal activity, the IG shall certify to the appropriate prosecuting attorney” the ID + Violation
- **Primary Source of Complaints:**
 - The Public
 - State Agencies + Employees
- **OIG Investigates Violations of**
 - Indiana Criminal Code
 - State Ethics Rules

TYPES of OIG INVESTIGATIONS

- SIMPLE
 - A Single Offense
 - Minimal Involvement
 - In-house by the Agency
- COMPLEX
 - Multiple/ interrelated offenses over extended time
 - OIG Investigative Resources
 - External Resources
 - YOUR Local Prosecutor
 - IPAC (Indiana Prosecuting Attorneys Council)

FOLLOW THE FACTS



FOLLOW THE FACTS!

- The Hot Tip!!!!
- Research
- 1st Team Meeting
- Collect the Evidence/ Search Warrants
- Witness Interviews
- Scientific Analysis/ Forensic Accountant
- 2nd Team Meeting/ Agreement
- Prep PCA + Arrest
- SUSPECT INTERVIEW

THE BEGINNING

- The Prosecutor's Role DURING the Investigation
 - Meet EARLY with the Investigators
 - Review Facts + Theories with the Investigators
 - Prosecutor is more likely to file Joint Investigation
 - Create the “to do” List!!!!
 - Conduct Follow-up meetings: Reach Consensus Accept/ Decline
 - PREP for Trial
 - The Work NEVER stops!!

SOURCES OF EVIDENCE

- Witness Interviews
- Social Media
- Phone Records
- Computer files
- Surveillance Videos
- Financial/ Business Records

EXTERNAL RESOURCES

- LOCAL PROSECUTING ATTORNEY
- LOCAL LAW ENFORCEMENT
- “THE FEDS!”
- IPAC
 - Indiana Prosecuting Attorneys Council
 - Specialized Knowledge & Jurisdiction

THE INVESTIGATION BEGINS

- During a Separate Investigation, Credible IWM Witnesses Said ...
 - DOC work release offenders made furniture at D's direction at the IWM.
 - They saw/helped D take furniture to his home in Greencastle, Indiana.
 - They saw Don give picture frames to his daughter for her college art projects.
 - Two years later, same witness saw same items still at Don's home.
- Anonymous Tip Letter About Criminal Acts by D
 - BIG TV in basement of the Soldiers & Sailors Civil War Display
 - Witness: Held the Entry Door While D Loaded TV into Truck and Leave
 - Same Witness: Saw the TV @ D's home/2 years later
 - Picture: Same TV at Soldiers & Sailors and at D's Home

Don Hickey and the Indiana War Memorial



Large Screen TV - Indiana War Memorial



GATHER THE EVIDENCE

- Search Warrant: DOC Furniture @ D's Home
- Inmates/ Work Release Built Furniture @ IWM
- PICTURES
 - Coffee Table
 - Picture Frames
 - Bed Frames
 - IWM Director: This possession is NOT authorized!

Search Warrant #1

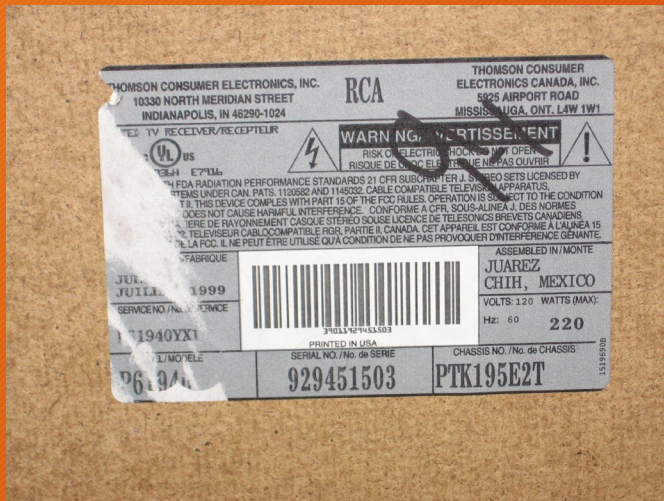
Hickey's Home Greencastle, Indiana



RCA TV + More

- During Search Warrant: Observe IWM TV in D's Living Room
- NEW Search Warrant for TV
- Return: House is Locked & Secured
- Search for Entry/ Observe in Back Yard + Porch
 - IWM Lawnmower + Rototiller
 - Saw + Garden Hose
 - INDY 65-Gallon Trash Can
 - Park Bench w/ Smoker

Search Warrant #2 Large Screen TV Hickey's Home Greencastle, Indiana



Search Warrant #3 Hickey's Home Greencastle, Indiana



SPILL THE BEANS!



THE ARREST + THE CONFESSION

- Arrest Warrant Secured
- D fled to Oklahoma/ Worked as Security Director
- Flight to Oklahoma: 4 hour 15 minutes



DON HICKEY's MUGSHOT



AND NOW, THE REST OF THE STORY

- In late 2010, the state terminated Don's employment on an unrelated ethics matter and debarred him from future state employment.



CUSTODIAL INTERVIEWS & THE RULES!

- The trigger to require *Miranda* rights advisement is custodial interrogation
- Whether the person is in custody is determined by the “totality of the circumstances”
- Seventh Circuit list of factors:
 - Whether a person was made aware that he is free to stop answering ??s
 - Whether Prolonged, Coercive, Accusatory questioning
 - Whether Police employed subterfuge to induce self-incrimination
 - Degree of Police Control over Place of interrogation
 - Whether suspect’s freedom of movement is significantly curtailed

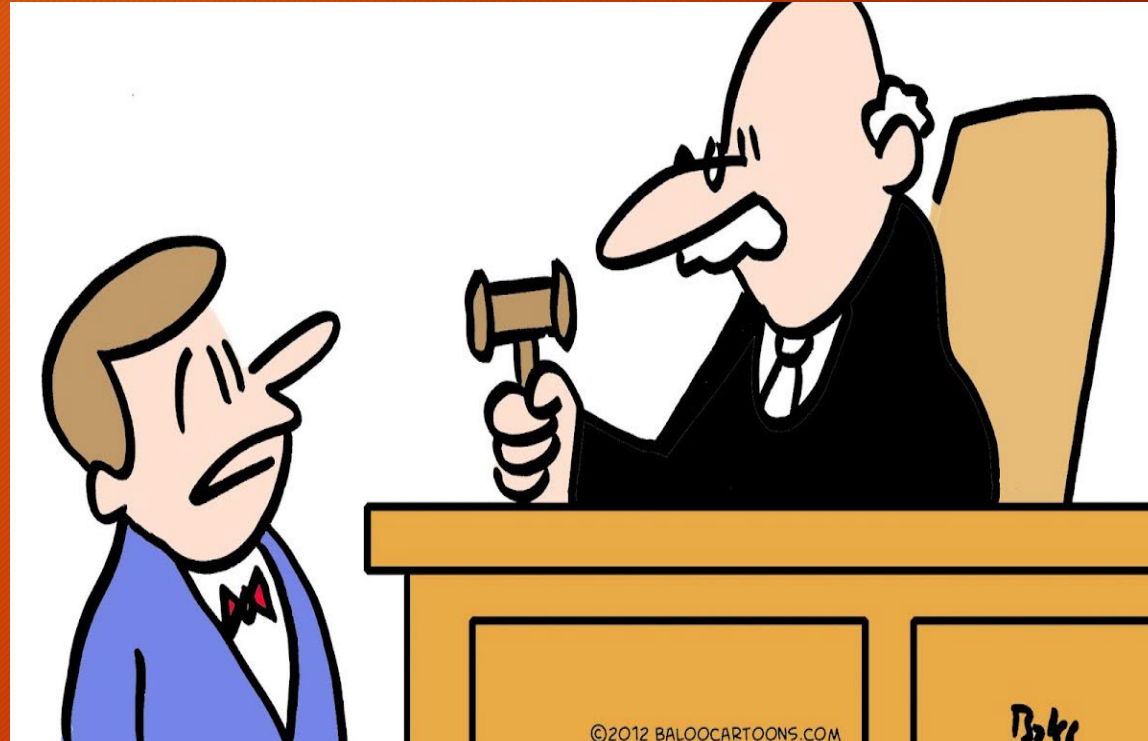
“Totality of the Circumstances”

- Basis: Objective Circumstances/ NOT the Subjective View of Officers or the Suspect
- Use of Handcuffs would cause reasonable person to feel that freedom of movement is restrained to same degree as arrest
- Police Questioning is NOT always Custodial Interrogation
- Initial/ General on-the-scene questioning as to facts surrounding the crime --- NOT under *Miranda*
 - *Hudson v State*, Court of Appeals, 2019

Investigation (Theft)

- Developed from SBA audit
- Excessive purchases of supplies local municipal golf course
- Collection and review of receipts (previous years to current)
- Accounting of supplies on hand
- Interview employees/ follow up on information collected
- Manager/Pro developing new private golf course
- Non-Custodial interview with golf course manager/pro at his home
- Admissions made by manager/pro, Months later Arrest Warrant Issued
- Suppression Hearing to suppress manager/pro admission statements

Remind Me Counselor why are we having this hearing.



FREEDOM-OF-MOVEMENT INQUIRY

- Objective Circumstances
- Location, Duration, Character of the Questioning
- Statements made during questioning
- Number of Law Enforcement present
- Extent of Police Control over Environment
- Degree of Physical Restraint
- HOW the interview begins & Ends
 - *State v E.R.*, Ind. Supreme Court, 2019

Indiana R. Evidence 617 (a)

- Felony Criminal Prosecution
- Custodial Interrogation
- Place of Detention
- Must make “an audio-video recording”
- Except: clear & convincing proof/ recording malfunction

THE *PIRTLE* REQUIREMENT

- “Pirtle Warning required when a person (1) is in custody and (2) is asked by police to consent to a home or vehicle search.”
- Pirtle court held “that a person in police custody is entitled to the presence and advice of counsel prior to consenting to a search, and that right, if waived, must be explicitly waived.”
- Because a person in custody may not fully appreciate the magnitude of what is at stake when authorizing police to freely search a home or vehicle, we require police to explicitly inform persons in custody of their constitutional rights

MOTION TO SUPPRESS

- Preparation
 - Who When Where Why???
- Motion Hearing
 - The combination of the Facts & the Law
- Sometimes You Lose?
 - All is NOT Lost
 - IMPEACHMENT!!

Spontaneous Statements



ULYSSIA RICHMOND / DCS

THE BEGINNING

- Source: Original Complaint provided by County Prosecutor
- Complaint: FCM not making required Family Visits
- FCM falsified Case Visit Reports
- DCS Director confronted D
- D admit Falsified Reports

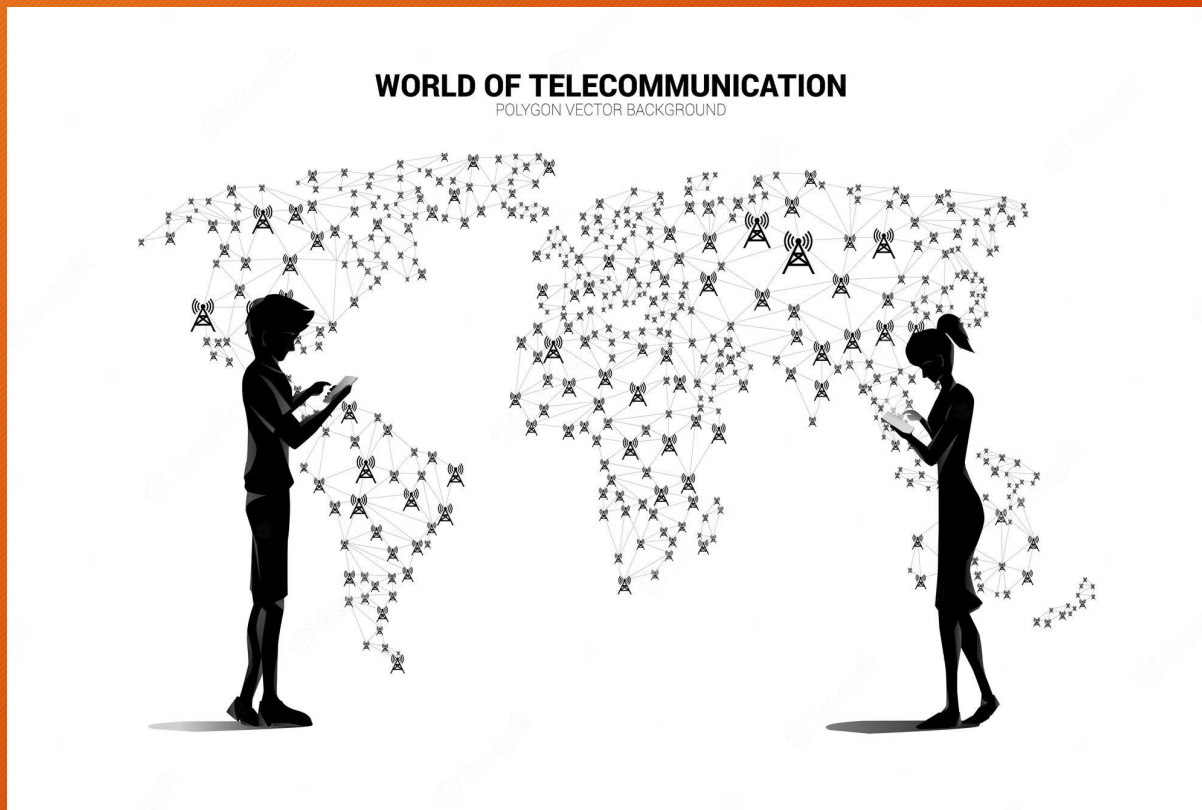
DCS RULES

- FCMs required to see child in assigned case
Monthly
- Pictorial Verification Required
- Home Visit Required: Every other month

THE INVESTIGATION

- Cell Phone Pings (D's location @ specific time)
- State issued Computer/ Outlook File
- Time + Labor records
- D's Personnel Records
- DCS policies + procedures required for FCMs
- Court filings based on D's Falsified DCS records
- Family Interviews
- DCS Supervisors + co-worker Interviews

Where's ULYSSIA



Visit Date	Time	County	Child	Caregiver	Notes
1/16/2018	4:30 PM	Adams	Son-1	Parents-1	Parents say FCM was never at their home.
1/22/2018	4:30 PM	Allen	Son & Daughter-2	Mother 2	On report filed with Adams Circuit Court FCM lists the date as 1/24/2018.
1/30/2018	11:00 AM	Miami	Granddaughter-3	Grandparents-3	Grandparents say FCM was never at their home again after dropping off in December. Asked for pictures to use in place of a home visit.
2/5/2018	3:30 PM	Allen	Son & Daughter-4	Mother-4	On report filed with Adams Circuit Court FCM lists the date as 2/15/2018.
2/7/2018	1:00 PM	Adams	Son-5	Mother-5	Mother says FCM never came back to her home after being introduced to her in January.

2/16/2018	4:00 PM	Adams	Son-6	Parents-6	Parents say FCM was never at their home. Texts indicate there was no home visit in February.
2/27/2018	3:00 PM	Allen	Granddaughter-7	Grandmother-7	Grandmother says FCM was never at her home.
3/13/2018	4:00 PM	Miami	Granddaughter-8	Grandparents-8	GPS on cell phone puts FCM 1 hour and 15 minutes away from (Home) before and after they reported they visited the (Home)
3/16/2018	4:00 PM	Adams	Son-9	Father-9	Father says he was at his brother's home all day for a cookout.
3/21/2018	5:50 AM	Adams	Brothers-10	Mother-10	Mother said FCM missed a scheduled visit in February and the report of a visit in March was false.
3/21/2018	4:00 PM	Adams	Son-11	Mother-11	Mother says FCM never came back to her home after being introduced to her in January.

THE INTERVIEW

- Meet Ulyssia at Community Center/ Fort Wayne
- Non-Custodial Interview
- D admit Entering False Home Visit Reports
 - “7 or 8 times”
- D describe actions during Home Visit time??
 - Go Home b/c so Stressed Out

CHARGES FILED

- OBSTRUCTION of a Child Abuse Investigation
 - IC 31-33-22-2(b)(1)
- D Plead GAC to Obstruction
- Sentence: 1year Suspended w/ 2 actual Jail Days

Other Possible Charges

IC 31-33-22-2 - Falsifying records

IC 35-44.1-1.1 - Official Misconduct

IC 35-44.1-2-2 - Obstruction of justice

IC 35-44.1-2-1 - Perjury

IC 35-44.1-1-3 - Ghost Employment

42 IAC 1-5-13 - Ghost Employment (Ethics)

IC 4-2-6-17 - Use of State Property (Ethics)