

Police Prosecutor Update

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SUFFICIENCY OF THE EVIDENCE RESISTING LAW ENFORCEMENT CAUSING INJURY

On November 21, 2017, the Indiana Court of Appeals issued its decision in Thrash v. State, ___ N.E.3d ___ (Ind. Ct. App. 2017). Officers Cooper and Jackson were dispatched to an apartment and upon arrival, encountered Thrash's ex-girlfriend who told them that Thrash was inside and was not supposed to be there. They observed Thrash who ran to the back of the building and into the basement. The officers cornered Thrash in the basement. They observed him with his hands in his coat pockets. They ordered him to remove his hands to where they could see them; Thrash did not obey. Both forcibly tried to remove his hands from his pockets by grabbing an arm. Thrash resisted. Officer Cooper "effectuated a 'leg sweep'" and Thrash went to the ground. Thrash continued to refuse to remove his hands from underneath his body. The officers bent over Thrash to restrain his hands. As Officer Jackson got Thrash off the ground, he saw Officer Cooper bent over experiencing pain in his back. Cooper was diagnosed with a sprain and was off work for a week.

Thrash was charged with resisting law enforcement, a Level 6 felony, with bodily injury to Officer Cooper. Thrash was convicted in a jury trial. On appeal he argued that the evidence was not sufficient to convict him of the Level 6 felony resisting charge because there was no evidence that he inflicted Cooper's injuries. In rejecting Thrash's claim, the court found that Thrash "created a scenario which directly produced Officer Cooper's injuries."

After Cooper effected a leg sweep which made Thrash fall, he and Officer Jackson followed Thrash to the ground. Like the defendant in [Whaley v. State, 843 N.E.2d 1 (Ind. Ct. App. 2006)], Thrash continued to resist arrest from both officers by refusing to remove his hands/arms from underneath his body. When the struggle was over, Officer Cooper was unable to stand and he experienced back pain.

Based upon the testimony most favorable to the verdict, the court concluded that the evidence was sufficient to convict Thrash of the Level 6 felony.

SUFFICIENCY OF THE EVIDENCE PUBLIC INTOXICATION

On November 29, 2017, the Indiana Court of Appeals issued its decision in Ruiz v. State, ___ N.E.3d ___ (Ind. Ct. App. 2017). Ruiz was drinking alcohol at some picnic tables at a Rally's next to an apartment building. Officers were dispatched to Ruiz' picnic three separate times in a two-hour period. The first complaint was about a subject drinking vodka and yelling racial slurs. The responding officers told Ruiz to go inside and remain in his apartment. The second call was a complaint about an intoxicated person in the hallway causing a disturbance. The responding officers told Ruiz to stay inside his apartment and warned him that another call could result in his going to jail. The third call was about an intoxicated male creating a disturbance with nearby residents.

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The responding officer was aware of the previous two runs. She was given a description of Ruiz and was told that he was walking in a grassy area between the apartment and Rally's. She observed Ruiz walking in the grass near the Rally's, swaying back and forth, and having trouble keeping his balance. Apartment residents pointed to Ruiz and said he was the guy who had yelled obscene things to them. In response, Ruiz yelled at them. Ruiz exhibited the classic signs of intoxication and had a pint-sized bottle of vodka in his pocket. He was arrested and charged with public intoxication. The charging information alleged that he had "either breached the peace or was in imminent danger of breaching the peace."

Ruiz was convicted of public intoxication in a bench trial. On appeal Ruiz argued the evidence was not sufficient for a conviction because the state had not proven that Ruiz was in imminent danger of breaching the peace. The appellate court disagreed. It was reasonable for the factfinder to infer that Ruiz "who was undoubtedly intoxicated in a public place; had behaved in a manner that required the police to come two previous times to respond to residents' complaints about Ruiz; was yelling at residents; was admittedly 'furious' and had a 'little attitude' with the officer; and was being uncooperative with the officer – was in imminent danger of breaching the peace or disturbing the public tranquility" when the officer responded for the third time. The conviction was affirmed.