

Police Prosecutor Update

Issue No. 326
August 2019

SEARCH AND SEIZURE CANINE SWEEP AT TRAFFIC STOP

On July 16, 2019, the Indiana Court of Appeals issued its decision in Tinker v. State, ___ N.E.3d ___ (Ind. Ct. App. 2019). A motor patrol officer stopped Tinker for a traffic infraction. Tinker had been driving northbound on I69; about 45 minutes earlier, the officer had observed Tinker commit a similar infraction while Tinker was driving southbound on I69. When the officer approached the passenger side of Tinker's car, he asked both Tinker and his passenger, Dowdell, for identification and asked where they had been and where they were going. Both indicated they had travelled from Fort Wayne to Indianapolis and were returning to Fort Wayne. The officer asked for an assisting officer to respond and a canine unit. He ran background checks on Tinker and Dowdell and remained in his car until an assisting officer arrived. The background checks revealed that both Tinker and Dowdell had prior drug and handgun possession arrests. The officer then asked Tinker to step out of the car; when Tinker opened the door, the officer smelled the odor of raw marijuana. He talked to Tinker some more and obtained consent to pat him down. The asked Dowdell out of the car, and while he was speaking to Dowdell, the canine was walked around Tinker's car and alerted on it. The officers searched the car and found 3.45 pounds of marijuana in the trunk. Tinker filed a motion to suppress, which was denied and was found guilty at trial of dealing in marijuana.

On appeal, Tinker alleged that the officer extended the traffic stop beyond the time required to reasonably complete the stop in order to get a canine officer on scene. A narcotics dog sweep becomes an unreasonable detention if the motorist is held for longer than necessary to complete a traffic stop. The appellate court found that the canine arrived and had completed its sweep 14 minutes after Tinker was stopped. At that time, the motor patrol officer was in the midst of speaking with both Tinker and Dowdell about the infractions that warranted the stop and further clarifying their coming and going that night. Under the circumstances, the canine sweep did not measurably extend the duration of the traffic stop.

SEARCH AND SEIZURE CUSTODIAL INTERROGATION

On July 11, 2019, the Indiana Court of Appeals issued its decision in Hudson v. State, ___ N.E.3d ___ (Ind. Ct. App. 2019). A police officer was dispatched to the scene of a domestic disturbance. The dispatch report indicated the ex-husband, Hudson, was on scene and had a gun. When the officer arrived, he saw Hudson, placed him in handcuffs and put him the back of the patrol car. He asked Hudson, "what was going on this evening and where the gun was at." Hudson claimed no knowledge of a gun, but told the officer about the argument between his ex-wife and him. The officer then spoke to Sparacino who witnessed the argument and saw Hudson knock his daughter down. Hudson's daughter told the officer that Hudson had hit her in the face and knocked her down and that he went to his truck and got a gun. "She watched him walk to the front of the truck and cock the gun."

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.

The officer then searched the truck and found an empty holster. He returned to the patrol car and told Hudson that he had found the gun holster and gave Hudson Miranda warnings. He then asked Hudson “why he got the handgun out,” and Hudson replied that it was for his own protection. The handgun was later located. Hudson was charged intimidation with a deadly weapon and battery. He filed a motion to suppress evidence, which was denied. He was granted leave to file an interlocutory appeal.

Hudson first alleged that he was in custody from the moment he was handcuffed and should have been Mirandized at that time. A person is in custody when there has been a “formal arrest or restraint on freedom of movement of the degree associated with a formal arrest.” The court found that Hudson was in custody when handcuffed and placed in the squad car. Hudson also alleged that the officer’s questions amounted to interrogation. “Police interrogation includes both express questioning and words or actions that, given the officer’s knowledge, the officer should know are reasonably likely to elicit an incriminating response from the suspect. Not every question amounts to interrogation. The court found that “based on the totality of the circumstances” the officer’s initial questions to Hudson amounted to an inquiry into the facts of the situation, which did not require a Miranda advisement. Instead, it was a “general on-the-scene questioning as to facts surrounding a crime or other general questioning of citizens in the fact-finding process.”

Hudson also contested the warrantless search of the truck. The court found the truck was a readily mobile vehicle, and that after he questioned Hudson’s daughter, there was probable cause that evidence of a crime would be found in it. Therefore, exigent circumstances existed which allowed the truck to be searched without a warrant required by the Fourth Amendment. The trial court’s denial of Hudson’s motion to suppress was affirmed.

SEARCH AND SEIZURE AUTOMOBILE EXCEPTION

On July 15, 2019, the Indiana Court of Appeals issued its decision in Cleveland v. State, ___ N.E.3d ___ (Ind. Ct. App. 2019). Two motor patrol officers stopped the car in which Cleveland was a passenger for a traffic violation. Cleveland was in the backseat on the passenger side. When the officers approached both sides of the car, they smelled the odor of raw marijuana. They asked all four passengers for identification and discovered that the driver had an outstanding warrant. They asked the driver out of the car, and he complied. He started to resist during the pat-down, and while both officers dealt with him, Cleveland had gotten out of the car and was walking across a parking lot with a gold bag. The officer ordered Cleveland to stop and put the bag down, and he did. He was now 20 to 30 feet away from the car. The officer handcuffed and patted him down, but did not at that time smell marijuana or find a gun. Sometime later, he retrieved the gold bag from the parking lot and smelled the odor of marijuana coming from the bag. He opened it and found a gun and marijuana. The gun had 17 rounds in the magazine and one in the chamber. After being given the Miranda warning, Cleveland admitted the gun was his. He was charged with possession of a handgun without a license and possession of marijuana.

At his bench trial, Cleveland objected to the admission of the gun and the marijuana on the grounds that they were obtained in an unlawful search in violation of the Fourth Amendment and Article I, Section 11. The trial judge overruled his objection and found him guilty of both charges.

Cleveland argued that the search of the gold bag was unlawful because the automobile exception to the warrant requirement did not extend to his person or his gold bag because he had left the vehicle.

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.

First, the officers had constitutional authority to search the bag from the outset by virtue of its presence in the car at the time they suspected the car contained contraband. That probable cause to search the bag did not cease when Cleveland walked away with it. The search of the bag did not violate the Fourth Amendment. The court likewise found the search did not violate Article I, Section 11 of the Indiana Constitution. The traffic violation and the strong odor of marijuana created a strong suspicion that illegal activity was occurring. Cleveland had already been detained in the initial traffic stop. There was little additional intrusion into his normal activities from the search of the bag. Finally, law enforcement needs were high because the driver was resisting arrest and Cleveland was leaving the scene with the gold bag, which they had probable cause to search, in tow. The conviction was upheld.

Cleveland additionally appealed the trial court's order to have the handgun destroyed. A trial court has authority to order destruction of a firearm for those convicted of misuse of a firearm. However, courts have held that use of a firearm does not encompass mere possession of it. Therefore, the court concluded that conviction for unlawful possession of a firearm alone does not give a court the authority to destroy the firearm. Because there was no evidence that Cleveland used the firearm in "an incorrect, improper, or unsuitable way," it was error to order its destruction. However, because Cleveland is not licensed to carry a handgun, the court also does not have the authority to return it to Cleveland directly. Therefore, it ordered the law enforcement agency to hold the handgun "until a proper solution becomes available." Judge Bradford dissented to this holding; in his view, carrying a handgun to use as protection without a license constitutes misuse. This sounds like a more sensible view, unless police departments are to become eternal depositories of unlicensed handguns.