

Police Prosecutor Update

Issue No. 342
November 2020

SUFFICIENCY OF THE EVIDENCE RESISTING LAW ENFORCEMENT

On November 19, 2020, the Indiana Court of Appeals issued its decision in Jackson v. State, ___ N.E.3d ___ (Ind. Ct. App. 2020). Police were dispatched to a gas station to investigate a harassment complaint. When the officer arrived, he observed Jackson and a companion put their hands in their pockets when he drove up. The station was located in a high crime area. The officer ordered the two men to take their hands out of their pockets. The companion complied, but Jackson refused after the officer repeatedly told him to take his hands out of his pockets. The officer removed Jackson's hands from his pockets and handcuffed him. At that point, the companion ran away, and the officer chased after the companion. Jackson then left the gas station. Other officers arrived and located Jackson, and he was arrested for resisting law enforcement and public intoxication. At a bench trial he was convicted of resisting law enforcement under I.C. 35-44.1-3-1(a)(1).

To obtain a conviction for resisting law enforcement as it was charged, the state is required to prove that the defendant forcibly resisted the officer. That requires some sort of physical action by the defendant. It is not sufficient that the defendant merely refused to act in compliance with an order by a law enforcement officer. Because there was no evidence that Jackson physically resisted by stiffening his body, pulling away or any similar action, the court found that the state had not met its burden in proving that Jackson forcibly resisted the officer. Therefore, it reversed his conviction.

SUFFICIENCY OF THE EVIDENCE THEFT

On November 12, 2020, the Indiana Court of Appeals issued its decision in Williams v. State, ___ N.E.3d ___ (Ind. Ct. App. 2020). A man used the self check-out register at Kroger and paid with a \$100 bill. He forgot or neglected to take the \$83.00 in change from the machine. Williams, an off-duty Kroger employee, next used the station, paid for his bill with a credit card, noticed the change and took it. The man who left the cash returned to report the missing \$83.00. The store determined that Williams took it – he was seen on a surveillance camera, after all – and, because Williams was an employee, paid the victim the \$83.00 back. Williams was charged with theft as a class A misdemeanor. At trial, the victim did not testify. Williams was convicted of theft.

On appeal, Williams argued that the evidence was not sufficient to convict him because the state failed to identify the victim (even though the victim was named in the information). The Court found that it could reverse Williams' conviction for this reason alone, but it found a different problem with Williams' conviction: that Indiana's theft statute does not criminalize the taking of lost or mislaid property. The Court found that Indiana had a statute specifically criminalizing the taking of lost or mislaid property, but it was repealed 40 year ago. Therefore, the Court reversed Williams' conviction. To be sure, this case is a head-scratcher.

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.