

Police Prosecutor Update

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This month we will look at a couple of areas of the law that have not been reviewed lately.

Use of force to make arrest or prevent escape: With regard to a private citizen, “reasonable force” may be used to effect a lawful arrest (felonies only) or prevent an escape. Deadly force may be employed by a private citizen “only if he reasonably believes that that force is necessary to prevent serious bodily injury to himself or a third person, or the commission of a forcible felony.” Deadly force may never be used by a private citizen *simply* to effect the arrest of or prevent the escape of a felon.

A law enforcement officer may use reasonable force to effect a lawful arrest or prevent an escape. Regarding deadly force, a law enforcement officer must have probable cause to believe that such force is necessary to effect the arrest of, or prevent the escape of, a person whom the officer has probable cause to believe poses a *threat of serious bodily injury* to the officer or a third person *and* the officer has given a warning, *if feasible*, to the person.

“Deadly force” is such force as creates a substantial risk of serious bodily injury. “Forcible felony” means a felony that involves the use or threat of force against a human being, or in which there is imminent danger of bodily injury to a human being.

Use of force to resist arrest: The rule in Indiana is that a private citizen may not use force in resisting a peaceful arrest by an individual whom he knows, or has reason to know, is a police officer performing his duties regardless whether the arrest in question is lawful or unlawful. This rule also applies to resisting a peaceful seizure of property by police.

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Probable cause in drug cases – controlled buy: “Controlled buys” are somewhat unique probable cause situations. This is because, even though informants are used to make the drug buy, probable cause is actually based upon the observations of police officers (personal knowledge) rather than upon the statements of the informants (hearsay). Thus, there are no corroboration or credibility problems as are usual when probable cause is based on hearsay.

A controlled buy consists of searching the informant-buyer, removing all personal effects, giving him money with which to make the buy, then sending him into the residence in question. On his return he is again searched for contraband. Except for what actually transpires in the residence, the entire transaction takes place under the direct observation of the police. They make sure the buyer goes directly to the residence and returns directly, and they closely watch all entrances to the residence throughout the transaction. Regarding the sufficiency of the search of the informant, a pat-down search is sufficient in a controlled buy. A search of shoes, socks, or body cavities is not required.

Probable cause in drug cases – odor of marijuana: Indiana courts have not expressly determined that the smell of marijuana *alone* constitutes probable cause for arrest. However, the majority of courts in other states have stated that it does. Indiana would probably agree with this. In the search and seizure context, when a trained and experienced police officer smells the distinctive odor of burnt (or probably raw) marijuana coming from a vehicle, the officer has probable cause to search the vehicle. It is not necessary that the odor be independently confirmed by a trained dog.

Probable cause in drug cases – use of narcotic detection dogs: Generally, the sniffing of a vehicle, luggage, or other containers by a trained dog does not constitute a search. An alert or positive reaction, either by itself or combined with other facts, by a trained and reliable dog will be sufficient to establish probable cause to search. However, the use of a trained dog to sniff outside a private residence or apartment probably would be a search and without a valid warrant would be illegal.

This is a publication of the Monroe County Prosecutor’s Office which will cover various topics of interest to law enforcement officers. Please direct any suggestions you may have for future issues to Chris Gaal of the Monroe County Prosecutor’s Office.