Police Prosecutor Update

Issue No. 206
January 2009

The November, 2007 PPU dealt with a Court of Appeals case that decided whether a police officer can ask a motorist stopped for a routine traffic infraction questions unrelated to the initial reason for the stop, aside from questions related to weapons. The court basically ruled that to allow police to question individuals during a traffic stop about the presence of drugs would open the door to all sorts of questions, and routine traffic stops are not the place for such inquiries.

The Indiana Supreme Court recently said the Court of Appeals was wrong. It framed the question just a little differently: whether a police officer, without reasonable suspicion, can inquire as to possible further criminal activity (in this case drug possession) when a motorist is stopped for a traffic infraction. More specifically, whether police questions that are unrelated to the initial reason for the detention may constitute a seizure?

Generally, because questions are neither searches nor seizures, police need not demonstrate justification for each question. Questions that *do not increase the length of detention* do not make the custody unreasonable or require suppression of evidence found as a result of the answers. In the case at hand, the officer's brief questioning as to whether the defendant had any weapons, drugs, or anything else that could harm the officer was not itself a search or seizure and thus not prohibited. The defendant was not obligated to answer the questions, and his choice to do so and to disclose inculpatory information provided the basis for the officer's further request for permission to search the defendant's trouser pockets.

* * * * *

In another recent case, the defendant contended that out-of-court identifications (in his case, a photographic array) should be inadmissible unless the identifications are recorded in some manner, either written, video, or audio. The Court of Appeals declined to adopt such a procedure. There is no Indiana statutory or constitutional provision that requires a witness's out-of-court identification of a suspect to be recorded in any manner.

* * * * *

A couple of recent cases allows us to review the law surrounding public intoxication. By way of background, a "public place" does not mean only a place devoted to the use of the public. It also means a place that "is in point of fact public, as distinguished from private – a place that is visited by many persons, and usually accessible to the neighboring public. A private residence, including the grounds surrounding it, is not a public place."

In the first case, the defendant was found in a state of intoxication "in the driveway of her friend's house." At trial, the State describe the driveway as "an area that people in the neighboring area use to park" and an area "used by the public to park perpendicular to" the public street. The State claimed that this parking area did not belong to anyone in particular. However, the evidence indicated that the area in question was a "driveway" between the defendant's friend's house and the neighbor's residence. The State presented no evidence that this parking area was used by the public in general rather than only the residences next to the area. Therefore, the evidence was insufficient to prove that the defendant was intoxicated in a "public place."

The law is clear that the enclosed common hallway and stairway area *inside* an apartment dwelling are not public areas or places of public resort within the meaning of the public intoxication statute. The second case concluded that an outside, unenclosed courtyard area of an apartment complex is sufficiently distinguishable from an interior common area of an apartment building that it can constitute a public place.

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.