

Police Prosecutor Update

Issue No. 191
October 2007

A Court of Appeals case presents a couple of vehicle search issues. The facts are that a law enforcement officer brought his patrol car to a halt directly behind the defendant's van, which was stopped at a red traffic light. The officer conducted a random computer check of the defendant's license plate (which is permissible) which indicated that the defendant had an outstanding warrant for his arrest. However, the officer did not at that time initiate a traffic stop. Instead, he followed the defendant as he drove into the parking lot of a convenience store. As the defendant exited the van and walked toward the store, the officer got out of his car, stopped the defendant, and requested his driver's license. After examining the license, the officer handcuffed the defendant. He asked the defendant if he had any weapons or contraband in the van. The defendant responded that there was marijuana in the center console. The defendant had not been given *Miranda* warnings prior to being questioned. The issue was whether the marijuana was admissible at trial. This in turn depended upon whether the warrantless search of the van was legal.

One exception to the warrant requirement is probable cause to believe that an operable vehicle contains contraband or evidence of a crime. Under this exception, when there exists probable cause to believe that the vehicle contains contraband or evidence of a crime, a warrantless search of the vehicle is constitutional. Also, under this exception, the warrantless search may include all containers in the vehicle capable of holding the contraband. A "container" means any object capable of holding another object. The defendant's admission that he had marijuana in the van could provide probable cause for the officer to search the van. However, the defendant had already been arrested and handcuffed when the officer questioned him. When an individual is subjected to custodial interrogation, the safeguards of the *Miranda* warnings are an absolute prerequisite. Because the defendant was not given his *Miranda* warnings prior to custodial interrogation, his admission could not provide probable cause to search the van.

Another possibility for admissibility of the marijuana was the search incident to arrest exception. Under this exception, once a police officer has made a lawful custodial arrest of an occupant of an automobile, the Fourth Amendment allows the officer to search the passenger compartment of that vehicle as a contemporaneous incident of arrest. In this case, because of the arrest warrant for the defendant, he was clearly lawfully arrested. However, in the Court of Appeals opinion, since the officer did not initiate a traffic stop to arrest the defendant but waited until the defendant exited his van at the convenience store, this exception did not apply. **Note** – this result would be incorrect under the current state of the law. The United States Supreme Court has recently stated that this exception allows police to search a vehicle's passenger compartment incident to the lawful arrest of both "occupants" and "recent occupants" of the vehicle.

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An interesting recent case looked at the "enter" portion of the "breaks and enters" element of burglary and residential entry. The defendant argued that he didn't commit residential entry because he had only partially leaned into the victim's residence through a window he had broken. He further argued that the statute requires that an individual's entire body must enter the structure to support a conviction. No Indiana case has determined whether a "partial entry" would support a conviction. In the Court of Appeals view, entering a home violates the occupant's possessory interest in the building and presents the possibility of a situation that may be dangerous to personal safety. A *partial* entry creates the same situation; therefore, partial entry falls within the scope of residential entry.

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.