

Police Prosecutor Update

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PUBLIC INTOXICATION

On February 13, 2014, the Indiana Court of Appeals issued a decision in *Morgan v. State*, _____ N.E.2d _____ (Ind. Ct. App. 2014), striking down, as unconstitutionally vague, a portion of the statute defining public intoxication and thereby REVERSING the defendant's conviction for Public Intoxication.



An Indianapolis police officer was working his part-time job for IndyGo bus service when he observed the defendant asleep inside the plexi-glass bus stop shelter. The defendant's brother was yelling at the defendant to get up, but the defendant wasn't moving. The officer went over and tapped the defendant on the shoulder. The defendant raised his head and said "Get off of me." The officer then told the defendant to leave the bus shelter.

When the defendant got up, the officer could smell alcohol, his eyes were bloodshot and glassy and the defendant was swaying from side to side. The officer said the defendant was agitated and angry.

The officer believed the defendant was intoxicated and that the defendant's behavior was "annoying" and arrested him for Public Intoxication. The defendant was also charged with Disorderly Conduct and Intimidation for conduct that occurred after he was placed under arrest.

The defendant argued that I.C. 7.1-5-1-3, which states that it is a Class B Misdemeanor if an individual is intoxicated while in a public place and "harasses, annoys, or alarms another person" is unconstitutionally vague. The Court of Appeals held that the above portion of the public intoxication statute is unconstitutionally vague because it fails to provide notice enabling ordinary people to understand the conduct it prohibits or authorizes or encourages arbitrary or discriminatory enforcement.

The remaining three (3) elements of the public intoxication statute remain effective and subject to enforcement. If a person is intoxicated in a public place and the person 1) endangers the person's life, 2) endangers the life of another person or 3) breaches the peace or is in imminent danger of breaching the peace, they can still be charged with public intoxication.

SEARCH AND SEIZURE CONSENT

On February 24, 2014, the United States Supreme Court issued a decision in *Fernandez v. California*, _____ U.S. _____ (2014), affirming the defendant's convictions.

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.

The defendant and other members of a Los Angeles gang attacked and robbed a man near an apartment complex. After the attack, as officers were looking for the gang members, a man passing by informed the police the guy had gone into an apartment nearby. When officers went to that apartment building, they heard screaming and fighting coming from one of the apartments. The officers went to that door and knocked. The door was answered by a female who was holding a baby and crying. The police noticed she had fresh injuries and it appeared she had been in a fight.

One of the officers asked the female to step outside so they could do a protective sweep. The defendant then appeared at the door and told the police, "You don't have any right to come in here. I know my rights." The police then arrested the defendant for a battery related charge and took him to jail. (Note: the defendant did NOT contest probable cause for this arrest). Later the victim of the robbery identified the defendant as his attacker.

Approximately one hour after the defendant was arrested, the police returned to the defendant's residence. They talked to the female who also lived in that apartment. The police obtained both oral and written consent to search the apartment. During the search, the police found evidence linking the defendant to the earlier robbery and beating.



Prior to trial on the robbery charge, the defendant filed a motion to suppress the evidence seized by the police at his residence. The United States Supreme Court upheld the search of the residence and the defendant's convictions. United States Supreme Court cases firmly establish that police officers may search jointly occupied premises if one of the occupants consents. However, the Court recognized a narrow exception to this rule, holding that the consent of one occupant is insufficient when another occupant is present and objects to the search. The Court pointed out that this rule is limited to situations in which the objecting occupant is physically present.

In this case, the objector had been arrested and was no longer physically present. An occupant who is absent due to a lawful detention or arrest stands in the same shoes as an occupant who is absent for any other reason. Therefore, the consent given was sufficient to allow the police to search the defendant's residence.

SEARCH AND SEIZURE EXIGENT CIRCUMSTANCES

On February 20, 2014, the Indiana Court of Appeals issued a decision in *Carpenter v. State*, _____ N.E.2d _____ (Ind. Ct. App. 2014), affirming the defendant's convictions for drug related offenses.

Police and animal control officers were called to the defendant's home on a report four dogs were fighting in the yard. When they arrived the dogs were still fighting, but one had retreated under a deck and seemed wounded. The dogs were covered with mud and blood and they kept running in and out of the house through an opened sliding glass door. One animal control officer climbed the fence to enter the backyard and captured three of the dogs.



The fourth had gone into the house through the open door. Two police officers entered the house to search for the dog and to determine if the dogs had injured anyone inside the house. The officers observed dog feces and urine throughout the house and they noticed what appeared to be blood on the walls, though it was unclear whether it was human or canine. As they searched for the dog, they found marijuana plants in the house.

Officers captured the dog and found no people inside the home. The defendant arrived at the house before the police left and was taken into custody. Police obtained a search warrant for the home and seized the marijuana and other controlled substances.

The Court of Appeals held that based on the officers' observations in this case, exigent circumstances permitted the police to conduct a warrantless search of the defendant's home.

SEARCH AND SEIZURE CONSENT TO SEARCH

On February 27, 2014, the Indiana Court of Appeals issued a decision in *State v. Cunningham*, _____ N.E.2d _____ (Ind. Ct. App. 2014), affirming the trial court's granting of the defendant's motion to suppress the evidence.

An officer pulled the defendant's car over because one of the tail lamps red lens covering was missing. After the officer told the defendant why he pulled him over, the defendant asked to get out of the car to see the tail lamp for himself. The officer told him that was fine but that he would need to pat him down for any weapons just for officer safety. The defendant answered "that was fine" and got out of the car. During the pat-down the officer felt what he knew was a pill bottle and asked the defendant what was inside of it. The defendant told him it was marijuana, removed it and gave it to the officer. The defendant also told the officer that he had a pipe in the car.

The defendant challenged both the legality of the initial traffic stop and the pat-down search. The trial court granted the motion to suppress on the basis that the initial traffic stop was illegal. The state then appealed the trial court's ruling.

The Court of Appeals held that the initial traffic stop was valid as the red lens from one of the defendant's tail lamps was completely missing, and it was emitting only white light in violation of I.C. 9-19-6-4 which requires two operating tail lamps that emit a red light plainly visible from 500 feet.

The Court went on to examine the issue of consent. The officer had no reasonable suspicion to believe the defendant was armed and dangerous and absent a valid consent had no basis for conducting a pat-down. The Court held that the consent given by the defendant was not valid as it was merely acquiescence to police actions and directions and not freely and voluntarily given. The Court concluded that the officer did not ask for permission to conduct a pat-down search. Instead he gave an ultimatum to the defendant: if he decided to exit the car, he would be patted down. Phrased in this way, the defendant had no choice but to submit to the pat-down when he exited the car. The defendant's response "that was fine," only represents mere acquiescence or submission to the officer's claimed right to conduct a pat-down search, even though he had no such right. As such, the Court concluded that the discovery of the marijuana and pipe during the illegal pat-down were properly suppressed.