

Police Prosecutor Update

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SEARCH AND SEIZURE GPS DEVICE

On October 7, 2013, the Indiana Court of Appeals issued a decision in *Jackson v. State*, _____ N.E.2d _____ (Ind. Ct. App. 2013), affirming the defendant's convictions for drug dealing offenses.

With the help of a cooperating source, the police conducted two controlled buys where the defendant sold heroin. The police observed the defendant in a different vehicle, a white Dodge Stratus, on other buys and during surveillance. The cooperating source told the police that the Stratus was used to go to Chicago to retrieve more heroin. Without a search warrant, officers placed a GPS device on the Stratus. The GPS device was used to assist with visual surveillance and to determine that the car had gone to Chicago and was traveling back. The police were able to locate the car upon its return based on the GPS and performed a traffic stop. The defendant was driving the car. He was arrested and searched. The police found a baggie of heroin and a baggie of marijuana in his clothing.



The defendant was charged with crimes based on the two prior buys as well as the drugs found on him at the time of the traffic stop. Ultimately, the defendant only challenged the admission of the evidence obtained as a result of the traffic stop arguing that the evidence was fruit of the poisonous tree based on the warrantless placement of the GPS device on his car.

In *U.S. v. Jones*, the United States Supreme Court held that the installation and use of a GPS device to track a vehicle's movement constituted a search and required a search warrant. It should be noted however, that *Jones* was decided AFTER the police in this case placed the GPS device on the defendant's car.

The court looked at three factors to determine whether the causal connection between the illegal police conduct and the procurement of the evidence was sufficiently attenuated to allow the admissibility of the evidence. Ultimately, the court held that under the circumstances in this case, any police illegality by placing the GPS on the defendant's car in violation of the defendant's rights did not taint the subsequent evidence and upheld the convictions.

PUBLIC INTOXICATION

On October 8, 2013, the Indiana Court of Appeals issued a decision in *Holbert v. State*, _____ N.E.2d _____ (Ind. Ct. App. 2013), REVERSING the defendant's conviction for public intoxication.

One evening a woman observed an unknown man twice cross her yard and enter her neighbor's backyard. She then saw the man enter her neighbor's garage. She called 911 to report a suspected burglary. She described the man and his clothing and told police which direction the man was going.

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Shortly thereafter, the police stopped a man matching the description of the suspect in the area the 911 call came from. The officers immediately placed the defendant in handcuffs and patted him down for officer safety. They found a baggie of marijuana and a can of beer. The officers then noticed all the classic signs of intoxication. The 911 caller then identified the defendant as the man she saw entering her neighbor's garage.



The defendant was charged with public intoxication and possession of marijuana. The defendant acknowledged that the police had reasonable suspicion to initiate a *Terry* stop but argued the police had no right to cuff him and pat him down. The court held that an officer has an automatic right to do a pat down whenever a suspect has been stopped on the suspicion that he has committed, was committing, or was about to commit a type of crime for which the offender would likely be armed. The court went on to say that burglary is one of those crimes.

However, the court reversed the conviction for public intoxication holding that the behavior that alarmed the 911 caller occurred while the defendant was on private property, not public property. Because the officers did not notice that the defendant was intoxicated until after they stopped him and cuffed him, the state couldn't argue that the defendant placed himself in danger by walking down a public sidewalk, adjacent to a public roadway, while intoxicated. Thus, there was no evidence that the defendant engaged in any of the four listed criteria under the public intoxication statute while in a public place.

On October 31, 2013, the Indiana Court of Appeals issued a decision in *Thang v. State*, _____ N.E.2d _____ (Ind. Ct. App. 2013), REVERSING the defendant's conviction for public intoxication.

While on duty, an officer stopped at a gas station to use the restroom. When he was finished he noticed a car that wasn't there when he arrived. He also noticed a customer inside. After speaking with the customer, the cashier immediately notified the officer that the customer might be intoxicated. The officer approached the customer and noticed the classic signs of intoxication. The customer provided identification and the officer determined that the car was registered to him. The customer also had the keys to the car. The officer arrested the customer and he was later charged with public intoxication.

The defendant conceded that he was intoxicated in a public place but the court found that there was no violation of the remainder of the statute. The court found no evidence that the defendant alarmed the cashier. The cashier did not testify at trial and the officer provided no evidence that the cashier was alarmed or afraid of the defendant. The court also held that there was insufficient evidence that the defendant endangered himself or others by driving to the gas station. The officer did not see the defendant drive there and did not know how he got there. The court concluded that the evidence was insufficient to support the conviction for public intoxication and reversed the conviction.

TRAFFIC STOP
REASONABLE SUSPICION

On October 16, 2013, the Indiana Court of Appeals issued a decision in *Croom v. State*, _____ N.E.2d _____ (Ind. Ct. App. 2013), affirming the defendant's conviction for operating a motor vehicle after his driving privileges had been forfeited for life.

An officer was behind the defendant and ran his Indiana interim dealer license plate. The check showed the plate was not on file with the BMV. Ultimately it was determined that the plate was not yet linked to a new computer system and the plate was in fact valid.

The defendant argued that because the defendant had a valid plate, the officer had no reasonable suspicion for an investigatory stop. The court held that a good faith reasonable belief that a violation occurred was sufficient to establish reasonable suspicion under the 4th Amendment.

