Police Prosecutor Update

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ADMINISTRATIVE SEARCHES
HOTEL REGISTRIES

On June 22, 2015, the United States Supreme Court issued its decision in the case of City of L.A. v. Patel. The Los Angeles Municipal Code requires hotel operators to record the names, addresses, number of guests, vehicle information, date and time of arrival and departure, room number and method of payment of their guests. This information must be kept on the hotel premises for a period of 90 days and "shall be made available to any officer of the Los Angeles P.D. for inspection." Failure of a hotel operator to make these records available for inspection is a misdemeanor. The Indiana Code has similar requirements and penalties. I.C. 16-41-29-1, 16-41-29-2, and 16-41-29-5. At issue in this appeal is the penalty provision of the L.A. Municipal Code.

Patel, a motel operator, and his unscrupulous confederates sued the City of L.A. for declaratory and injunctive relief from the statute and alleged the ordinance was unconstitutional. The Supreme Court held in a 5 to 4 decision that the L.A. ordinance is facially unconstitutional because it fails to provide hotel operators with an opportunity for pre-compliance review. In coming to this decision, the Court assumed that the City was justified in requiring hotel operators to record and keep this information. Nevertheless, the Court assumed without discussion that these government-mandated records were the personal property of the hotel operator and thus subject to the warrant requirement in the 4th Amendment. The Court also assumed that the authorized searches served a need other than criminal investigation, notably to deter criminals from operating on the hotel's premises. Therefore, the Court found the ordinance to fall within the administrative search exception to the warrant requirement. As such, absent exigent circumstances, the subject of the search must be afforded an opportunity to obtain pre-compliance review before a neutral decision maker.

Drug traffickers and other organized criminals (promoters of prostitution and human traffickers, for example) frequently operate out of hotel rooms and change hotels frequently. Often, investigators suspect criminal activity operating out of hotels but do not know who the players are. The hotel registry is a useful tool in identifying persons engaged in criminal activity and co-conspirators. Typically, when asked, hotel operators do not refuse inspection of their guest records because they do not want their hotels associated with a criminal element. However, where the operator is in collusion with the criminals, or simply does not wish to give up a ready, steady source of income, this ruling gives them the ability to stall the investigation for a sufficient amount of time to alert the criminal element.

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SEARCH AND SEIZURE
PROBABLE CAUSE

On June 12, 2015, the Court of Appeals issued its decision in State v. Stevens, ___ N.E.3d ___, (Ind. Ct. App. 2015). An officer was investigating an incident that previous day at a pharmacy where Stevens was alleged to have made "suspicious" purchases of pseudoephedrine. A criminal records check produced an IDACS record from Florida indicating that Stevens had been convicted within the last seven years of Dealing in Methamphetamine. While investigating, the officer received a report that Stevens was at the drug store again, attempting to purchase pseudoephedrine. The officer went to the pharmacy and arrested Steven for Possession or Purchase of Pseudoephedrine by a Methamphetamine Offender. Subsequent to the arrest, Stevens was found to be in Possession of Methamphetamine and Paraphernalia and was ultimately charged with Possession of Methamphetamine, Unlawful Possession of a Syringe, Maintaining a Common Nuisance, and Possession of Paraphernalia.

The IDACS description of Stevens' conviction was erroneous insofar as he was convicted of dealing in alprazolam (Xanax), not methamphetamine. Stevens filed a motion to suppress, which was granted. The State appealed. Stevens argued that before arresting him, officers should have (1) contacted the prosecutor's office to confirm that the criminal history entry was accurate or (2) accessed the Florida statute online to confirm that Stevens was convicted of a crime involving methamphetamine before arresting him. The Court of Appeals in reversing the trial court said, "Under both the Fourth Amendment and Article 1, Section 11, it was reasonable for law enforcement officers to believe that the information they received from IDACS, namely that Stevens had a prior conviction for dealing in methamphetamine, was accurate. The system is one on which officers regularly rely, and nothing indicates that officers are or should be expected to confirm or research data generated by IDACS, particularly absent any evidence of intentional misconduct with respect to use or maintenance of the system. This reasonable belief was sufficient to provide probable cause to believe that Stevens was committing a crime by attempting to purchase pseudoephedrine."

SEARCH AND SEIZURE
SEARCH INCIDENT TO ARREST

On June 22, 2015, the Court of Appeals issued its decision in K.K. v. State, ___ N.E.3d ___ (Ind. Ct. App. 2015). An officer pulled over a car for Driving with a Suspended License. Three people were in the car; K.K., a juvenile, was in the back seat. Officer detected the strong odor of marijuana coming from the interior of the car. The three were removed from the car, patted down, handcuffed, and seated on the curb. Another officer stood guard. He observed K.K. make a furtive movement by "blading" or turning his body to his left side. The officer then directed K.K. to stand and patted K.K. down, at which time he discovered a handgun with an obliterated serial number in the pocket of K.K.'s basketball shorts. Apparently, no marijuana was found.

K.K. moved to suppress the handgun. The trial court denied the motion and found K.K. to have committed a delinquent act. This appeal ensued. K.K. maintained that the odor of marijuana gave police the authority to search the vehicle, but not to seize the passengers, place them in handcuffs and sit them on the curb. The Court of Appeals disagreed and affirmed the trial court. The order of marijuana gave the police probable cause to arrest K.K. Therefore, they could search him incident to arrest. The gun was found during a search incident to arrest. Therefore, the trial court properly admitted it into evidence.

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FREEDOM OF SPEECH/DISORDERLY CONDUCT
RESISTING LAW ENFORCEMENT

On June 25, 2015, the Court of Appeals issued its decision in Jordan v. State, ___ N.E.3d ___, (Ind. Ct. App. 2015). A uniformed officer observed Jordan driving a car, and the registration plate did not match the car. He stopped the car and asked Jordan for her driver's license and registration. She produced her license but not her registration. He also asked her if she had any weapons in her vehicle, at which point Jordan became upset. She yelled at the officer and accused him of asking that question because he was black. Because her driver's license was suspended, he had her car towed. She continued to yell, even after being asked to stop. When he tried to give her a citation, she talked over him to the point that the officer could not explain the citation to her. She yelled expletives, called him a "motherf***," and yelled that the officers had issued her a citation because she was black. People from the nearby liquor store came out to observe what was happening.

After they had repeatedly told her to be quiet, officers arrested Jordan for disorderly conduct. They stepped toward her to put her in handcuffs. She turned around to get away from them. An officer grabbed her right shoulder, and she jerked away from him, twisted and turned, and flailed her arms. Eventually the officer took her to the ground and effected the arrest. She was charged with resisting law enforcement and disorderly conduct, and was convicted of both counts in a bench trial.

On appeal, the Court found that her comments were political speech; therefore, the state would have to demonstrate that the arrest only slightly impaired her right to speak. "We cannot say that the State demonstrated that the magnitude of the impairment was slight. Nor can we say that the harm suffered by the people in the liquor store lot and across the street rose above the level of a fleeting annoyance or that the State demonstrated that the speech amounted to a public nuisance such that it inflicted particularized harm analogous to tortious injury on readily identifiable private interests. Accordingly, we conclude that Jordan may not be punished, consistent with the Indiana Constitution, for her particular speech." Therefore, her conviction for Disorderly Conduct was reversed.

As to the charge of resisting law enforcement, the Court upheld her conviction. The general rule is a private citizen may not use force in resisting a peaceful arrest by an individual who he knows, or has reason to know, is a police officer performing his duties regardless of whether the arrest in question is lawful or unlawful. Jordan's actions were sufficient to constitute forcibly resisting law enforcement.

SEARCH AND SEIZURE
TERRY STOP

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On June 23, 2014, the Court of Appeals issued its decision in Johnson v. State, ___ N.E.3d ___, (Ind. Ct. App. 2015). An officer working off duty at the Greyhound Bus Station observed Johnson and another man enter the station at 2:00 a.m. The man accompanying Johnson was intoxicated and stumbling all over the place. Both men smelled of the odor of alcoholic beverage. The officer asked them for identification and whether they were travelling anywhere by bus. Both stated they were not traveling by Greyhound, and Johnson was unable to produce identification and shoved his hand into his pocket. The officer asked Johnson at least two times to remove his hand from his pocket and Johnson refused. The officer then performed a pat-down of Johnson, and recovered a 45 caliber handgun from the waist band of Johnson's pants, behind the pocket where he had placed his hand. Johnson was convicted in a bench trial of Serious Violent Felon in Possession of a Firearm.

Johnson did not challenged the constitutionality of the initial encounter or investigative stop. However, he asserted that the weapons pat down was unconstitutional under both the 4th Amendment and Article I, Section 11. The Court of Appeals found that because Johnson entered the station at 2:00 a.m. with an obviously intoxicated companion, was not travelling anywhere, did not produce identification when asked, shoved his hand into his pocket and refused to take his hand out of his pocket when asked, "a reasonably prudent man would be warranted in the belief that his safety was potentially in danger." Therefore, the pat down did not violated the 4th Amendment.

The court further found that under Article I, Section 11, the degree of concern or suspicion caused by Johnson's actions previously described was high. The degree of intrusion from the officer's taking Johnson's left arm, placing his hands behind his back, and performing a pat-down was not high. Finally, the extent of law enforcement needs was high due to the circumstance of Johnson's presence in the Greyhound bus station at 2:00 a.m. with an intoxicated person, neither of whom was taking a Greyhound bus anywhere, and his actions of refusing to take his hand out of his pocket. The court concluded that the totality of circumstances permitted the search under Article 1, Section 11.

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