Police Prosecutor Update

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SEARCH AND SEIZURE
RESISTING LAW ENFORCEMENT

On February 9, 2016, the Indiana Court of Appeals issued its opinion in the case of Miller v. State, ___ N.E.3d ___ (Ind. Ct. App. 2016). In response to a radio dispatch about a disturbance, two officers arrived at a convenience store and observed Miller jaywalking. An employee of the store pointed at Miller. The officers turned on their emergency lights, but by the time they got to Miller, she had gotten to the door of an apartment. When one officer said, "Hey, I need to talk to you," she ignored him and entered the apartment. After officers knocked on the apartment door, Miller came outside. The officers placed her under arrest for resisting law enforcement. During a "pat-down" officers found a synthetic drug and an Ecstacy pill. One of the officers then went back to the store and spoke to the clerk who alleged that Miller became upset at the price of a soda and damaged the EBT card reader. Miller was charged with possession of a controlled substance, criminal mischief, and resisting law enforcement. She filed a motion to suppress the evidence found on her person as the product of an unconstitutional search. The motion was denied and the Court of Appeals granted Miller's motion for an interlocutory appeal.

Miller's activities at the convenience store were not sufficient grounds to arrest her. A report of a disturbance, without more, is not a sufficient basis upon which to conduct an investigatory stop. Also, while an officer was permitted to detain Miller for jaywalking in order to obtain identifying information, and the refusal to provide information to police is a class C misdemeanor, there was no evidence in the record that she had refused to give officers information or that she was informed of the jaywalking allegation. Therefore, she could not be arrested for a class C misdemeanor.

Finally, the Court ruled that the officers could not arrest Miller for resisting law enforcement. The resisting law enforcement by fleeing statute requires that an officer's order to stop be based on probable cause or reasonable suspicion. At the time the officers ordered her to stop, they did not have specific, articulable facts that would lead a person to suspect that criminal activity was afoot. Therefore, even if Miller disobeyed a direct order from the officer to stop, she could not be subjected to an arrest or a search based solely on her failure to obey the order.

The Court reversed the trial court's denial of the motion to suppress and remanded the case back to the trial court. The drug evidence is not admissible. The charges of resisting law enforcement and criminal mischief are still in play, although it is doubtful the resisting charge will survive a motion for directed verdict, based upon the Court's opinion.

INTIMIDATION

On February 18, 2016, the Indiana Court of Appeals issued its opinion in the case of Holloway v. State, ___ N.E.3d ___ (Ind. Ct. App. 2016). Holloway drank some beer, drove his car and crashed into another motorist. The responding police officer arrested him and took Holloway to jail. During the booking procedure, the handcuffed Holloway became angry and told the officer, "I hope you die. I hope you die tonight." Later, Holloway stood up and started to approach the officer and said, "I will f[*]ck you

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up." Holloway was charged with level 6 felony intimidation, misdemeanor OWI and a class B misdemeanor battery. Holloway pled guilty to OWI, the other misdemeanors were dismissed, and the court convicted Holloway of felony intimidation after a bench trial.

Holloway challenged the sufficiency of the evidence used to convict him. He argued that his profane statement to the officer did not constitute a threat because it was brief and he was handcuffed and in jail when he uttered it. "Threat" is defined as an "expression, by words or action, of an intention to . . . unlawfully injure the person threatened or another person[.]" I.C. 35-45-2-1(c)(1). The Court found no merit to Holloway's argument and upheld the conviction. Interestingly, one judge dissented.

SEARCH AND SEIZURE
INVENTORY

On February 26, 2016, the Indiana Supreme Court issued its opinion in the case of Wilford v. State, ___ N.E.3[d] ___ (Ind. 2016). This case is the third case reported by the Police Prosecutor Update on inventories in as many months. The car Wilford was driving was pulled over for equipment violations. Wilford's license was suspended, and Wilford was arrested. The officer decided to impound the car. Prior to towing the police searched it and found a handgun. At the trial, Wilford objected to the admission of the handgun. Wilson was convicted of carrying a handgun without a license. The Court of Appeals affirmed his conviction. 31 N.E.3rd 1023 (Ind. Ct. App. 2015).

Proper impoundment is the "threshold question" to a valid vehicle inventory. Impoundment is proper when it is mandated by statute or is an exercise of the police community care-taking function. No statute authorized the impoundment of Wilford's vehicle. The standard for determining whether the impoundment was a reasonable exercise of the community care-taking function is two-fold: 1). Consistent with objective standards of sound policing, an officer must believe the vehicle poses a threat of harm to the community or is self-imperiled; and 2) The officer's decision to impound adhered to established departmental routine or regulation. The Court found that the prosecution failed to satisfy the second prong.

The burden is on the police department to show that there is a standardized impoundment procedure. In this case, the officer testified he towed the car because it was in an unsafe condition, Wilford had been arrested, and he was not the owner of the vehicle. The officer made only passing reference to "our procedures in that situation." There was no reference to the "particulars" of the procedure, without which the Court was unable to evaluate whether the impoundment was a reasonable exercise of the community care-taking function and whether the officer adhered to the established routine or regulation. The handgun, therefore, should not have been admitted into evidence.

The vehicle inventory has captured the Courts' attention. Police departments should use these decisions to make sure its impoundment and inventory policies and procedures are updated. Officers should know the policy, follow the policy and procecures, and be prepared in court to testify to and or produce the policy and procedure in detail.

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