

SEARCH AND SEIZURE NEED FOR IMMEDIATE AID

On November 29, 2016, the Indiana Supreme Court issued its decision in Osborne v. State, ___ N.E.3d ___, (Ind. 2016). A gas station clerk called police to report that a woman was “stuck underneath her vehicle.” The clerk described the car and gave the license plate number. By the time an officer arrived, dispatch had informed him that the woman had freed herself and was leaving. The officer observed the vehicle driving away and followed it. He did not witness any infractions or criminal conduct, but initiated a traffic stop based upon the initial report because he was concerned for her well-being. When he stopped Osborne, he observed no sign of physical injury, but ultimately observed indications of intoxication and arrested Osborne for operating while intoxicated. Osborne moved to suppress the evidence, which the trial court denied. The Court of Appeals reversed the trial court, Osborne v. State, 54 N.E.3d 428 (Ind. Ct. App. 2016).

One exception to the warrant requirement is that the officer “had an objectively reasonable basis for believing that medical assistance was needed or persons were in danger.” The Court found that the initial report that Osborne was trapped under her car could give rise to a reasonable concern that emergency medical assistance was needed, prompting further investigation. However, the facts on the ground when he arrived no longer supported that concern. She had freed herself and was driving away in a way that elicited no concerns that she was impaired or needed medical attention. The Court reversed the denial of Osborne’s motion to suppress.

On the same day, the Indiana Supreme Court issued its decision in Cruz-Salazar v. State, ___ N.E.3d ___, (Ind. 2016). In that case, someone reported a pickup truck parked in front of a residence for 30 minutes with the motor still running. When the officer arrived, he shined his flashlight into the truck and observed Cruz-Salazar either asleep or passed-out. The officer tapped on the window and got no response, so he opened the door and roused Cruz-Salazar. Cruz-Salazar had signs of intoxication and register 0.184 on a portable breath-test. Officer arrested him for public intoxication. A search incident to arrest yielded cocaine, and Cruz-Salazar was charged with possession of cocaine. Cruz-Salazar moved to suppress the evidence, and the trial court denied his motion and subsequently convicted him of possession of cocaine as a Class A misdemeanor. The Court of Appeals affirmed the search and the conviction. The Supreme Court granted transfer. Referencing its reasoning in the Osborne case cited above, the Court found that when the officer could not rouse Cruz-Salazar, who was behind the wheel of his running pickup, he had an objectively reasonable basis to open the door of the truck and check on Cruz-Salazar’s well-being. The warrantless entry into the vehicle was permissible under both the 4th Amendment and the Article 1, Section 11 of the Indiana Constitution. The Court affirmed his conviction.

SEARCH AND SEIZURE COLLECTIVE KNOWLEDGE OF POLICE OFFICERS

On November 17, 2016, the Indiana Court of Appeals issued its decision in Dunson v. State, ___ N.E.3^d ___, (Ind. Ct. App. 2016). Police received a number of 911 calls reporting men with guns in the area. Angry shouting was audible in some of the calls, and some reported 30 people had gathered. Numerous officers responded. An officer and a deputy sheriff participated in a traffic stop of someone thought to be involved. Two other officers spoke to Coleman, who was bleeding around her mouth and nose and had sections of her hair torn out. Her shirt was torn, and there were footprints on her shirt. She was crying and agitated. While she was talking to officers, Dunson drove past on a motorcycle, and Coleman indicated that he was “involved.” One of the officers, Faulk, radioed that she had a conscious and alert female who was injured and that a black male on a silver scooter was “coming toward you; he may be involved.” The officer and deputy sheriff who had pulled over the other vehicle then responded and stopped the motorcycle. As one of them approached Dunson, he noticed a bulge in his groin and waist line, which turned out to be 9 mm Ruger handgun. Dunson was charged with carrying a handgun without a permit, a level 5 felony. Dunson moved to suppress the handgun. The trial court denied the motion and found him guilty of the level 5 felony.

On appeal Dunson asserted that Officer Faulk’s radio broadcast that Dunson may be involved was not specific and articulable enough to support a reasonable suspicion that he was involved in criminal activity. The Court found that even though Officer Faulk did not explain the basis for her reasonable suspicion, she was known to the other officers and was available and did in fact subsequently explain the basis for her suspicion. The law enforcement officers were cooperating in investigating reports of a disturbance involving guns. Two officers spoke to a victim, while the other two detained a suspect. When the officers speaking to Coleman acquired information that Dunson was involved, they were outside their vehicles and Dunson was traveling on his motorcycle. Relaying the exact details of her reasonable suspicion would be dangerous where the officers were simultaneously investigating the commission of a crime, keeping the area safe, and attempting to apprehend suspects. Given the totality of the circumstances, the information was sufficient to lead an ordinarily prudent person to believe Dunson was involved in the criminal activity officers were investigating. The search of Dunson and the conviction were affirmed.