



POLICE / PROSECUTOR UPDATE

Issue No. 155

October 2004

We will first look at a case in which the Court of Appeals found a **trash search** to be reasonable under the totality of the circumstances.

Law enforcement officers went to the defendant's residence (although the court's opinion did not say why). As they approached the residence, they noticed a strong smell of ether. They knocked on the front door but got no answer. One officer parked his patrol car in a nearby parking lot to observe the residence, and the others left. A short time later, he observed four individuals, including the defendant, exit the residence and get into two vehicles. Two deputies were called to assist. They also noted the strong odor of ether and saw three bags of trash next to the mailbox along the road. They took the trash bags, transported them to the county jail, and examined the contents for evidence of illegal activity. They found evidence of methamphetamine manufacture, sale, and use. Based on this evidence, they obtained a search warrant for the residence, where they found evidence of illegal drug activity.

As stated earlier, the court found the search reasonable. When the deputies arrived at the defendant's residence, they saw the trash bags next to the defendant's mailbox. There were several residences nearby, and many of those also had trash bags next to their mailboxes. The defendant's bags, along with the bags of the neighbors, had apparently been set out or trash pick-up. In seizing the defendant's garbage bags, the deputies conducted themselves in the same manner as would those whose duty it was to pick up the bags. Finally, in seizing the bags, they did not trespass on the defendant's property or disturb the defendant's neighbors. Lovell v. State, 813 N.E.2d 393 (Ind. Ct. App. 2004).

Another case involved an illegal **warrantless search of a car** because it did not fall within any exception to the warrant requirement.

Two police officers attended a squad meeting before beginning their patrol. They learned of an armed robbery that had occurred earlier that day in which the suspects had semi-automatic weapons and a black duffle bag. While on patrol at about 11:00 p.m., the officers observed a white Cadillac parked on the right-hand side of the road with the trunk "popped open." Thinking this was suspicious, the officers exited their vehicle and approached the car. While doing so, they shined their flashlights on the houses on both sides of the street to see if anyone would come out to claim the car. When no one did, the officers looked inside the trunk and saw a black duffle bag. One officer looked in the bag and found athletic equipment. The officer also looked into a backpack next to the duffle bag and found \$30,000 and cocaine.

The search was improper. Although the officers had information that a black duffle bag had been involved in an earlier armed robbery, there was no mention of a children's backpack being involved in any crime. The mere fact that the backpack was near the duffle bag some distance from the scene of a robbery does not provide police with probable cause to search the backpack. Also, there was no indication that the car was in any danger of disappearing while the officers obtained a warrant. One of the officers could have gone to try to get a warrant while the other remained with the vehicle in case a prospective driver appeared. Thus, there were no exigent circumstances arising out of a disappearance of the car.

Because the police lacked probable cause to search the backpack and because no exigent circumstances existed, the automobile exception to the warrant requirement did not apply. The officers were required to obtain a warrant before searching the car and its contents. Jones v. State, 814 N.E.2d 298 (Ind. Ct. App. 2004).

This is a publication of the Clark County Prosecuting Attorney, covering various topics of interest to law enforcement officers. It is directed solely toward issues of evidence, criminal law and procedure. Please consult your city, town, or county attorney for legal advice relating to civil liability. Please direct any suggestions you may have for future issues to Steve Stewart at 285-6264.