



POLICE / PROSECUTOR UPDATE

Issue No. 160

March 2005

The Court of Appeals recently considered a search and seizure question never before confronted in Indiana: May police officers with a search warrant detain the resident while the warrant is executed?

The facts indicate that police officers obtained a warrant to search the defendant's apartment for evidence of illegal drug activity. When officers arrived at the residence, the defendant's vehicle was not there, so the officers waited nearby for him to return. When the defendant arrived, the officers confronted him, identified themselves, and informed him of the search warrant. The defendant, who was "a pretty big guy," became "very belligerent, argumentative, very jerky in his motions." He was sweaty, licking his lips, and his eyes were dilated. This made the officer believe that the defendant was under the influence of methamphetamine. This in turn made the officer fear for his safety, so he placed the defendant in handcuffs and patted him down for weapons. The officers then moved the defendant into the apartment and commenced the search.

The officers found a bag of marijuana under an armrest of a couch in the living room. At this point, an officer confronted the defendant, saying, "I know that you've got the dope and you probably have it down your pants." After he was asked to stand up, the defendant said "I'll get it." He had a bag in his beltline. It contained several smaller baggies containing a substance determined to be methamphetamine.

The defendant challenged the legality of the search of his person. The Court of Appeals stated that the legality of the search hinged on the legality of his detention. The specific question the court had to answer was "whether the officers executing a search warrant have the authority to require a person to re-enter the residence and to remain there while they conducted their search."

The detention here was clearly a seizure, which generally requires probable cause. However, there can be an exception to this general rule where the seizure "constitutes such a limited intrusion on the personal security of those detained and is justified by such substantial law enforcement interests that it may be made on less than probable cause, *so long as* the police have an articulable basis for suspecting criminal activity."

Three things had to be examined to determine whether such an exception existed under the facts of this case: (1) the nature of the official intrusion; (2) the justification for the intrusion; and (3) the nature of the articulable suspicion of the police.

With regard to the nature of the intrusion, of prime importance was the fact that the police had obtained a warrant to search the defendant's residence. While the detention of the defendant while the residence was being searched was admittedly a significant restraint on the defendant's liberty, it was clearly less intrusive than the search itself.

In assessing the justification for the detention of an occupant of premises being searched for contraband pursuant to a warrant, the court said that the law enforcement interest is relevant. The most obvious is the interest in preventing flight if incriminating evidence is found. Again according to the court, less obvious, but often more important, is the interest in minimizing the risk of harm to the officers.

In the court's view, in executing a warrant to search for drugs, the risk of harm to both the police and occupants is minimized if police exercise unquestioned command of the situation.

Finally, with regard to articulable suspicion of the police, the court stated that the search warrant's very existence provided an objective justification for the detention. The court concluded that if "the evidence that a citizen's residence is harboring contraband is sufficient to persuade a judicial officer that an invasion of the citizen's privacy is justified, it is constitutionally reasonable to require that citizen to remain while officers execute a valid warrant to search his home." The detention and, after contraband was found in the residence, the search of the defendant's person, was consistent with the Fourth Amendment.

Carroll v. State, ___ N.E.2d ___ (Ind. App. 2005).

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.