



POLICE / PROSECUTOR UPDATE

Issue No. 159

February 2005

The United States Supreme Court was recently confronted with the following question: Whether the Fourth Amendment requires reasonable, articulable suspicion to justify using a **drug detection dog to sniff a vehicle** during a legitimate traffic stop. The answer is NO. The Court held that a dog sniff conducted during a lawful traffic stop that reveals no information other than the location of a substance that no person has any right to possess does not violate the Fourth Amendment. However, the Court also cautioned that the traffic stop must be executed in a reasonable manner, including the length of the stop. Illinois v. Caballes, ___ U.S. ___ (2005).

* * * * *

There is a line of cases of the Indiana Court of Appeals holding that IC 9-30-6-6(g) is only applicable when a physician refuses to draw blood. However, our Supreme Court has determined that limiting (g) to those instances in which a physician refuses to draw blood is inconsistent with the intent of the implied consent statutes. Subsection (g) allows the **taking of a blood sample without the driver's consent** if the provisions of subsection (g) are met, regardless whether the physician is reluctant to do so or not. Abney v. State, ___ N.E.2d ___ (Ind. 2005).

* * * * *

In another case, the Indiana Court of Appeals applied the standard of reasonable suspicion with regard to the **investigatory stop of a vehicle**.

In the early morning hours a police officer was on routine patrol and observed a car parked on the side of the street with its interior dome light illuminated. He observed a male sitting in the front passenger seat and leaning across the center console of the car underneath the steering wheel. Concerned that an attempted theft might be in progress, he stopped his vehicle and reversed toward the car.

He then observed the man sitting in the passenger seat and a female sitting in the driver's seat. Because he never lost sight of the car, and because the car door had remained closed, the officer believed that the female was in the car when he first observed it but that she was either ducking down or lying down in the seat. Based on his experience, the officer suspected that the two might be engaged in a drug deal, prostitution, or both as he had made several arrests in that area for drugs and prostitution.

When he approached the car, the woman started the car and began moving. He ordered the woman to stop, which she did. Because the officer could not see the man's hands and because the man was fidgeting with an object in a sweatshirt the officer became concerned that the defendant might be hiding a weapon. He drew his weapon and ordered the man to put down the sweatshirt and show his hands. As the man did so, a handgun fell from the sweatshirt. The two were ordered from the car, and the officer retrieved the gun.

The defendant contended that this was an illegal investigatory stop. Such a stop requires that, based upon the facts known to the officer, and the reasonable inferences drawn from these facts, the officer has a reasonable suspicion that criminal activity had occurred or was occurring. Here, when taken together, all the facts known to the officer - the time of day, the circumstances he had observed, and his knowledge of drug and prostitution activity in the area - constituted reasonable suspicion.

Also, an officer may conduct a limited search for weapons when he has a reasonable belief that a suspect is armed and dangerous. However, the officer needn't be absolutely certain the suspect is armed. Here, under the facts and circumstances known to the officer, he had a reasonable belief that the defendant may have been hiding a weapon under the sweatshirt. State v. Gladney, 793 N.E.2d 264 (Ind. Ct. App. 2003).

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.