Police Prosecutor Update

Issue No. 188
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In this issue, we will look at a number of different matters.

You might want to review Issue No. 181 (Dec. 2006) of the PPU. The Court of Appeals overturned a conviction because the actions of law enforcement personnel turned a consensual police-citizen encounter into an investigatory detention without the required reasonable suspicion. The Supreme Court reversed the Court of Appeals and reinstated the conviction. In doing so, it stated "that a police officer who neither explicitly nor implicitly communicates that a person is not free to go about his or her business may ask questions of the person to investigate allegations of criminal activity without implicating the Fourth Amendment or requiring the advisement of rights under the Indiana Constitution." Obviously, the Supreme Court viewed the conduct of the police to have been proper.

In another case, our Supreme Court set down a hard and fast rule: the application of force to a detainee's throat to prevent swallowing of suspected contraband violates the constitutional prohibitions against unreasonable search and seizure. By grabbing the defendant's throat to prevent him from swallowing the suspected bag of drugs, the police violated this constitutional protection. Therefore, no choke holds.

The United States Supreme Court recently held that when police make a traffic stop, a passenger in the car, like the driver, is seized for Fourth Amendment purposes, and the passenger may challenge the stop's constitutionality.

Another United States Supreme Court case held that a law enforcement officer can, consistent with the Fourth Amendment, attempt to stop a fleeing motorist from continuing his public-endangering flight by ramming the motorist's car from behind. The Court concluded: "A police officer's attempt to terminate a dangerous high-speed car chase that threatens the lives of innocent bystanders does not violate the Fourth Amendment, even when it places the fleeing motorist at risk of serious injury or death." The Court refused to lay down a rule requiring the police to allow fleeing suspects to get away whenever they drive *so recklessly* that they put other peoples lives in danger. As the Court stated, "It is obvious the perverse incentives such a rule would create: Every fleeing motorist would know that escape is within his grasp, if only he accelerates to 90 miles per hour, crosses the double-yellow line a few times, and runs a few red lights. The Constitution assuredly does not impose this impunity-earned-by-recklessness."

With regard to consensual encounters between police and citizens, the Court of Appeals recently observed that the Fourth Amendment permits a police officer, without any reasonable suspicion of any wrongdoing, to approach a citizen to ask questions; however, that citizen remains free to ignore the questions and walk away. Accordingly, when a citizen in such a circumstance walks away from the officer, the officer must have reasonable suspicion that a crime is, was, or is about to occur prior to yelling "stop" and chasing the citizen. The United States Supreme Court has stated that a police officer may approach an individual in a public place and ask him if he is willing to answer some questions. However, the individual may not be detained even momentarily without reasonable, objective grounds for doing so, and his refusal to listen or answer questions does not furnish those grounds.

Finally, the second case discussed in Issue No. 179 dealing with "child care worker" was reversed by the Supreme Court. The bus driver was not a child care worker.

Case Names: *Clarke v. State*, ___ N.E.2d ___ (Ind. 2007).
Grier v. State, ___ N.E.2d ___ (Ind. 2007)
Brendlin v. California, ___ U.S. ___, ___ S.Ct. ___, ___ L.Ed.2d ___ (2007)
Scott v. Harris, ___ U.S. ___, 127 S.Ct., 1769, 167 L.Ed.2d 686 (2007).
Greeno v. State, 861 N.E.2d 1232 (Ind. Ct. App. 2007)
Smith v. State, ___ N.E.2d. ___ (Ind. 2007)