POLICE / PROSECUTOR UPDATE

Issue No. 130 September 2002

A recent court of appeals case contains an excellent review of the law regarding the applicability of the *Miranda* warnings and also the scope of a *Terry* investigative pat-down search.

The facts are that early one morning a police officer observed a car parked illegally in front of "no parking" signs. The defendant, who was in the driver's seat, was asked for his identification. While the officer was running the identification, he asked the defendant if there were "any guns or anything illegal in his vehicle." The defendant became agitated after this question was asked and "started feeling his pockets, reaching under the seat, just reaching everywhere." The officer told the defendant that his actions were making him nervous and that he should stop reaching around. However, the defendant continued to do so. When the officer instructed him to exit the car, the defendant asked "Why do you want me out of the car?" and continued to reach around in the car. The officer then opened the car door and escorted the defendant from the car. The officer handcuffed him. He informed the defendant that he was not under arrest but that he was being cuffed for officer safety and that he was going to perform a pat-down because the defendant's actions made him very nervous. During the pat-down, the officer felt an object in defendant's left front pants pocket which he recognized, based on its packaging, shape, and feel, to be rock cocaine. The officer stated aloud, "that's rock cocaine right there," to which the defendant responded, "Oh, that's my own use, that's my own stash. You know, that's my own personal stash." The defendant had not been given the *Miranda* warnings.

The *Miranda* Issue

Miranda warnings are required during "custodial" interrogation by police; that is, when a person has been "taken into custody or otherwise deprived of his freedom of action in any significant way." The ultimate question is simply whether there has been a formal arrest or restraint on freedom of movement of the degree associated with formal arrest. Whether a person is in custody does not depend on the subjective views of either the officer or the subject. An officer's knowledge or beliefs are relevant only if conveyed, through words or actions, to the subject. The issue is how a reasonable person in the subject's circumstances would view the situation. Although the officer in this case specifically told the defendant he was not under arrest, the court stated that the use of handcuffs would cause a reasonable person to feel that he was not free to leave and that his freedom of action was restrained to a degree associated with a formal arrest. The defendant here was in custody in the court's view.

However, this answers only half the question. In addition to custody, there must also be "interrogation." Not every custodial question or statement by police amounts to interrogation for *Miranda* purposes. Because police officers cannot be held accountable for the unforeseen results of their words or actions, the definition of interrogation can extend only to words or actions by police officers that they *should have known* were reasonably likely to elicit an incriminating response. In the court's view, the officer's statement in this case about the rock cocaine was one he *should have known* would or could lead to a response that was reasonably likely to be incriminating. Thus, there was an "interrogation" in violation of *Miranda*.

The Pat-Down Issue

The constitution allows a pat-down for weapons during an investigatory stop for the officer's safety. The purpose of the search is to allow the officer to conduct his investigation without fear for his safety or the safety of others. The officer need not be absolutely certain that the individual is armed, but only that a reasonably prudent person in the same circumstances would be warranted in the belief that his safety or that of another was in danger. In this case it was not unreasonable for the officer to assume that while the defendant was reaching around in the car, he was looking for weapons. Thus, under these facts, the pat-down was reasonable.

The defendant also argued that when he was handcuffed, he was arrested without probable cause and that this illegal arrest made the search illegal. However, the court stated that although the defendant was in custody when he was handcuffed, probable cause was not required. Considering all the facts of the case, the mere use of handcuffs did not convert a *Terry* stop into a full arrest requiring probable cause. Given the defendant's actions when he was asked if there were "any guns or anything illegal in the vehicle," it was not unreasonable for the officer to handcuff the defendant for his own personal safety while conducting the pat-down.

Case: *Wright v. State*, 766 N.E.2d 1223 (Ind. Ct. App. 2002)