POLICE / PROSECUTOR UPDATE

Issue No. 133 December 2002

A recent court of appeals case instructs us that law enforcement officers must not exaggerate their authority under a search warrant.

The facts reveal that the defendant went to a residence to look into a problem with the floor. Shortly after he arrived, police officers came to the residence and placed the defendant and two others at the residence in handcuffs in order to execute a search warrant for the residence (it was not the defendant's residence). Police discovered a large quantity of cocaine in the residence but found no evidence connecting it to the defendant. Before the search began, an officer announced that he had a warrant to search the house *and* all the vehicles on the premises, and asked the defendant and the other two if there was anything they had on them the police needed to know about before the search began.

The defendant, who had been Mirandized, stated that he had an unlicensed handgun in his vehicle. Of critical importance to the court of appeals was the fact that at the hearing on defendant's motion to suppress, the State presented *no evidence* that, in fact, the warrant to search the residence also authorized the search of all vehicles on the premises.

Since there was no evidence that the search warrant included the vehicles also (so it has to be presumed it did not), the court viewed the matter as a question of the legality of a warrantless search of the defendant's vehicle. The argument that the defendant consented to the search failed. As the court of appeals said, "it is abundantly clear that police cannot obtain consent to a search by falsely representing that they have a warrant to search regardless of consent."

Another search warrant exception is the warrantless seizure of items from an automobile where an officer has probable cause to believe that the property to be seized is connected to criminal activity. Thus, the State also argued that the officer had probable cause to search the defendant's vehicle because of his statement that he had an unlicensed handgun in the vehicle. Therefore, the issue was whether the defendant's admission with regard to the handgun was voluntary. Although deception by police is not conclusive of voluntariness, it does weigh heavily against voluntariness of the admission. While voluntariness most often arises in Fifth Amendment confession cases, it also applies to searches under the Fourth Amendment. Accordingly, the court held that police deception concerning the existence of a search warrant invalidates the voluntariness of an admission, given in response to police questioning, regarding evidence that might be found in the place falsely represented to be covered by a warrant. An admission obtained in such a fashion cannot be used to establish probable cause to search.

* * * * *

Another case examined the maintaining a common nuisance statute. In that case, the defendant was convicted of that offense even though the evidence revealed that only one individual was smoking marijuana in the defendant's house, although several persons were also present. IC 35-48-4-13(b)(1) criminalizes maintaining a building, structure, vehicle, or other place that is used one or more times by *persons* to unlawfully use controlled substances. The word "persons" is the plural form of the noun person and means more than one person, and nothing within the statute directs the reader to a different meaning. Therefore, the statute requires the evidence to show that more than one person unlawfully used controlled substances within the home.

Roehling v. State, 776 N.E.2d 961 (Ind. App. 2002).

Hook v. State, 775 N.E.2d 1125 (Ind. App. 2002).

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.