POLICE / PROSECUTOR UPDATE

Issue No. 154 September 2004

This issue we will look at a couple of recent cases involving two **search and seizure** issues:

One involves a good discussion of **consent search** law. It involved a **traffic stop** of a vehicle that contained cocaine. The female driver advised the officer that the cocaine belonged to the defendant, with whom she and their child lived, and that there was more cocaine at their home. She gave the address of the residence, described it, stated that she had lived there for the past several months, and that she paid the bills for it and received mail there. She said where in the house the cocaine was located and consented to a search. The officer went to the residence. He advised the defendant of his *Miranda* rights but did not request his consent to search. The cocaine was located where the woman indicated. The court held that this was a reasonable consent search.

The law is that the consent need not be given by the subject of the search but may be given by a third party who has common authority over the premises. Common authority rests on the mutual use of the property by persons generally having joint access or control for most purposes. This is actual authority to consent. If actual authority cannot be shown, then apparent authority must be shown. Under apparent authority doctrine, a search is lawful if the facts available to the officer would cause a person of reasonable caution to believe that the consenting party had authority over the premises. Thus, the validity of the consent is judged against an objective standard: would the facts available to the officer *at the moment* warrant a person of reasonable caution to believe that the consenting person did in fact have authority over the premises.

Finally, authority to consent is not dependent on the person's location at the time. Either the person has authority to consent or not.

Primus v. State, __ N.E.2d __ (Ind. App. 08/11/04).

Another case outlined the law of **inventory searches**. The threshold question in determining whether an inventory search was proper is whether the impoundment of the vehicle itself was proper. Impoundment is warranted when it is authorized by statute or is part of routine police caretaking functions. To prove a valid impoundment under the caretaking function, the State must demonstrate: (1) that the belief that the vehicle posed some threat or harm to the community or was itself imperiled was consistent with objective standards of sound policing; and (2) that the decision to combat that threat by impoundment was in keeping with established departmental routine or regulation. An impoundment can be effected by police at the scene and does not depend on having the vehicle towed or otherwise physically moved from its location.

Two primary factors should be considered in determining whether the conclusion that vehicles constitute a hazard is reasonable as sound policing: (1) the degree to which the property on which the vehicle is situated is under the defendant's control; and (2) the length of time the impounding officer perceives the vehicle would be unattended helps assess the reasonableness of the officer's conclusion that the vehicle, if left alone, would be exposed to an unacceptable risk of theft or vandalism.

There is no requirement to use the least intrusive means to secure and protect the vehicle. The question is not whether there is an absolute need to impound the vehicle but whether the decision to do so is reasonable. Thus, it is not required to afford the defendant the opportunity to arrange for someone else to claim the car.

Taylor v. State, 812 N.E.2d 1051 (Ind. App. 08/04/04).