POLICE / PROSECUTOR UPDATE

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The Supreme Court and Court of Appeals recently decided two cases which are of some interest to law enforcement.

One case dealt with the plain view doctrine and the person in need of aid exception to the search warrant requirement. The facts reveal that a hotel maid approached a certain room shortly after noon and knocked on the door. The check-out time for the room had passed, so the maid had the front desk call the room. After getting no response, the front desk called a second time, again with no response. The maid then knocked again and, still getting no response, used her key to enter the room. Although the door chain barred her entrance, she was able to observe the defendant apparently asleep on a couch and a candle and a "white powder substance" on a table in front of the couch. After a third call from the front desk received no response, the police were called. When further knocks by the police went unanswered, the manager unlocked the door and, after observing the defendant and the powdery substance on the table, unlatched the chain, allowing the police to enter. The police then aroused the defendant and his girlfriend and seized substantial amounts of cocaine and marijuana.

Under the plain view doctrine, police may seize incriminating evidence without a warrant when two conditions are met. First, the initial police intrusion must have been permissible under the Fourth Amendment. Second, the incriminating nature of the evidence must be immediately apparent. Under the first requirement, it is not necessary for police to have a warrant to enter a place "when the facts suggest a reasonable belief that a person within the premises is in need of aid." In this case, repeated calls had gone unanswered and the maid observed defendant present in the room. This reasonably suggested that the occupants were in need of medical attention. Therefore, no warrant was required for the police to enter the room. Furthermore, as the police were legitimately in the room, they could observe the white powdery substance and drug paraphernalia in plain view, as these items were sitting on the table in front of the couch on which the defendant was sleeping.

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The second case dealt with the Implied Consent Law and the importance of an officer's testimony at a refusal hearing that the defendant was advised of the consequences of his refusal to submit to a chemical test. The defendant's license had been suspended for refusal to submit to a chemical test. He petitioned for judicial review but the trial court denied his requested relief.

Ind. Code 9-30-6-7(a) requires that "if a person refuses to submit to a chemical test, the arresting officer *shall* inform the person that refusal will result in the suspension of the person's driving privileges." The defendant testified that he was asked to submit to a breath test but was never told that his refusal would result in the suspension of his driver's license. However, to quote the court of appeals, " More telling . . . is the testimony, of lack thereof, of the arresting officer." The officer testified that he informed the defendant of "the Implied Consent Law" at least five times and read to the defendant from his Implied Consent card at least four times. However, the officer never testified to the *substance* of his advisements to the defendant. The court of appeals stated: "We cannot assume . . . that [the officer] informed [the defendant], either from memory or by reading from his card, of the consequences of his refusal to submit to a breath test as required" by law. Therefore, the defendant's failure to submit to the test could not be considered a refusal.

The lesson to be learned from this case is to never take shortcuts when testifying. Testimony that a person was advised of his "*Miranda* rights" without testifying to the substance of this advisement is insufficient if challenged. Likewise, testimony that a person was "informed of the Implied Consent Law" without specifying the *substance* of the advisement is not sufficient if challenged.

Plain view - Stewart v. State, 688 N.E.2d 1254 (Ind. 1997).
Consent - Vetor v. State, 688 N.E.2d 1327 (Ind. App. 1997).

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