

## BETWEEN THE LINES

By Leonard T. Bier, JD, CAPP

Conventional wisdom says the first rule of parking in an off-street parking facility is: park your car within the lines of the marked parking stall. However this was recently found not to necessarily be true. In *Gilmore vs. Maryland*, the Maryland Court of Appeals literally gave a convicted drug felon a Get Out of Jail Free card.

Gilmore parked in the private lot of a liquor store that was under surveillance by the police in a high drug trafficking area. He backed his car into a parking stall straddling the line, thus occupying two parking spaces, and then entered the liquor store. Gilmore's parking activity was observed by a police officer on surveillance duty. The officer waited 10 minutes for Gilmore to exit the liquor store and then confronted him, asking why he'd parked that way.

Gilmore said he wasn't aware that he had parked over the line. The officer requested his driver's license and vehicle registration, which were handed over. While running the driver's credentials check, the officer observed that Gilmore kept putting his hands in his pockets. Based on Gilmore's body language and fearing for his safety, the officer asked if he had a weapon. Gilmore stated he had a knife in his jacket pocket.

The officer patted down Gilmore, intending to temporarily hold the knife. On its way out of a pocket, the knife hooked a clear plastic bag containing a leafy substance. A field test confirmed the substance was marijuana. Gilmore was arrested and a more thorough search resulted in the discovery of another bag of marijuana and 16 bags of crack cocaine.

Prior to trial, Gilmore's attorney filed a motion attempting to have the drug evidence thrown out as a result of an unlawful search. The attorney argued that straddling the line in a parking lot was not a municipal or state parking violation, and if it was, it did not constitute a motor vehicle stop that allowed a search. The trial judge denied the motion. Gilmore went to trial, and was found guilty and sentenced to eight years in prison.

Gilmore appealed his conviction to the Appeals Court and again argued that the stop and search by the police

officer for a non-enforceable parking violation was unconstitutional. A review revealed that the officer testified that he could not specify any municipal ordinance or state traffic law that prohibited parking over the line in a parking lot. The officer testified that in the police academy he was taught that taking up two parking spaces was a parking violation. He further testified that taking two parking spaces was illegal and the same as double

parking. The trial transcript confirmed that Gilmore's attorney argued that neither city ordinances nor Maryland code prohibited parking in more than one spot.

The appeals prosecutor argued that Maryland Statute 21-1003(a) states, "a person may not park a vehicle at any other place

where parking is prohibited by an official sign." The appeals prosecutor argued that the stall line marking a parking space constituted an official parking sign.

The court rejected the appeals prosecutor's argument that Gilmore disregarded a parking sign and was lawfully detained for a parking violation. It also noted that the U.S. Supreme Court declined to distinguish what type of traffic violation is an appropriate reason to stop and search an individual or their vehicle. But the court ruled, "The officer who detained Gilmore in the parking lot did so under the mistaken belief that there was a statutory authority which made it illegal to park one's vehicle straddling a line on the pavement... Because a lawful detention cannot be predicated upon a mistake of law, the evidence obtained during the ensuing encounter should be suppressed." Gilmore's drug conviction was reversed and he was released from prison.

IPI members need to check their rules, regulations, ordinances, and state statutes to be certain that parking over the line or taking two parking spaces is, in fact, an enumerated enforceable parking offense. **P**



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