

Police Prosecutor Update

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SEARCH AND SEIZURE REASONABLE SUSPICION TO ENTER PROPERTY

On November 19, 2014, the Indiana Court of Appeals issued a decision in *Mundy v. State*, ___ N.E.3d ___ (Ind. 2014), reversing the trial court's denial of the defendants' motion to suppress evidence.

Detectives were looking for an individual, "D," who was suspected of taking a handgun from a client of his employer. The same handgun was suspected to have been used in the commission of a murder. The detectives looked up D's information with the Bureau of Motor Vehicles to find his address. D's last known address had a street number of 6552. They found what they thought was the house and knocked on the door, but no one answered. They then looked at the mailboxes located on the side of the road and decided to try another house located at the end of a long driveway.

The detectives drove up the private driveway for about 50 yards until they saw a cable stretched across the drive. The court noted that the cable was fastened to two posts at opposite sides of the driveway and was secured by two padlocks, at least one of which was unlocked. An "ADT" security sign was posted near the cable, and a "No Trespassing" sign was posted on a tree just beyond the cable. The detectives did not notice the sign. Detectives removed the cable from one of the padlocks, lowered it, and continued up the driveway. They saw a mobile home with several outbuildings and proceeded toward it. They parked their vehicle, and upon exiting their vehicle, detected the odor of marijuana that seemed to be coming from the garage.

Defendant Jost came out of the garage, at which time the odor of marijuana became stronger. One of the detectives asked Jost if D was nearby; Jost responded negatively. The owner of the property came out of the mobile home. She told police that she had lived there 20 years and had never heard of D. The property owner also refused detectives' request to search the property.

Jost and the owner were secured, and a detective entered the mobile home and found defendant Mundy and his girlfriend, and brought them outside. Mundy informed them that they were at 6225, not 6552.

Based upon the odor of marijuana they had smelled and plants they observed near the mobile home, detectives applied for and obtained a search warrant for the premises. Upon executing the warrant, they discovered over 100 marijuana plants, and the State charged Mundy and Jost with Conspiracy to Deal Marijuana, a class D felony. The defendants filed a motion to suppress the evidence, and after two hearings the trial court denied their motion to suppress. The defendants then brought an interlocutory appeal.

Applying Article 1, Section 11, of the Indiana Constitution, the Court of Appeals reversed the trial court. The Court considered the “degree of intrusion into the subject’s ordinary activities” and the “basis upon which the officer selected the subject of the search or seizure.” Considering first the basis upon which the officers acted, the Court noted that the State provided scant evidence regarding how the detectives came to suspect D. It appeared that they were trying to find D to question him in a consensual, noncustodial encounter. Moreover, they were unsure as to where D lived and took few steps to ensure they had the right address. As to the degree of intrusion, the Court found that the multiple indications that strangers were not welcome would cause a reasonable person not to take down the cable without permission and then proceed up the driveway. Thus, the detectives’ conduct in entering the property violated Article 1, Section 11 of the Indiana Constitution. As the search warrant was based upon information gathered only after the detectives entered the property, the evidence seized during its execution is likewise barred as fruit of the poisonous tree.

SEARCH AND SEIZURE SCHOOL BACKPACK

On November 13, 2014, the Indiana Court of Appeals issued a decision in *R.M. v. State*, _____ N.E.3d _____ (Ind. Ct. App. 2014), affirming the juvenile’s delinquency determination.



R.M., a high school student, approached the high school science teacher and requested the teacher’s permission to place his backpack behind the teacher’s desk. The high school has a policy prohibiting students from carrying backpacks from class to class. The teacher allowed R.M. to place his backpack in her classroom because she thought it might contain some medical equipment R.M. might need due to a medical condition. R.M. did not take his backpack with him nor did he come back for it at the time of day the teacher believed he would need the medical equipment.

Before the end of school the teacher requested the Public School Police Sergeant to come to her room because she thought the bag was suspicious and might contain drugs or guns. The sergeant opened the backpack, unzipped it and looked inside. He saw a pair of shoes and the grip of a small-caliber semi-automatic handgun sticking out of one shoe. He ultimately found the magazine in the other shoe although he found no bullets. The State filed a delinquency petition alleging that R.M. committed carrying a handgun without a license and possession of a firearm on school property, both felonies if committed by an adult. Following an evidentiary hearing, the juvenile court entered a true finding and placed R.M. on probation. R.M. appealed. R.M. alleged the juvenile court should not have admitted into evidence the handgun because the search of R.M.’s backpack was unreasonable under the 4th Amendment to the United States Constitution.

The Court of Appeals noted that students are entitled to less privacy at school than adults would enjoy in comparable situations. It found that it was reasonable for the Sergeant to act upon the teacher’s suspicions. It further concluded that the scope of the Sergeant’s search was reasonably limited as the Sergeant found the weapon after merely unzipping the backpack. Moreover, the court concluded that had the sergeant not acted on the teacher’s information, most people would consider him derelict in his duties for failing to examine the backpack and exposing the students to unnecessary risk.