

Police Prosecutor Update

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SEARCH AND SEIZURE TERRY STOP



On May 13, 2015, the Court of Appeals issued its decision in the case of D.F. v. State, ___ N.E.3d ___, (Ind. Ct. App. 2015). In that case, an officer responded within about thirty seconds to a report of a black male in a black hoodie who was on the bleachers in a park and had a gun that “looked like an Uzi like you saw in the movies.” When the officer arrived, he saw D.F. near the bleachers taking off a black sweatshirt. After removing the sweatshirt, D.F. sat on the bleachers next to the sweatshirt. The officer saw no one else wearing a black sweatshirt on or near the bleachers. As the officer walked toward the bleachers, D.F. began “scooting away” from the shirt. The officer opened the sweatshirt and found a gun. A delinquency petition was filed against D.F. alleging dangerous possession of a firearm and carrying a handgun without a permit, both Class A misdemeanors if committed by an adult. The Court adjudicated D.F. a delinquent.

D.F. alleged that the officer illegally searched his sweatshirt. An officer may briefly detain a person to investigate, without a warrant or probable cause, if he has reasonable suspicion based upon specific and articulable facts that the person has engaged, is engaging or is about to engage in criminal activity. During this investigative stop, the officer may search the person for weapons if he has reason to believe the person is armed and dangerous. The Court found that under the circumstances the officer had reasonable suspicion to investigate whether D.F. had a gun. Under the Fourth Amendment, the search of the sweatshirt was not unlawful.

In its Article I, Section 11, analysis the Court found that the degree of suspicion was high insofar as a citizen had reported an individual matching D.F.’s description carrying a gun moments before the officer arrived. The intrusion into D.F.’s privacy was minimal as the officer needed only to unfold D.F.’s sweatshirt. Finally the extent of law enforcement concern was high because police had reason to believe a teenager had a firearm in a public park where others were present. The search was lawful.

SEARCH AND SEIZURE PROTECTIVE SWEEP

On May 20, 2015, the Court of Appeals issued its decision in Johnson v. State, ___ N.E.3d ___, (Ind. Ct. App. 2015). Johnson was on probation. Police officers, who had received reports of possible drug activity at an address on Main Street, did a knock and talk at that address. Johnson answered the door and officers smelled the odor of burnt marijuana. Johnson told officers he did not live at the address, but that it belonged to Brooks, who was at school. Johnson was sluggish and had red eyes, denied smoking marijuana, and told officers he had smoked spice. Johnson was handcuffed. Officers heard movement from inside the duplex. Johnson stated no one else was in the apartment. An officer entered the apartment to ensure no one inside could injure officers or destroy evidence, but did not find anyone.

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Instead the officer, who spent about 40 seconds inside the apartment, observed some marijuana on a coffee table. Officers obtained a search warrant, searched the apartment and found a backpack that Johnson admitted was his. Inside the backpack was a large amount of marijuana in plastic bags. A petition to revoke Johnson's probation was filed. After denying Johnson's motion to suppress the marijuana evidence, the trial court revoked his probation.

Johnson argued that the marijuana evidence should have been suppressed because the officers did not have a warrant when they initially entered the apartment and observed marijuana on the coffee table. Everything discovered subsequent to that illegal entry should therefore be suppressed. The Court found that the odor of burnt marijuana, Johnson's appearance to be under the influence of marijuana, and Johnson's statement that he had smoked spice which smells nothing like marijuana, were sufficient to lead a reasonable person to conclude that Johnson had recently smoked marijuana and had possessed marijuana, and therefore, that evidence of a crime would be found within the apartment. This information was sufficient to establish probable cause for the search warrant without the officer's observation of the marijuana on the coffee table during his initial entry.

SEARCH AND SEIZURE INVENTORY

On May 27, 2015, the Court of Appeals issued its decision in Wilford v. State, ___ N.E.3d ___ (Ind. Ct. App. 2015). Wilford was driving a borrowed car that had been damaged in a wreck when officers stopped him for equipment violations. Wilford pulled the car into the parking lot of Planet Fitness. Wilford's driver's license was suspended with a prior conviction, and Wilford was arrested. The officer decided to impound the car "because of the unsafe condition of it and the fact that . . . Wilford was being arrested and he was not the owner of the vehicle." Prior to tow, the officer conducted an inventory of the vehicle contents, and found a stolen handgun in the front center console. Wilford admitted the gun was his and that he did not have a permit to carry. Wilford alleged the search of the vehicle and the seizure of the gun were illegal.

A well-established exception to the warrant requirement is the inventory of the contents of a lawfully impounded vehicle. An inventory is for the protection of private property in police custody, protection of police against claims of lost or stolen property, and protection of the police from possible danger. Courts examine the propriety of the impoundment and the scope of the inventory. In order to impound the vehicle, it must pose some threat or harm to the community or must itself be imperiled, and the decision to impound must be in keeping with departmental routine or regulation.

The Court found the car was damaged and unsafe to operate, and the fact that it was parked in a commercial lot was not dispositive. Therefore, it presented a threat to the community. While it would have been better for the officer to have cited to a formal or written impoundment policy, his testimony that his decision to impound was in keeping with department procedure was sufficient to determine that the decision was reasonable.

The inventory itself must be conducted pursuant to standard police procedure. While no written policy or procedure was introduced, the officer conducting the inventory described the inventory process in sufficient detail. It was, therefore, reasonable for the police to impound the vehicle and inventory its contents. The gun could be admitted into evidence.

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