

# Police Prosecutor Update

Issue No. 275  
May 2015

## SEARCH AND SEIZURE ABANDONED PROPERTY

On April 23, 2015, the Court of Appeals issued its decision in the case of J.B. v. State, \_\_\_ N.E.3d \_\_\_, (Ind. Ct. App. 2015). A police officer observed J.B., aged 17, walking with three other individuals. J.B. saw the police car and threw an “L-shaped” item, approximately 6 inches long, into a yard. The officer, who had extensive firearms training, believed the object to be a gun. The officer drove up to J.B. and his companions and told them to sit on the sidewalk. When backup officers arrived, the officer found a 9 millimeter handgun in the yard where J.B. had thrown it.



A delinquency petition was filed, and at the evidentiary hearing, J.B. moved to suppress the gun. The motion was denied, and J.B. was determined to be a delinquent child. On appeal, the Court found that by throwing the gun in the yard before the officer had spoken to him or attempted to seize or detain him, J.B. had abandoned it. Abandonment is an exception to 4<sup>th</sup> Amendment warrant requirement. The gun, therefore, was not to be suppressed. The Court further found that when the officer saw J.B. throw what appeared to be a handgun when he saw the police car, the officer then had a particularized and objective basis to conclude that J.B. had illegally possessed a handgun, thus justifying J.B.’s temporary detention.

In the three-part analysis under the Indiana Constitution, the Court concluded officer had a high degree of suspicion that J.B. had illegally possessed a firearm. The degree of intrusion was minimal in that J.B. was required to sit on a sidewalk unrestrained for the short time it took back-up officers to arrive. The extent of law enforcement need was high, so as to confirm the object was a handgun and to secure it to avoid endangering anyone else. Under the totality of the circumstances, the brief detention of J.B. to recover his discarded handgun did not violate the Indiana Constitution.

## FORFEITURE CONSTRUCTIVE POSSESSION

On March 24, 2015, the Supreme Court issued its decision in Sargent v. State of Indiana, and the Consolidated City of Indianapolis/Marion County, and the Indianapolis Metropolitan Police Department. Sargent was an employee of Walmart, and at the end of her shift, she stuffed 4 I-phones, worth \$1,200.00 in total, into her shirt and walked out of the warehouse before she was apprehended. She had driven her 1996 Buick, worth about \$1,700.00, to work that morning and then loaned it to a co-worker with instructions that the co-worker would pick her up from work. While she was detained, she told the loss prevention associate to go to the parking lot and tell the co-worker not to wait for her. The investigating police officer heard this request and used his initiative to find Sargent’s car in the parking lot, where he ultimately had



This is a publication of the Monroe County Prosecutor’s Office which will cover various topics of interest to law enforcement officers. Please direct any suggestions you may have for future issues to Chris Gaal of the Monroe County Prosecutor’s Office.

it towed and seized for forfeiture. A vehicle may be seized and forfeited when the person in possession of it uses it or intends to use it to transport stolen property in excess of \$100.00 in value.

Sargent was charged with theft, pled guilty and was given a year on probation. The State filed a motion for summary judgment in the forfeiture proceeding, and the trial court awarded the car to the State and the police department. The Court of Appeals upheld that judgment. However, the Supreme Court reversed the award of the car, and ordered it awarded to Sargent. The Court ruled that at the time Sargent was detained, she had neither actual nor constructive possession of the car. Since she needed to possess the car when she had the intent to transport stolen property, and she did not possess it, the State and the police were not entitled to forfeit her car.

