

## SEARCH AND SEIZURE CONSENT TO SEARCH A MINOR'S ROOM

On September 11, 2015, the Indiana Court of Appeals issued its opinion in the case of R.B. v. State, \_\_\_ N.E.3<sup>d</sup> \_\_\_ (Ind. Ct. App. 2015). A homeowner gave police a description of juvenile suspects in an attempted burglary, and shortly thereafter, individuals matching the description were detained. R.B. was one of them, and when his mother, T.B., arrived, the officer asked her if she had seen R.B. with a piece of stolen property. She said that she had seen R.B. with the property and did not know how he had acquired it. T.B. agreed that the officer could go to her house to locate the property. The officer, T.B., and R.B. went to T.B.'s house, and with R.B. detained in handcuffs, T.B. escorted the officer to R.B.'s bedroom where T.B. began to search for the stolen property. T.B. lifted R.B.'s mattress, and when she did so, the officer heard a loud click. He asked T.B. if he could search the bed, and she agreed. He found three firearms inside the box spring. Later, at the police station, R.B., after being advised of his rights and consulting with T.B., told police that he had purchased two firearms, and that the third belonged to a friend. He was charged with dangerous possession of a firearm a Class A misdemeanor.

During the delinquency hearing, R.B. objected to the admission of the guns and his confession. His objections were overruled. On appeal he argued that the search of his bedroom occurred without a warrant and without his consent; therefore, the seizure of the guns violated his 4<sup>th</sup> Amendment rights,



making his arrest and subsequent confession illegal. According to R.B., since he had to live in his mother's house or commit a delinquent act, "[his] expectation of privacy . . . is one society should see as justifiable under the circumstances." In Georgia v. Randolph, 547 U.S. 103 (2006), the Supreme Court recognized that, "people living together [who] fall within some recognized hierarchy, like a household of parent and child," might have a "societal understanding of superior and inferior" rights to use and enjoy the property. The Court of Appeals found that there was no serious question that it was "reasonable for an officer to rely on the voluntary consent of a minor's parent

to search the minor's bedroom inside the parent's home." The Court affirmed both the trial court's admission of the firearms and R.B.'s statement to the police.

## IMPLIED CONSENT REFUSAL

On September 24, 2015, the Court of Appeals issued its decision in Burnell v. State, \_\_\_ N.E.3<sup>d</sup> \_\_\_, (Ind. Ct. App. 2015). Officers stopped Burnell for moving violations. Burnell smelled of the odor of alcoholic beverages and failed all of the field sobriety tests. An officer read her the refusal information and warning and asked Burnell if she would submit to the chemical test for intoxication. Burnell replied,

"I don't know. I – I – I would really prefer if you would call my uncle." Pressed by the officer for a yes-or-no answer, Burnell made the following statements to the officer: "Yeah, yeah but – I'm an adult, but I, I . . . I can't get [sic] have another one . . . I got in trouble like two years ago. . . It was in Palm Beach. . . . Bruce is my uncle, and he's my best friend." Finally, the officer asked, "Are you willing to take the test or not? Okay?" Burnell ultimately replied, "Well if I refuse, I'm going to jail either way. So yeah, I guess I gotta take it." She then began to walk away from the officer, and he grabbed her arm to stop her. She told him not to touch her and began moving away from him again. The officer deemed her behavior a refusal and placed her under arrest.

Prior to trial, Burnell filed a petition for judicial review of the suspension of her driver's license for refusing the chemical test. At the hearing, both parties agreed there was probable cause to offer the test, but disputed whether she had refused the test. The trial court did not terminate her suspension. "I believe that the officer was appropriate in determining her behavior to constitute a refusal." The Court of Appeals upheld the trial court. When an officer advises a motorist of the consequences of refusing a chemical test, the warning must be in "absolute terms." Therefore, a motorist's response must also be unequivocal. "The statute as written leaves a motorist no room for negotiation or debate." Allowing an equivocal response would not comport with the mandatory language of I.C. 9-30-6-2. "Burnell's claim that she agreed to the test when she said, 'yeah I guess I gotta take it' is a request that we reweigh the evidence, which we will not do." This opinion drew a dissent and a concurring opinion. The concurring opinion did not agree that, "anything short of an unqualified, unequivocal assent to a properly offered chemical test constitutes a refusal." There appears to be no consensus on the standard to use in judging whether a person has consented to the chemical test for intoxication.

#### SEARCH AND SEIZURE CONSENT AND PROTECTIVE SWEEPS

On September 16, 2015, the Court of Appeals issued its decision in Bradley v. State, \_\_\_ N.E.3d \_\_\_, (Ind.Ct.App. 2015). An anonymous complaint alleged that drug dealing was occurring at a home. After conducting surveillance during which officers observed Bradley and Beatty arrive at and enter the home on numerous occasions, detectives approached the home, identified themselves and requested permission from Beatty to enter the home. After being granted entry, they detected the odor of burnt marijuana. They heard music and asked Beatty if anyone else were in the home, and Beatty replied that there was not anyone else. At that point they observed a male peer around the kitchen corner and retreat after he saw detectives. They ordered him into the living room, but he did not comply. Detectives then conducted a protective sweep of the kitchen. While in the kitchen, they observed digital scales, a small amount of cocaine, a glass jar with white residue, and baking soda on a counter in plain view. They brought the man they had observed and a third individual from an adjacent bedroom into the living room. They decided to sit Beatty and the two individuals on the couch while they completed their investigation. Before doing so, however, they lifted the cushions to search for weapons and found a small handgun. They then placed the three in handcuffs on the living room floor.

A short time later, Bradley pulled up to the home in his vehicle and entered the front door with a key. His left hand was in his coat pocket, and he did not comply with an order to remove his hand from his pocket. Detectives then searched him and recovered a baggie containing 30 grams of cocaine and a large amount of currency. After being read the Miranda warning, Bradley admitted to living in the home. Bradley moved to suppress all the evidence seized as a result of the warrantless entry into the home. The trial court found that the evidence detectives found in plain view during the protective sweep and the



evidence seized from Bradley's person was admissible. Likewise, it ruled the gun admissible. It found him guilty of dealing in cocaine, Class A felony; possession of cocaine and a firearm, Class C felony; and Possession of Cocaine, Class C felony.

On appeal, Bradley contended that the trial court should not have admitted the evidence found in plain view in the kitchen because Beatty did not have authority to consent to the detectives' entry, and the detectives did not have a reasonable concern for their safety before completing a protective sweep of the kitchen. A person has apparent authority to consent to a search if the facts available to the officer at the time would cause a person of reasonable caution to believe that the consenting party had authority over the premises. The Court found that police observation during surveillance of Beatty entering the home coupled with Beatty's actions in giving consent warranted the conclusion that the officers had a reasonable belief that Beatty had authority.

A law enforcement officer present in a home under lawful process may conduct a protective sweep when the officer possess articulable facts which would warrant a reasonably prudent officer in believing that the area to be swept harbors an individual posing a danger to those on the scene. The Court found the following factors justified the protective sweep. A male peered around the corner just after Beatty said no one else was in the home. The male retreated after seeing detectives and did not comply with the order to come out of the kitchen, into which they could not see. During surveillance they had seen heavy foot traffic in and out of the house, which, combined with the anonymous tip that they received concerning drug dealing, strongly indicated drug dealing was occurring and gave rise to the reasonable concern that occupants of the home would be armed.

The Court also analyzed the search under Article I, Section 11. As they had already found that Beatty had apparent authority to consent to the entry and did in fact consent, the detectives' reliance on his consent was completely reasonable. Their entry did not violate the Indiana Constitution. As for the protective sweep the Court found 1) the detectives had a high degree of concern for their safety because Beatty lied about being the only one present; 2) the additional intrusion into the kitchen was not significant because Beatty had already consented to their being in the home; and 3) the detectives' needs were substantial as they reasonably needed to verify their safety while continuing their investigation of drug activity inside the home. The protective sweep resulting in the discovery of drugs and contraband in the kitchen did not violated Article I, Section 11 of the Indiana Constitution. The denial of the motion to suppress was affirmed.

