Police Prosecutor Update

Issue No. 289
August 2016

SEARCH AND SEIZURE
CONSENT TO SEARCH

On July 7, 2016, the Indiana Supreme Court issued its opinion in the case of Bradley v. State, ___ N.E.3d ___ (S. Ct. Ind. 2016). The Court's opinion vacated the opinion of the court of appeals in 44 N.E.3d 7, which was briefed in Issue no. 280 of the Police Prosecutor Update (October, 2016). 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, detectives were again watching the home and observed Beatty arrive, approach and knock before being admitted to the home. A few minutes later, detectives decided to conduct a knock and talk, and Beatty, who had just arrived and been let in, answered the door. Detectives did not know who resided in the home. They requested admittance to the home, and Beatty consented. 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.

The Court framed the question as, "Does a houseguest, who happens to answer the door to a home shortly after he knocked to gain entry himself, have the apparent authority to consent to police entry?" As Beatty did not have actual authority to consent to a search, the test for evaluating apparent authority is whether "the facts available to the officer at the time would cause a person of reasonable caution to

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believe that the consenting party had authority over the premises." The facts in favor of apparent authority are that Beatty had entered the home on a prior occasion, and that Beatty answered the door when detectives knocked. However, on the day in question, Beatty had to be admitted to the home, and detectives did not know who lived in, owned or leased the home. Those facts did not demonstrate that police had a reasonable belief that Beatty had authority over the premises. The Court found that Bradley's motion to suppress should have been granted and all evidence seized after the entry should be suppressed.

SEARCH AND SEIZURE
SEAT BELT ENFORCEMENT STOP

On July 27, 2016, the Indiana Court of Appeals issued its opinion in the case of Harris v. State, ___ N.E.3d ___ (Ind. Ct. App. 2016). A state police trooper observed Harris and a passenger pass him in a vehicle, and they were not wearing seatbelts. He stopped the vehicle, and when Harris produced her driver's license, the officer immediately recognized her name as appearing on NPLEx reports in the past. He asked Harris where she was going, and where she was coming from. When the trooper confronted her about inconsistencies in her answer, she changed it and told him she was on her way to apply for food stamps. This response was inconsistent with her direction of travel. The trooper noticed she was "overly excited" during this brief exchange, so he asked if there were anything in the vehicle he needed to know about. He then returned to his vehicle and confirmed Harris had purchased pseudoephedrine 9 times in the past year, the most recent being 4 days prior to the stop. Upon further questioning Harris told him she had sold those pills for $20.00. The trooper obtained Harris's consent to search her vehicle and its contents, where he found methamphetamine. Harris admitted regularly smoking methamphetamine. The trial court denied Harris' motion to suppress.

The Court found that the trooper's investigation beyond the seatbelt violation contravened Indiana's Seatbelt Enforcement Act. I.C. 9-19-10-3.1. "[A] vehicle, the contents of a vehicle, the driver of a vehicle, or a passenger in a vehicle may not be inspected, searched, or detained solely because of a violation of [the Act]." The trooper's only basis for further questioning Harris was his recollection from NPLEx. Many people use pseudoephedrine medication for valid reason; their names would likewise appear in NPLEx. Absent additional circumstances suggesting an intention to manufacture methamphetamine, a person purchasing pseudoephedrine within legal limits would not cause an ordinarily prudent person to believe a crime has occurred or is occurring. The trial court was reversed.

SUFFICIENCY OF THE EVIDENCE
POSSESSION OF PARAPHERNALIA

On July 26, 2016, the Indiana Court of Appeals issued its opinion in the case of Perkins v. State, ___ N.E.3d ___ (Ind. Ct. App. 2016). Perkins was searched when he returned to a residential facility that was part of community corrections. The officer conducting the search found 2 syringe needles in a Newport cigarette pack. Upon realizing what the officer found, Perkins grabbed his clothing and ran. As he ran, he tossed his additional clothing. When Perkins was apprehended, Perkins spontaneously said, "it's not mine, it's not mine." Upon further investigation, a bottle cap containing heroin residue was discovered in the cigarette pack. Perkins was charged with and convicted of possession of a narcotic drug, escape, and possession of paraphernalia, a felony because of a prior conviction.

On appeal Perkins challenged the sufficiency of the evidence of the conviction for possession of paraphernalia. In his opinion the state failed to prove that he intended to use the syringe needles to

introduce a controlled substance into his body because it failed to offer evidence of track marks or past drug use, or evidence of heroin residue in or on the syringe needles, or that there was a usable amount of heroin in the bottle cap. Evidence of even a trace amount of a drug is relevant to the intended use of the paraphernalia. In this case evidence of intent was sufficient because Perkins was found to have possessed narcotics and instruments with which to introduce them into his body in a single location. He also fled from community corrections when the discovery was made, and his first response to officers was, "it's not mine." The trial court's verdict was affirmed.

SEARCH AND SEIZURE
WINDOW TINT ENFORCEMENT STOP

On July 26, 2016, the Indiana Court of Appeals issued its opinion in the case of Doctor v. State, ___ N.E.3d ___ (Ind. Ct. App. 2016). After receiving a court order allowing a GPS device to be placed on Doctor's car, detectives set up surveillance points along the Pennyrile Parkway and U.S. Highway 41 in Kentucky and southern Indiana. The lead detective identified Doctor's car in Henderson, KY, at 11:00 p.m. driving 30 miles an hour. It had dark tinted windows, and he was unable to tell how many occupants were in the vehicle or who was driving. He radioed to a motor patrol officer in Evansville that Doctor's car was approaching and that its windows were too dark to identify the occupants. Once Doctor's car crossed the state line, the motor patrol officer initiated the traffic stop based on a window tint violation. A canine officer arrived with his canine partner, and the dog indicated the presence of narcotics. Detectives obtained a search warrant, and the subsequent search revealed a "hydraulic trap" that contained two heat sealed bags of cocaine. Doctor was charged with dealing in cocaine and conspiracy to deal in cocaine, both class A felonies. Doctor filed a motion to suppress, which was denied; he then filed an interlocutory appeal.

Doctor asserted that the traffic stop was illegal; the window tint violation was pre-textual. The court found that the officers' testimony that they could not see the occupants of the vehicle provided reasonable suspicion to justify the traffic stop. It was not necessary that state be able to convict Doctor of the window tint violation; reasonable suspicion that he was in violation of the statute is all that is required. Further, because the court had in previous cases found that there are legitimate law enforcement and safety interests in prohibiting the operation of vehicles with excessive window tinting, the traffic stop was not contrary to Article 1, Section 11 of the Indiana Constitution. The court found that Doctor's motion to suppress was appropriately denied.

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