## Police Prosecutor Update

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## SEARCH AND SEIZURE INVENTORY

On January 19, 2016, the Indiana Court of Appeals issued its opinion in the case of Rhodes v. State, N.E.3<sup>d</sup> (Ind. Ct. App. 2016). The officer stopped the car driven by Rhodes and ultimately arrested him for driving while suspended. Before he towed Rhodes' car, the officer inventoried the glove box, passenger compartment and trunk. He found numerous personal items and miscellaneous items that he did not document. He also found a half-eaten pizza, a pizza delivery bag, and a jar of money. In the glove box he found a red metal grinder containing a small amount of marijuana. At a bench trial Rhodes moved to suppress the marijuana evidence. He ultimately was found guilty of Possession of Marijuana, a Class D felony. Rhodes alleged the inventory was a search that violated his 4<sup>th</sup> Amendment rights.

The Court found the inventory unreasonable because the state did not prove that the scope of the inventory complied with official police policy. The officers testified he conducted the inventory to make sure no valuables are left inside the vehicle before it is towed; if valuable items are found, the police may take them and put them in the IMPD property room to be held for safekeeping. The officer's testimony differed from his description of the procedure because he inventoried only those items that supported the marijuana possession charge. The Court distinguished Wilford v. State, 31 N.E.3d 1024 (Ind. Ct. App. 2015), discussed in last month's Police Prosecutor Update. The distinction the Court made is not particularly compelling. The lesson from these contrary holdings remains the same. Police departments should have a written policy and procedure for vehicle impoundment and inventory; that procedure should be introduced in court; and officers should follow that procedure diligently, especially by keeping a written record of the items they find during the inventory.

## SEARCH AND SEIZURE CANINE SNIFF

On January 29, 2016, the Indiana Court of Appeals issued its opinion in the case of Hansbrough <u>v.</u> State, \_\_\_ N.E.3<sup>d</sup> \_\_\_ (Ind. Ct. App. 2016). An officer stopped Hansbrough on the interstate for a moving

violation. While asking for license, registration and insurance, the officer observed what he believed to be marijuana shake. As the officer walked back to his car, he called for a canine officer. He then began typing out a warning ticket and running a records check. Sixteen minutes into the traffic stop, the canine officer conducted a dog sniff, which resulted in a positive indication for a controlled substance. Before the canine officer arrived, the motor patrol officer had returned to Hansbrough's vehicle to verify an address, had begun the paperwork, had checked his criminal record, and was on the phone waiting for the results of a warrant check when the canine unit arrived. A probable cause search of the car recovered a handgun, which Hansbrough admitted was his. Hansbrough had a prior conviction for battery, a



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Class C felony. A jury found Hansbrough guilty of unlawful possession of a firearm by a serious violent felon.

Hansbrough objected at trial to the admission of the gun because the dog sniff impermissibly prolonged the traffic stop. Rodriguez v. U.S., 135 S.Ct. 1609, 1612 (2015) held that "a police stop exceeding the time limit needed to handle the matter for which the stop was made violates the Constitution's shield against unreasonable seizures." The police may not extend an otherwise completed traffic stop, absent reasonable suspicion, in order to conduct a dog sniff. Here, the Court did not focus on whether the officer had reasonable suspicion (the marijuana shake). Instead, it found that the sixteen minutes it took for the dog sniff did not unreasonably extend the traffic stop. The Court's analysis was fact-sensitive; courts have invalidated searches resulting from vehicle stops lasting less than 16 minutes because they were prolonged by a canine sniff. The Court in this case noted that the dash camera established that the dog sniff occurred within 16 minutes of start of the traffic stop. The Court found believable the officer's testimony that he had not completed the paperwork and was on the phone checking for warrants when the sweep occurred. It appears that the key to these canine sniff cases is a reliable measurement of the duration of the stop and an accurate account of the officer's activity when the canine sweep occurs.

## SEARCH AND SEIZURE SEARCH INCIDENT TO ARREST

On January 21, 2016, the Indiana Supreme Court issued its opinion in the case of <u>Garcia v. State</u>, N.E.3d \_\_\_\_ (2016), overruling the decision of the Court of Appeals in <u>Garcia v. State</u>, 25 N.E.3d 786 (Ind. Ct. App 2015). In this case, a police officer observed Garcia driving a car without headlights after dark. Garcia did not have a valid driver's license, and the officer arrested him. The officer conducted a pat-down search for weapons and found a silver cylinder shaped container in Garcia's front left pocket. The officer opened the container. It contained hydrocodone, for which Garcia had no prescription. Garcia was convicted of possession of a controlled substance.

On appeal, Garcia asserted the search of the container was outside the scope of a permissible search incident to arrest and was unreasonable under Article 1, Section 11 of the Indiana Constitution. The court agreed with Garcia, finding under the <u>Litchfield</u> test that the degree of suspicion that a criminal violation had occurred was low, the degree of intrusion was high, and the law enforcement need was low. Therefore, it was unreasonable for the officer to open the container he found on Garcia.

The Supreme Court granted transfer and vacated the opinion of the Court of Appeals. As to the first prong of the <u>Litchfield</u> test, the degree of suspicion, the Court concluded that the officer did not need any additional degree of suspicion specifically in relation to the cylinder found in Garcia's pocket in order to open it incident to his lawful arrest. As to the second prong, the degree of intrusion upon Garcia's ordinary activities, the Court concluded that Garcia was already subject to lawful arrest, his vehicle was being towed, and he was being transported to the police station to be detained for a period of time. Thus, a brief pat-down and the subsequent opening of a container found during the pat-down, was not an extensive intrusion.

As to the third prong, the extent of law enforcement needs, the Court found that officer safety is a primary concern when taking a person into custody. Small, innocuous items have the potential to pose a threat. Therefore, there was no reason to delay the officer's ability to inspect the cylinder once it had already been lawfully seized.

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