

SEARCH AND SEIZURE INVENTORY

On December 7, 2015, the Indiana Court of Appeals issued its opinion in the case of Whitley v. State, ___ N.E.3^d ___ (Ind. Ct. App. 2015). Officers stopped Whitley's pickup truck because it displayed a passenger vehicle plate registered to a different vehicle. Whitley did not have a valid driver's license and could not produce registration. Officers confirmed that the truck was not registered to Whitley, and that Whitley's driver's license was suspended. The truck was parked partially in the roadway near the intersection of two streets. Officers impounded the truck and the junior officer began the inventory of the truck's contents. During the inventory, he found over 7 grams of methamphetamine, some Schedule IV pills and some paraphernalia. When arrested, Whitley had \$1,135.00 in his wallet. Neither officer recorded the contents of the truck on a tow ticket. The probable cause affidavit listed some of the contents they found, and an evidence technician photographed the interior of the truck, capturing the contents not recorded. Whitley was charged with, inter alia, Class A felony dealing in methamphetamine. Whitley filed a motion to suppress, which the trial court denied. Whitley was then granted leave to file an interlocutory appeal.

Whitley contended that the inventory was a pre-textual search for evidence of a crime because the police did not follow standard police procedures. A valid inventory is an exception to the warrant requirement. Inventories are allowed to protect the private property in police custody, to protect the police against claims of lost or stolen property, and to protect the police from possible danger. Evidence of established local procedure is required to ensure that the inventory is not a pretext for a general rummaging in order to discover incriminating evidence. Indiana statute authorized the impoundment of the truck without proper registration or license plate. The state also entered into evidence the standard operating procedure of the department for the tow and inventory of vehicles. That procedure specifically required a detailed listing of all items found in a vehicle during the inventory. The officers explained the steps they took to inventory the vehicle, which were in accord with the procedure, but neither officer made a detailed list of the contents on a tow ticket or any other document, except what was written in the affidavit of probable cause. According to the court, the officers appeared to have stopped the inventory once they found the contraband.

Because the decision to impound was unquestionably reasonable, no evidence was presented to suggest that officers were looking for evidence when they began the search, and an evidence technician took photographs that simultaneously made a record of the truck's contents and a record of the officers' failure to follow procedure, the court concluded that the inventory was not a pre-textual search and the subsequent discovery of criminal evidence was reasonable under the Fourth Amendment. If there is a lesson to be learned here, it is that police departments should have a written policy and procedure for vehicle impoundment and inventory, and that officers should follow that procedure diligently to avoid close calls like this that require appellate review.

SEARCH AND SEIZURE TERRY STOP

On December 7, 2015, the Indiana Court of Appeals issued its opinion in the case of Polson v. State, ___ N.E.3d ___ (Ind. Ct. App. 2015). A concerned citizen placed a 911 call to report a suspicious person walking down a country road. The caller described a man in a black t-shirt who appeared to be “under the influence of something” and who was “holding something underneath his shirt with his arm down straight.” The caller gave a physical description of the man and said he appeared to have a “pretty sizeable weapon tucked up underneath his shirt.” Approximately 9 minutes after receiving the dispatch, a sheriff’s deputy arrived and observed Polson who matched the description the caller gave. The deputy parked his car to face Polson and asked Polson to approach him. Polson responded, “I haven’t done anything wrong.” The deputy explained the suspicious person report, to which Polson replied that he was walking to a gas station. The nearest gas station was two-and-one-half miles away. According to the deputy Polson was sweating and acted nervous and “skittish.” The deputy asked Polson to show him what was under Polson’s shirt. Polson lifted up only one side of the shirt, which revealed nothing. The deputy asked to see the other side. Polson lifted that side, revealing the handle and top of a gun. Polson ultimately pulled the gun out and threw it into the ditch, saying, “You’ll never pin that on me, Bubba.” Polson did not have a handgun permit and was a convicted felon.

Polson filed a motion to suppress the handgun, and it was denied. At trial Polson was convicted of carrying a handgun without a license, a Level 5 felony. On appeal Polson asserted that the deputy did not have reasonable suspicion to conduct an investigatory stop because Polson was walking down a public road in a place he was allowed to be.

An officer may stop and briefly detain a person for investigative purposes if the officer has reasonable suspicion supported by articulable fact(s) that criminal activity may be afoot. Reasonable suspicion is determined on a case-by-case basis by considering the totality of the circumstances. Individually innocent facts, when observed in conjunction, can be sufficient to create reasonable suspicion of criminal activity. The court found there was reasonable suspicion for the stop. The caller was a concerned citizen, not anonymous. The caller gave a detailed description of both the suspicious person and the suspicious activity. When the deputy arrived, Polson matched the caller’s description. The deputy’s personal observations corroborated the caller’s: Polson’s explanation that he was walking to a gas station was suspicious because the nearest station was 2½ miles away. Polson acted nervous, was sweating and appeared to be under the influence of something. In response to the request to show what was under his shirt, Polson acted in an evasive manner and refused to comply before finally revealing the handgun.