

Police Prosecutor Update

Issue No. 295
February/March 2017

SEARCH AND SEIZURE PHYSICAL COPY OF SEARCH WARRANT

On January 17, 2017, the Indiana Court of Appeals issued its decision in Taylor v. State, ___ N.E.3d ___, (Ind. Ct. App. 2017). After finding Taylor passed out behind the wheel of his running car, police officers obtained a search warrant for Taylor's blood. A photograph of the signed warrant was sent by email to an officer's cell phone. Not satisfied with seeing a photograph of the signed search warrant, Taylor struggled with the officer before finally complying with the order. Taylor was charged with battery, resisting law enforcement and operating a vehicle while intoxicated. He filed a motion to suppress the blood draw evidence, which the trial court denied. An interlocutory appeal followed.

Taylor complained that the lack of a physical copy of the search warrant meant the officer did not have a search warrant at the time of the search. The Court first concluded that it was unnecessary for a law enforcement officer to serve the search warrant on the person to be searched. Furthermore, the Court found that "I.C. 35-33-5-8 contemplates a situation where the officer and judge do not exchange pieces of paper in order to procure a search warrant, and also contemplates an officer may not have a physical copy of the warrant in his or her possession at the time the warrant is executed." The statute requires a permanent record of the warrant proceedings and allows for the efficient use of technology. The denial of the motion to suppress was upheld.

CONSTRUCTIVE POSSESSION CARRYING A HANDGUN WITHOUT A PERMIT

On January 18, 2017, the Indiana Court of Appeals issued its decision in Erickson v. State, ___ N.E.3d ___, (Ind. Ct. App. 2017). Detectives were investigating Erickson regarding illegal sale of handguns. Erickson had shown the detective a handgun. A controlled purchase was scheduled. On the day of the purchase, surveillance officers witnessed Erickson place a black bag in the back of a car registered to someone else. Erickson got into the back seat behind the driver, and was driven into the county, after which officers stopped the car. Erickson jumped out of the car, yelled, and started "pumping up, throwing his hands, clinching his fists." When he charged the officers, a canine officer on scene deployed his partner, Boss. Boss was "boss," and Erickson was subdued. Officers obtained a search warrant for the car and found two empty firearm magazines and a loose round in the black bag in the trunk. Inside the car, under the driver's seat, officers located a Taurus handgun with the barrel pointed toward the rear. The gun was the same gun he had previously shown the detective. Erickson was charged with carrying a handgun without a license, enhanced by a prior conviction to a Level 5 felony, and resisting law enforcement. A jury returned a verdict on both counts.



On appeal Erickson argued that there was no evidence that he "carried" the handgun, and that the statute requires a person to be carrying, rather than possessing the handgun. The handgun statute

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“encompasses more than moving about with a firearm attached to one’s body.” The Court found that based upon the totality of the circumstances, sufficient evidence existed to establish that Erickson constructively possessed the handgun while seated in the vehicle.

ARREST WARRANT CASTLE DOCTRINE

On February 24, 2017, the Indiana Court of Appeals issued its decision in Jean-Baptiste v. State, ___ N.E.3^d ___, (Ind. Ct. App. 2017). A sheriff’s deputy went to Jean-Baptiste’s house to serve an arrest warrant that arose out of a civil action. The deputy drove his official car, wore his uniform and badge, and properly identified himself as a law enforcement officer. He explained to Jean-Baptiste that he had a “civil arrest warrant” and showed it to him. He told Jean-Baptiste to “turn around and place his hands behind his back.” Jean-Baptiste “impolitely” refused, while the deputy made numerous requests. Jean-Baptiste remained “in the threshold of the doorway.” The deputy reached across the threshold of the doorway and grabbed Jean-Baptiste’s right arm, but Jean-Baptiste forcefully yanked his arm away. The deputy then entered the house and arrested Jean-Baptiste for resisting law enforcement. Jean-Baptiste was found guilty of resisting law enforcement in a bench trial.

On appeal Jean-Baptiste asserted the evidence was not sufficient to find him guilty of resisting law enforcement because the deputy was not lawfully engaged in his duties as a law enforcement officer when, to effect a civil arrest warrant, he crossed the threshold of the defendant’s house to grab the defendant without permission or other legal justification. A civil arrest warrant is not a criminal arrest warrant. The government may not force entry into a private dwelling for the purpose of civil process. The Court found that as a matter of law, the deputy unlawfully entered Jean-Baptiste’s residence to effect civil process. Therefore, he was not lawfully engaged in the exercise of his duties, and Jean-Baptiste used reasonable force to prevent or terminate the deputy’s intrusion when he yanked his arm away from the deputy’s grasp. As a result, the state lacked sufficient evidence to support the conviction. The conviction was reversed.

WITNESS IDENTIFICATION IMPERMISSIBLY SUGGESTIVE SHOW-UP

On February 28, 2017, the Indiana Court of Appeals issued its decision in Albee v. State, ___ N.E.3^d ___, (Ind. Ct. App. 2017). The victim was taking a shower in her sorority house at night when she noticed a tall figure, dressed in dark clothing, standing outside the shower door. She waited for a minute, and the shower door, fastened by a magnetic closure, opened about one inch. She pulled the door closed, and the figure moved away. After she returned to her bedroom, she heard her bedroom door open. She looked up and saw the reflection of a man in the full-length mirror on the door that connected the two rooms of her suite. She and the man briefly “made eye contact” in the mirror. The man left and she called the police. She described him as 40 years old wearing a hooded navy blue sweatshirt and jeans. He had dark, curly hair that was matted on his forehead and was not wearing a hat. Officers arrived and searched the area and found Albee in the parking lot adjacent to the sorority house about an hour and forty-five minutes later. Officers accompanied the victim to the lot and asked if she could identify Albee as the man she saw in the house.

Albee was about 30 yards away from her, was in handcuffs with 6 officers around him, and was wearing a hat. He was illuminated by a spotlight from a police car. In addition, an officer took a picture of him with a digital camera and showed it to the victim. The victim was not completely sure Albee was

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the man. The officers then asked the victim to go to the police station to view him in better lighting. There she was able to watch Albee in a room by himself via closed circuit television. The officers took pictures of Albee, both with and without his hat. They did not compile a photo array or organize a line-up. The victim identified the image of Albee in the photograph as the man she saw in her house.

Albee was charged with voyeurism, residential entry, and the habitual offender enhancement. He filed a motion to suppress the victim's identification, and the court denied the motion. After a second jury trial, Albee was convicted of both criminal counts, and appealed his convictions, claiming that the trial court should not have admitted testimony regarding the victim's pretrial and in-court identifications.

Both the U.S. and Indiana Supreme Courts have found the practice of one-on-one show-ups between a suspect and a witness to be inherently suggestive, but not always unreliable. The victim first observed Albee in handcuffs and surrounded by 6 officers illuminated by spotlight. In part due to the poor lighting, she was unable to identify him with certainty. So officers offered her another chance at the police station with better lighting. The victim testified that he was the only person in the area who matched the description of the man she saw in her bedroom. Given two more opportunities to view him – watching him via closed circuit television for an unspecified amount of time and by viewing him in digital photographs – she knew he was in custody and that he was the same man she saw in the parking lot. After three opportunities to view him, she was finally able to positively identify him. The Court also found that no exigent circumstances precluded a line-up or a photo array for the victim to view. Therefore, the manner in which the police conducted the show-ups was unnecessarily suggestive.

The victim's initial observation of her intruder was very brief. She did not view Albee in the parking lot until almost two hours later. After her initial inability to identify Albee as her intruder, the police gave her additional opportunities to view their only suspect until she was able to do so. The Court found her eventual identification to be unreliable. Therefore, the show-up violated Albee's right to due process. Finally, the victim's in-court identification was tainted by the prior, unduly suggestive viewings. The pretrial and in-court identifications should not have been admitted, and Albee's conviction was reversed.