Police Prosecutor Update

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SEARCH AND SEIZURE
PASSENGER IN A VEHICLE

On December 21, 2016, the Indiana Court of Appeals issued its decision in Thomas v. State, ___ N.E.3d ___, (Ind. Ct. App. 2016). Based upon information from an informant, officers set up surveillance on a white Dodge Caravan at a hotel. Thomas and another man, both matching descriptions given by the informant, got in the van and left the parking lot. The van improperly signaled a lane change, and a uniformed officer made the traffic stop. Thomas was in the passenger seat. The driver gave officers consent to search the van. A drug detection canine alerted next to the driver's door. The officers then got the driver and Thomas out of the van and conducted a pat-down. The found no drugs in the van. They asked for consent to do a strip search at the station and informed them that they would seek a search warrant if they declined. The driver agreed, but Thomas declined. Police took Thomas to the police station into an interview room and observed him take something from his jacket pocket and put it in his mouth. When he refused to open his mouth, they forced it open and discovered a baggie containing 8.5 grams of heroin. A jury found Thomas guilty of dealing in a narcotic drug.

On appeal, Thomas argued that the police lacked probable cause to arrest, detain, move and subsequently search him after the traffic stop. Dog sniffs are sufficient to establish probable cause. Therefore, police had probable cause (and the consent of the driver) to search the van. However, when they failed to find drugs in either the van or on the driver, they no longer had probable cause particularized to Thomas. A person who is merely in a suspected car does not lose immunity from the search of his person to which he would otherwise be entitled. The Fourth Amendment does not authorize a "process-of-elimination practice absent information particularized" to the individual under suspicion. Therefore, the police lacked probable cause to search his person or take him into custody. Their subsequent observation of his attempt to conceal the heroin on his person was fruit of the poison tree. The court ordered his conviction reversed.

SEARCH AND SEIZURE
DYNAMIC ENTRY

On January 6, 2017, the Indiana Court of Appeals issued its decision in Watkins v. State, ___ N.E.3d ___, (Ind. Ct. App. 2016). A confidential informant told detectives that he had observed more than 10 grams of cocaine, marijuana and a firearm in a residence known to be occupied by a Frederick Jackson. Jackson was known to police narcotics detectives. During surveillance, detectives determined that one resident was Mario Watkins. Watkins had a prior burglary conviction. A search for the residence was obtained. While a SWAT team was being assembled, they were informed that a woman and three men were inside the residence. Also, a person fitting the description of Watkins was seen taking out the trash. Three officers went to the rear of the residence. Nine officers approached the front. At 10:30 a.m., police knocked and announced "Police – search warrant – police – search warrant." Another officer announced over the loud speaker "search warrant" and the address. A second later, they knocked down

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the door with a battering ram. One SWAT officer had a camera attached to his helmet and was responsible for deploying a flash bang.

The video of the entry showed that at time stamp 4:01 the door was rammed open. At 4:02 the flash bang was tossed into the house, and it detonated at 4:04. Prior to tossing the flash bang in, an officer yelled, "flash bang, flash bang, flash bang." The device detonated 6 inches inside the door. Afterward, detectives entered, and one of them picked up a crying baby in a playpen just inside and very close to the door. A car seat and a toddler's activity center were within the line of sight of the front door. The flash bang officer did not see the baby, nor did his camera capture the child. Meanwhile, the officers in back smashed a kitchen window and tossed a flash bang into that room, setting off the smoke detectors. Watkins was in another room and offered no resistance; he stated everything they would find in the house belonged to him. The police also found two men and a woman inside as well as cocaine, marijuana and .40 caliber handgun. The trial court denied his motion to suppress, and Watkins was found guilty of possession of cocaine, possession of a schedule II controlled substance, possession of marijuana, and maintaining a common nuisance. He received two years on work release.

The court analyzed this search under Article 1, Section 11 of the Indiana Constitution and applied the three-part Litchfield test even though this search was authorized by a warrant. The Court concluded that while there was a considerable degree of suspicion, the extent of law enforcement needs for a military-style assault was low, and the degree of intrusion was unreasonably high. "Under these specific circumstances and particularly in light of the use of a flash bang grenade in the same room as a nine-month old baby who was 'very close' to where the flash bang was deployed, the State has not demonstrated that the police conduct was reasonable under the totality of the circumstances." Watkins' convictions were reversed.

The majority opinion drew a strong dissent. "If we are going to ask police officers, as protectors of the general public's safety and security, to enter the home of four adults, one of whom is a violent felon in possession of a handgun who sells drugs out of the house, I believe we must allow those officers some means by which to protect themselves from the danger that can be inherent in such an entrance."

It is rare that a court suppresses evidence found in executing a valid search warrant, for the reason that the means of executing the warrant was unreasonable. It is difficult to articulate exactly what the police officers did wrong, except to fail to know that a baby would be inside. One would hope that a petition to transfer would be filed.

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