

# Police Prosecutor Update

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## SEARCH AND SEIZURE UNLAWFUL ARREST

On March 22, 2018, the Indiana Court of Appeals issued its decision in Wilson v. State, \_\_\_ N.E.3d \_\_\_ (Ind. Ct. App. 2018). A resident of a duplex called 911 and reported a car parked in the yard on the unoccupied side of the duplex. The occupants of the car did not respond when someone knocked on the window. The police knew the area for prostitution and drug activity, and the area was known as a high crime area. An officer was dispatched to the duplex and found the car as described with two people in it, but parked in the lot of a nearby apartment complex. The officer recognized the passenger as someone with a history of prostitution and drug use. Wilson was the driver, and he got out of the car but immediately bent back into it and reached toward the center console. The officer drew his weapon and ordered Wilson to show his hands. Wilson complied. When asked if he were hiding anything, Wilson responded in the negative and told officers they could search the car. Officers patted Wilson down and placed him in handcuffs. After handcuffing him, they asked Wilson at least two times if they could search the car. At no time did they read him Miranda or Pirtle rights. They took Wilson about 20 feet away from the car, and got his passenger out and handcuffed her. When they searched the car, they did not find anything in it. However, they found a bag of marijuana near the rear, driver's side tire, about two feet away. A second officer searched the car and, after popping open a loose part of the center console found a bag containing heroin and methamphetamine.

Wilson was charged with dealing in a narcotic drug, dealing in methamphetamine, and possession of both a narcotic drug and methamphetamine. Wilson filed a motion to suppress, which was denied. He was granted leave to file an interlocutory appeal. Wilson asserted that his 4<sup>th</sup> Amendment rights were violated when officers detained him without reasonable suspicion and arrested him without probable cause when they handcuffed him at gunpoint.

"An arrest occurs when a police officer interrupts the freedom of the accused and restricts his liberty of movement." Sears v. State, 668 N.E.2d 662, 667 (Ind. 1996). Wilson was ordered to show his hands at gunpoint and handcuffed. A reasonable person in his position would not have felt free to leave. His leaning in the car and reaching toward the console was not enough, by itself, to constitute probable cause for an arrest. The court concluded that Wilson was under arrest, but because the arrest was not supported by probable cause, the items seized as a result of the subsequent search were "fruit of the poisonous tree." Therefore, Wilson's motion to suppress should have been granted.

## SEARCH AND SEIZURE UNLAWFUL ARREST

On March 29, 2018, the Indiana Court of Appeals issued its decision in Glasgow v. State, \_\_\_ N.E.3d \_\_\_ (Ind. Ct. App. 2018). An officer observed two cars, one with its flashers on, parked on the shoulder of the highway. Glasgow and Hunt were standing near the cars. The officer stopped behind the cars and activated his emergency lights. Glasgow, the driver of the rear car, approached the officer, who

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recognized Glasgow from prior interactions. Glasgow told the officer that he had a flat tire, and Hunt was assisting. Neither of them possessed a driver's license, and both had suspended driver's licenses. Glasgow's car was uninsured, and his license plate was registered to another vehicle.

The officer asked Glasgow and Hunt if they could arrange a ride home. A second officer arrived on scene, and he recognized both Glasgow and Hunt from previous interactions. The second officer observed Hunt bend down behind the open door of Glasgow's car. The officer asked Hunt what he was doing, and Hunt replied that he was tying his shoe. The officer walked to the area where Hunt had been and observed a black jewelry box beneath a rock one and a half feet from the front tire. He opened the box and found a clear bag of heroin. He arrested Hunt. While this was happening, Glasgow was standing with the first responding officer by Hunt's car while charging his cell phone so that he could call for a ride. The second officer, after placing Hunt in his squad car, asked Glasgow if the jewelry box belonged to him. Glasgow denied it. Before patting Glasgow down, the officer asked if he had any needles on him that would "poke us or stick us." Glasgow responded that he had a syringe and pulled it from his left pocket. The syringe had residue inside. Glasgow was ordered to empty his pockets, which he did. Officers then asked if he had any drugs on his person, and Glasgow pointed to a folded piece of paper that he had placed on the hood of the car when he emptied his pockets. He told the officers that it contained heroin. Glasgow was charged with possession of a narcotic drug and unlawful possession of a syringe.

Glasgow filed a motion to suppress the heroin and the syringe. The trial court granted the motion as to the heroin Glasgow placed on the hood of the car. After a bench trial, Glasgow was found guilty of possession of the syringe, and not guilty of possession of a narcotic drug. He pled guilty to the habitual offender enhancement.

Glasgow appealed, contending the trial court erred in admitting the syringe because officers were not justified in stopping him and conducting a pat-down. With regard to the stop, the initial encounter between Glasgow and the officers was consensual. Upon the discovery of the heroin after Hunt bent down in a suspicious manner, the consensual encounter became nonconsensual, a Terry stop. The Court found the Terry stop justified by reasonable suspicion that criminal activity, possession of narcotics, had taken place and further investigation was necessary. Under state constitution analysis, the court found a high degree of suspicion that a violation had occurred, the degree of intrusion minimal as Glasgow's freedom was curtailed only after the heroin was found seemingly abandoned, and the extent of law enforcement needs relating to Glasgow's and Hunt's involvement to be high.

With regard to the patdown, the court did not reach the issue of whether the patdown was reasonable because the syringe was not the product of a search. As part of the investigation, but prior to conducting the patdown, the officer asked Glasgow if he had any needles or weapons. "The question was asked during a lawful stop; the question was justified by the officer's legitimate concern about being stabbed or poked with a used needle; and the questioning did not materially extend the duration of the stop or the nature of the intrusion." The judgment of the trial court was affirmed.