

Police Prosecutor Update

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SEARCH AND SEIZURE LOCKED CONTAINERS

On January 15, 2019, the Indiana Court of Appeals issued its decision in Brown v. State, ___ N.E.3d ___ (Ind. Ct. App. 2019). Police had obtained a search warrant for Brown's residence, to search "buildings, structures, vehicles, fenced-in areas, and any other enclosed area and/or closed container anywhere on the premises" Brown showed up during the search and was arrested pursuant to a warrant. He was advised of the Miranda warning, which he indicated he understood, and placed in the back of a squad car. While there, he told the police where they would be able to find contraband and finally advised police to look in a safe in the bedroom and gave them the combination. The police opened the safe, and found over 100 grams of methamphetamine, and about \$9,000.00 in cash, some of which the police were able to confirm was pre-recorded buy money.

Brown filed a motion to suppress the evidence in the safe and argued that the police should have advised Brown of his Pirtle rights prior to opening the safe, or they should have gotten a second warrant for the safe. The trial court denied the motion to suppress, but granted the defendant's request for an interlocutory appeal.

As to the defendant's argument that the officers should have advised him of his Pirtle rights before getting the combination to the safe, the court of appeals found that a Pirtle advisement cannot be necessary when police have a search warrant because Pirtle was intended to help citizens protect the same rights that a search warrant protects. Getting the combination from Brown merely helped Brown protect his property from destruction during the search warrant. Brown also argued that the authority granted by the warrant to search a "closed container" did not include the authority to open a locked container, such as a safe. The court found that the warrant authorized the police to search for drugs, and that authority include any container on the premises that might reasonably conceal drugs. They were not required to obtain a second search warrant for the safe because it was already included in the list of areas that the warrant permitted searching. Therefore, police did not need Brown's consent to open his safe. The denial of the motion to suppress was affirmed.

SEARCH AND SEIZURE REASONABLE SUSPICION FOR A TRAFFIC STOP

On January 10, 2019, the Indiana Court of Appeals issued its decision in State v. Bouye, ___ N.E.3d ___ (Ind. Ct. App. 2019). A police officer observed a white Saturn operating on a public street and conducted a computerized license plate check (using IDACS); the plated returned to a Jeep Renegade. He then stopped the Saturn, which Bouye was driving, and during the stop discovered some marijuana and evidence that Bouye was intoxicated. Bouye moved to suppress that evidence and alleged that the officer did not have reasonable suspicion to stop him. At the hearing, Bouye's wife testified that about a month prior to the arrest, she purchased the Saturn and registered it with the BMV a day later. After

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selling the Jeep, she transferred the plate to the Saturn and re-registered the plate with the BMV. She was able to provide the court with the receipts for these transactions. The trial granted the motion to suppress, and the State appealed.

Routine license plate checks showing potential improper registration are enough to create reasonable suspicion. At the time of the stop, there was substantial evidence that the officer had “an objective, reasonable suspicion” that Bouye had committed an offense. “The fact that Bouye’s wife, at the suppression hearing, proved that Bouye had not violated the law regarding the license plate . . . is beside the point.” The stop and the resulting seizure were still constitutional. The trial court’s granting of the motion to suppress was reversed.