

Police Prosecutor Update

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REASONABLE SUSPICION TRAFFIC STOPS

On February 27, 2019, the Indiana Supreme Court issued its decision in Marshall v. State, ___ N.E.3d ___ (Ind. 2019). Using his radar detector, an officer observed Marshall's car to be traveling faster than the posted 50 mile per hour speed limit. The officer stopped Marshall, intending to write him a ticket for speeding. After the stop, he and another officer began investigating Marshall for operating while intoxicated, and the officer opted not to write Marshall a ticket for speeding. As a result, the officer did not document the speed at which Marshall had been traveling. Marshall was charged with operating while intoxicated. When the officer was later deposed, he could not remember the speed Marshall registered on the radar detector. Marshall moved to suppress all evidence resulting from the traffic stop, alleging that Marshall had been illegally seized because the officer lacked reasonable suspicion to stop him for speeding. At the suppression hearing, the officer testified that while he still could not remember the speed at which his radar detector indicated Marshall was traveling, he remembered that it was above the posted speed limit. On the basis of the officer's testimony, the court denied the motion to suppress.

The Court of Appeals reversed the trial court, holding that the officer did not have specific articulable facts to support the traffic stop. On transfer, the Supreme Court affirmed the trial court. The reasonable suspicion standard does not require an officer document the driver's speed. Reasonable suspicion "is not readily quantifiable and cannot be 'reduced to a neat set of legal rules.'" It requires only a "particularized and objective basis for suspecting." The officer's testimony provided enough objective and articulable facts to believe Marshall was speeding when the officer initiated the traffic stop. The stop did not violate the 4th Amendment. Applying the 3-part analysis, the court further found that the stop did not violate Article I, Section 11 of the Indiana constitution. Based on the radar indications, the officer had a high degree of knowledge Marshall was speeding. The traffic stop at 2:40 a.m. on a road with little or no traffic amounted to a small intrusion into Marshall's activities. Finally, law enforcement has a legitimate and compelling need to enforce speed limits.

SEARCH WARRANTS DECEPTIVE STATEMENTS

On February 13, 2019, the Indiana Court of Appeals issued its decision in State v. Vance, ___ N.E.3d ___ (Ind. Ct. App. 2019). A sheriff's investigator used a confidential informant (CI) to make 3 controlled buys of cocaine from the target. On the first occasion, the target went to a hotel before delivering the cocaine to the CI. On the second occasion, the target went to a residence before the delivery. On the third occasion, the target was driven to a street corner from which he walked north. Police surveillance of the target was interrupted for a period of time, but was restored when the target was observed leaving Vance's residence, after which he delivered cocaine to the CI. The detective then prepared a search warrant for Vance's residence, stating that controlled purchases were made "from the same unnamed target." The warrant was executed and cocaine and marijuana were found.

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Vance was charged, and he moved to suppress the evidence obtained from the search of his house. He alleged material facts had been omitted from the warrant, and it was not supported by probable cause. At the hearing, it was ascertained that Vance was not the target, and that the target had not been searched as part of the controlled buys. The trial court suppressed the evidence.

If an affidavit of probable cause includes a false statement made knowingly, intentionally or with a reckless disregard for the truth, and when that false statement is set aside, the affidavit's remaining content is insufficient to establish probable cause, then the search warrant must be voided. "A properly conducted controlled buy will permit an inference the defendant had prior possession of a controlled substance." In this instance, a previously searched buyer did not enter Vance's residence; the uncontrolled target entered Vance's residence. Simply seeing the target leave Vance's residence, the court held, would not lead a reasonable person to believe that a search of the residence would uncover evidence of drug dealing. Therefore, the search warrant was not supported by probable cause. The Court also found that the good faith exception to the exclusionary rule did not apply. The affidavit permitted an inference that the target and Vance were the same person, when in fact they were not. The likelihood that evidence would be found at the home of a dealer is greater than the likelihood evidence would be found at a place the dealer visited. "The good faith exception will not reward the creation of a misleading impression to avoid the clear absence of probable cause." The trial court's order suppressing the evidence was upheld.

THEFT DISCARDED TIRES

On February 11, 2019, the Indiana Court of Appeals issued its decision in Smith v. State, ___ N.E.3d ___ (Ind. Ct. App. 2019). Smith and an accomplice entered the premises of a tire dealership and entered the enclosure where used tires were stored. Smith and her accomplice removed several used tires and drove away with them. An employee observed them and called police. The police apprehended Smith and her accomplice with the used tires. The dealership did not sell used tires or give them away. After being removed from a customer's car, the tires were stored in a fenced area that was to be kept locked (on the day in question it had been inadvertently left unlocked) and that was marked with a sign warning of video surveillance. The dealership paid a contractor to remove the tires from the enclosure to dispose of or recycle them. This procedure was undertaken to prevent legal exposure from accidents that could result if they delivered old, worn-out tires.

Smith was charged with theft. During the trial she moved for a directed verdict on the basis that the tires had no value. The trial court denied her motion, and the jury subsequently convicted her. On appeal she challenged the evidence as insufficient because the tires were not property within the meaning of I.C. 35-43-4-2 because the State failed to establish that they had value. The court disagreed. The fact that these used tires, according to witnesses, could be sold by an unauthorized dealer and that they were taken without permission, pointed to "the logical inference that the tires retain some value after they are removed from vehicles." The conviction was affirmed.