

Police Prosecutor Update

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REASONABLE SUSPICION TERRY STOP AND FRISK

On April 10, 2019, the Indiana Court of Appeals issued its decision in Smith v. State, ___ N.E.3d ___ (Ind. Ct. App. 2019). Dispatch issued a “shots fired” run, indicating that gunshots were fired from a gray or silver SUV in the area of Market Street in downtown Indianapolis. The information came from an anonymous caller who noted that the vehicle had damage “all over” it. When the officer responded, he arrived at the corner of Delaware and Market Streets and observed a vehicle matching that description. The vehicle was stopped, and Smith was the driver and had two passengers. Several officers approached the SUV with guns drawn and instructed Smith and his passengers to get out, after which they placed Smith and the passengers in handcuffs. The original responding officer observed a handgun on the driver’s side floor in plain view. After Miranda, Smith admitted the gun was his and he did not have a license for it. At his bench trial, Smith moved to suppress the handgun on the grounds that the search violated the Fourth Amendment and Article I, Section 11 of the Indiana Constitution. The trial court denied the motion and found Smith guilty of possessing a handgun without a license.

On appeal Smith alleged police violated his 4th Amendment rights when they stopped the vehicle based upon an anonymous report. An anonymous tip is ordinarily not sufficient to provide reasonable suspicion unless it predicts future behavior or it gives “eyewitness knowledge of alleged dangerous activity and accurate information identifying the suspect.” In this case, the anonymous caller called an emergency number, gave a specific description of the vehicle’s color and model (Trailblazer) with damage all over, and gave a statement that “gunshots were coming from that vehicle,” indicating the caller was an eyewitness. The caller also gave a specific location, where the police actually located the vehicle. Therefore, the anonymous tip had sufficient indicia of reliability. Smith also contended the stop went beyond the limits of a Terry stop because police approached him with weapons drawn, ordered him out of the vehicle and handcuffed him. The court found, however, that the police had reasonable suspicion that a person or persons in Smith’s vehicle were shooting guns out of the vehicle and were, therefore, armed and dangerous. The officers’ actions were reasonably related to the justification for the stop. The Court also found the stop was constitutional under Article I, Section 11.

SEARCH AND SEIZURE TRAFFIC STOP

On April 8, 2019, the Indiana Court of Appeals issued its decision in Washburn v. State, ___ N.E.3d ___ (Ind. Ct. App. 2019). Washburn was the target of a narcotics investigation. A narcotics officer observed Washburn’s car commit a traffic infraction and pulled Washburn over. Washburn was “shaking to the point where he couldn’t even get his driver’s license out.” He would not make eye contact, was breathing heavily, and kept reaching toward the back seat. The officer ran a warrant check and asked for backup and a canine. Washburn had a warrant for his arrest; the officer placed Washburn under arrest and summoned a wrecker to tow the vehicle because it was blocking traffic. A narcotics

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canine arrived 4 to 6 minutes after being called. The canine jumped into the car and indicated on a backpack in the back seat. Inside the backpack was a small locked safe. The canine then indicated on the safe. When he saw the safe, Washburn told police they weren't allowed to search it and refused to give officers the code or the key. Officers opened it with a pry bar and found methamphetamine, a gun and a digital scale. Washburn filed a motion to suppress, which was denied. He was subsequently convicted of two felonies.

On appeal Washburn alleged that the items in the safe were seized in violation of Article I, Section 11 of the Indiana Constitution because police used a pry bar to open the locked safe found in the backpack in the car. Using the 3-factor test in Litchfield v. State, the Court found that the degree of concern, suspicion or knowledge that police would find contraband was high because of Washburn's behavior after the stop along with the canine indication of drugs. The Court found the degree of intrusion was low despite opening a locked safe. Because the canine alerted to the safe after Washburn had already been arrested, the intrusion into Washburn's ordinary activity caused by forcing open the safe was "very low." Regarding the extent of law enforcement need to open the safe, the Court found it was relatively low because there was no shortage of time for the officers to get a search warrant. However, balanced against the other two Litchfield factors, "the weight favors a determination that" the search of the safe was reasonable. The felony convictions were upheld.

The facts of this case indicate that officers were preparing to tow the vehicle which would have allowed them to inventory it. However, the Court in a footnote reminds us that law enforcement officers are not permitted to open locked containers discovered in an inventory. A careful analysis of this case leads also to the conclusion that officers should be careful about opening locked containers found in a vehicle even when there is probable cause. Had Washburn not been under arrest on an outstanding warrant, for example, the Court of Appeals may have ruled to suppress the evidence. The best advice here is, when in doubt, to get a search warrant.