

# Police Prosecutor Update

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## SEARCH AND SEIZURE PATDOWN FOR WEAPONS

On August 15, 2019, the Indiana Court of Appeals issued its decision in Peele v. State, \_\_\_ N.E.3d \_\_\_ (Ind. Ct. App. 2019). Two officers stopped a vehicle, in which Peele was a passenger, for a traffic violation. One of the officers observed that Peele’s “throat was throbbing, he avoid[ed] eye contact . . . rubbed his palms on his sweatpants multiple times, . . . patting his jacket and pants pockets. And then he began to reach in the area of the center front armrest retrieving metal tools.” At that point the officer removed him from the car and performed a weapons patdown. He felt a large object in the front of Peele’s waistband not “consistent with the human anatomy.” As he moved Peele, who was now in handcuffs to the trunk of the vehicle, the other officer observed a sock roll out of Peele’s pant leg. The officer retrieved the sock, searched it and found methamphetamine, marijuana and buprenorphine.

Peele moved to suppress the drugs; the trial court denied his motion, and Peel was convicted in trial by jury. On appeal, Peele alleged that the search of the sock exceeded the scope of the otherwise permissible patdown for weapons. The court found that the State could not justify the search of the sock based on “plain feel” because the officer did not testify that it was immediately apparent that the bulge he felt was contraband. It found that Peele had not abandoned the sock because it had apparently rolled out of his pants; thus, Peele had lost control of it involuntarily rather than tossed it away. Once the sock fell, it was no longer in his control. Therefore, the principal reason for the weapons patdown, that Peele was armed and dangerous, was no longer valid. “[R]ather than pushing the sock aside and obtaining a warrant, [the officer] conducted a general search . . . In doing so, he broadened the scope of the Terry search beyond its protective purpose.” Peele’s conviction was reversed.