

Police Prosecutor Update

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SEARCH AND SEIZURE NEW CRIME EXCEPTION

On November 13, 2019, the Indiana Court of Appeals issued its decision in State v. Serrano, ___ N.E.3d ___ (Ind. Ct. App. 2019). A police officer responded to a dispatch of an armed robbery in progress and observed a white Cadillac Escalade leaving the neighborhood at a high rate of speed. The officer relayed the information to dispatch, but did not tell dispatch that he did not know if the Cadillac was involved in the robbery. A police detective heard the dispatch about the white Cadillac and observed a white Cadillac stopped at a traffic light. He pulled his car in front of it and observed three people in the car. He and several officers ordered them out of the car. Julio Serrano exited the back of the car, pushed between two officers and ran across the street “pulling a firearm.” He fumbled the firearm, regained possession of it, and then faced the officers. The detective then shot Serrano, and officers recovered the firearm. Serrano was charged with unlawful possession of a firearm by a serious violent felon and was alleged to be a habitual offender. Serrano filed a motion to suppress and argued no evidence supported the Cadillac’s involvement in the robbery. The trial court denied the motion. Serrano then filed a supplemental motion to suppress and introduced the responding officer’s bodycam video which did not show a white Cadillac at all. After that hearing, the trial court granted the defendant’s motion and ordered the evidence suppressed. The court denied the state’s motion to correct error, and the state appealed.

Evidence obtained in violation of the Fourth Amendment may still be used against a criminal defendant if the seizure of the evidence is sufficiently attenuated from the constitutional violation. For example, if the defendant commits a new crime between the constitutional violation and the seizure of the evidence, the seizure may be untainted by the constitutional violation. In order for the taint of an illegal search to be purged, the courts assess these factors: the proximity in time between the unconstitutional conduct and discovery of the evidence, the presence of intervening circumstances, and the flagrancy of police misconduct. Further, under the Indiana constitution, “if the defendant’s response is itself a new and distinct crime, then evidence of the new crime is admissible, notwithstanding the prior illegality of police behavior.”

Without deciding if the detective had reasonable suspicion to stop the white Cadillac, the court of appeals found that the new crime exception applied to the seizure of Serrano’s gun. Serrano “pushed past two officers, ran from them and fumbled with a handgun. This conduct and the discovery of Serrano’s gun constitute a new crime.” The trial court’s grant of the motion to suppress was reversed, and the case remanded.

SUFFICIENCY OF THE EVIDENCE CRIMINAL TRESPASS

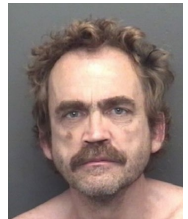
On December 4, 2019, the Indiana Court of Appeals issued its decision in Kifer v. State, ___ N.E.3d ___ (Ind. Ct. App. 2019). The Civic Center Complex consists of three buildings that house city

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and county government agencies, the courts and the police department. In 2005, the general manager of the building authority, which manages the Civic Center Complex, mailed to David Kifer a letter informing him to “please be advised that you are no longer permitted to be in the Civic Center Complex.” In 2009, Kifer was sentenced in an unrelated case, and the trial court, referencing the earlier ban, suggested he contact the sheriff’s office several days in advance if he needed to enter the building, so that a deputy sheriff could escort him to the office he needed to visit. On March 4, 2019, Kifer went to the police department to report a crime. He entered the Civic Center Complex, went through the security protocol, went to the police department to make the report and was arrested. He was charged with criminal trespass, which was enhanced to a felony because of a prior conviction. In a trial from the bench, he was found guilty. Kifer appealed and alleged the evidence was not sufficient to convict him of trespass.

In order to be found guilty of criminal trespass, the court had to find that Kifer entered the property of the building authority having been denied entry by an agent of the building authority. The general manager testified that the building authority owns the Civic Center Complex and leases it to the city and the county departments who have offices in the complex. He banned Kifer after being “notified by judicial officers, law enforcement officials, elected department heads” of Kifer’s behavior. The court of appeals found that the general manager was not the agent of judicial officers, law enforcement officials, or elected department heads, “and therefore cannot derive his authority from them, absent a specific court order.” Therefore, the general manager did not have authority to ban Kifer from the Civic Center Complex.

Kifer also alleged that an agent cannot ban a person “forever and permanently from a public building.” The court of appeals agreed. Indiana’s trespass statute is a general statute, which does not grant officials authority to permanently ban people from public facilities. Only after Kifer had peacefully entered the Civic Center and reported a crime was he arrested on the authority of a fourteen-year-old letter. Because the police station is a facility designed to protect the public, including Kifer, the court found it unreasonable to allow a citizen to be banned permanently from the premises. The conviction was reversed.



Kifer is not new to the appellate process. In addition to this decision, he is a party in two other published appellate court decisions: Kifer v. State, 740 N.E.2d 586 (Ind. Ct. App. 2000); Kifer v. Ellsworth, 346 F.3d 1155 (7th Cir. 2003).