

Police Prosecutor Update

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SEARCH AND SEIZURE SEARCH INCIDENT TO ARREST

On December 19, 2019, the Indiana Court of Appeals issued its decision in Johnson v. State, ___ N.E.3d ___ (Ind. Ct. App. 2019). A casino patron reported to a security officer that an individual wearing a white hat had approached him in the casino and asked, “if he wanted to buy white girl,” which he interpreted to mean cocaine. A gaming agent was notified, and the agent reviewed security footage and identified Johnson. He located the Johnson and asked him to come to an interview room. The agent advised Johnson that he needed to pat him down. During the pat-down, the agent located and removed from Johnson’s pocket an object that “felt like a ball of drugs.” Johnson was charged with dealing in a look-alike substance. Johnson filed a motion to suppress the ball of white powder, which was denied. The trial court ruled that the search of Johnson’s pocket was incident to arrest. Johnson was found guilty as charged and appealed.

The Court of Appeals found that the initial encounter between the agent and Johnson was akin to a Terry stop because the agent had a reasonable suspicion that criminal activity “may be afoot.” Johnson did not challenge the decision to conduct a pat-down (which is justified when an officer has a reasonable fear that the detainee may be armed or dangerous). However, the agent also reached into Johnson’s pocket to retrieve a ball of white powder. To do so legally, the agent would need probable cause to arrest Johnson. The combination of the casino patron’s testimony and the agent’s discovery of a ball of white powder would support a finding of probable cause. However, because the agent did not (or could not) testify about when he first determined the object “felt like a ball of drugs,” the court was unable to determine whether the agent had probable cause to arrest Johnson at the time the agent reached into Johnson’s pocket. The judgment of conviction was reversed.

SEARCH AND SEIZURE WEAPONS PAT-DOWN

On December 27, 2019, the Indiana Court of Appeals issued its decision in O’Keefe v. State, ___ N.E.3d ___ (Ind. Ct. App. 2019). A police lieutenant driving a marked patrol car observed a black Harley Davidson motorcycle with two occupants and no registration plate. He pulled the motorcycle over; at the time he was off-duty and not in uniform. O’Keefe was the driver, and Schmitt was the passenger. The lieutenant observed Schmitt to be nervous and the motorcycle to be freshly painted. He also observed and took custody of a large knife bag. O’Keefe denied having any other weapons. Both individuals provided identification, but O’Keefe was unable to show proof of insurance. While the lieutenant was running their information in his patrol car, Schmitt, who had an active arrest warrant started to run away. The lieutenant got out of his car, put O’Keefe in handcuffs, and because O’Keefe was wearing a motorcycle vest with several large bulges, conducted a pat-down. The lieutenant found a sharpening stone for a knife in O’Keefe’s vest and removed it.

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A second officer came upon the scene and observed the lieutenant with O'Keefe. The lieutenant informed the officer that Schmitt had run off and asked him to take custody of O'Keefe while he pursued Schmitt. The second officer noticed O'Keefe had a lot of bulky items in his motorcycle vest and was wearing a large number of garments for the time of year (July). Unaware that the lieutenant had already conducted a pat-down, the second officer did a second pat-down of O'Keefe. That pat-down revealed a large knife in O'Keefe's pocket. In the process of retrieving the knife, the officer also retrieved a methamphetamine pipe with burnt residue inside. He advised O'Keefe of his Miranda rights and asked him if he had any other items. O'Keefe replied that he had and "8-ball" of methamphetamine. Further search of O'Keefe resulted in seizure of 9.5 grams of methamphetamine (an extremely generous 8-ball).

O'Keefe filed a motion to suppress the drugs and contested the second officer's pat-down. The trial court denied the motion. O'Keefe was found guilty of possession of methamphetamine in a bench trial. On appeal, he asserted the pat-down was conducted without reasonable suspicion that he was armed and dangerous. The court found the second officer was "warranted in his belief that his safety or that of others was in danger." He happened upon a chaotic scene in which one of two detainees had run away from law enforcement, observed bulges in O'Keefe's vest that he believed could be weapons, and did not know that O'Keefe had previously been patted down. The convictions were affirmed.