

Police Prosecutor Update

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SEARCH AND SEIZURE SUFFICIENCY OF THE AFFIDAVIT OF PROBABLE CAUSE

On February 20, 2020, the Indiana Supreme Court issued its decision in Heuring v. State, ___ N.E.3d ___ (Ind. 2020). Officers investigating methamphetamine dealing obtained a warrant to place a GPS tracker on Heuring's SUV for 30 days. On the tenth day, the officers determined that the tracker had not transmitted a signal since the SUV was parked at Heuring's house 3 days earlier. The manufacturer indicated that the battery was fully charged, but "the satellite was not reading" which meant the device had been unplugged. During the next week, they observed the SUV at Heuring's home; a detective went to retrieve the tracker, and it was not there. However, if it had been accidentally detached from the SUV, it would have nevertheless transmitted its location. Based on this information, officers believed the tracker had been stolen and obtained a search warrant for Heuring's home and barn to locate the tracker. When they executed the search warrant, they observed drugs, paraphernalia, and a handgun in Heuring's house. They stopped searching and obtained a second search warrant for drugs. During the subsequent search, they located the tracker and additional contraband.

Heuring moved to suppress the evidence arguing that probable cause did not exist that evidence of theft would be found in either Heuring's home or barn. The trial court denied the motion, and the court of appeals affirmed. On transfer, the Supreme Court reversed. To establish probable cause, the affidavit needed to show a fair probability that someone knowingly exerted unauthorized control of the device with intent to deprive the law enforcement agency of the device. The Court found that the affidavit failed to show that any control over the tracker was knowingly unauthorized or that there was an intent to deprive the agency of its value or use. There was no evidence of who might have removed the device or that it had any features that identified who owned it or even what it was. At best, the Court found, the affidavit supports only speculation that someone removed the device with the conscious objective to deprive the agency of its use. Thus, the affidavit failed to connect the object of the search with the crime of theft. The Court also found that the good faith exception to the warrant requirement did not apply; therefore, all of the drug and handgun evidence will be suppressed.

Apparently, a law enforcement agency has no ability to retrieve a GPS tracker when a suspect removes it, disables it, and conceals it on his property.

SEARCH AND SEIZURE TRAFFIC STOP

On February 13, 2020, the Indiana Court of Appeals issued its decision in Bean v. State, ___ N.E.3d ___ (Ind. Ct. App. 2020). A narcotics detective observed Bean at a gas station. Recognizing Bean as a suspected drug dealer, the detective drove ahead along the route he knew Bean would take to get home, and parked and waited. When Bean passed where the detective had parked, he was driving 60 miles per hour in a 55 mile per hour zone. He initiated a traffic stop, and two other officers arrived. They

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directed Bean to exit the car. Bean consented to a pat-down for weapons; the detective did not find a weapon. Bean then consented to a search of his car, and the officer conducting that search observed what he believed to be marijuana shake on the passenger seat and floorboard. The material was not collected or field-tested. Officers also did not expose a drug detection dog, which one of the officers had, to the vehicle. Bean was “crossing himself and reaching towards his groin” while the detective was searching his car. He was sweating and breathing heavily, and his hands were shaking. A detective asked Bean to remove his shoes, but when he did so, the detective found nothing illegal. The detective then conducted a second pat-down without Bean’s consent. During that search Bean pinched his legs together. They then asked Bean to “shake out his pants.” Bean jumped up and down, and ultimately a bag of pills fell out of his pants. The pills were hydrocodone and alprazolam.

Bean was charged with two counts of dealing in a controlled substance and with maintaining a common nuisance. He was not charged with possession of marijuana. Bean filed a motion to suppress the drugs, which was denied. In a bench trial, he was found guilty of the dealing counts. On appeal, Bean challenged the traffic stop and the pat-down searches.

The court of appeals found the traffic stop lawful because Bean was travelling five miles over the speed limit. The court found Bean’s first pat-down to be lawful because Bean consented and because detectives had a reasonable belief that Bean might be armed and dangerous due to previous interactions in which Bean had been armed with a firearm. The court found the car search lawful because Bean consented to it. However, the court found Bean did not consent to the second pat-down, and he removed his shoes and jumped up and down because the detectives had ordered him to do so. The court found that second pat-down, the search of his shoes, and the order to shake out his pants were not motivated by concerns about officer safety, but were rather searches for drugs. Thus these searches were not justified on the grounds that the defendant might be armed and dangerous. The court also found that the last three searches were not incident to arrest. The detective who observed the shake did not test it, did not collect it and did not attempt to have a drug detection dog indicate the odor of a controlled substance. The detective also did not testify regarding any specific characteristics that lead to his conclusion that it was marijuana shake. Thus, his testimony was a bare conclusion and did not amount to probable cause. Because the detectives did not have probable cause to arrest Bean for marijuana possession, any subsequent search of his person was unlawful. The Court reversed Bean’s conviction.

ARREST TURN SIGNALS AND ROUNDABOUTS

On February 28, 2020, the Indiana Court of Appeals issued its decision in Davis v. State, ___ N.E.3d ___ (Ind. Ct. App. 2020). Davis exited a roundabout without using his turn signal to indicate that he was turning. A police officer observed this and stopped Davis to issue a ticket. After the car was stopped, the officer observed Davis bend over “as if attempting to conceal something. When ordered, Davis got out of his car, and threw a digital scales on the floorboard. In a subsequent search of the car, the officer found methamphetamine residue on the scales, smoking devices, a plastic bag with residue and other plastic bags. The officer transported Davis to the hospital for a blood draw. Davis was charged with possession of methamphetamine, possession of paraphernalia and operating a vehicle while intoxicated. Davis moved to suppress the evidence, and the trial court granted the motion because the State failed to prove that Davis had violated I.C. 9-21-8-25 concerning turn signals, making the stop unlawful. The Court of Appeals affirmed. The court found that “roundabouts are intersections to which the current turn signal statute simply cannot and does not apply.”

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