

SEARCH AND SEIZURE REASONABLE SUSPICION

On April 6, 2020, the United States Supreme Court issued its decision in Kansas v. Glover, ___ U.S. ___ (2020). A Kansas sheriff deputy observed the pickup truck Glover was driving and ran the license plate. The registration returned to the truck the deputy observed and identified the owner of the truck as Glover. The inquiry also revealed that Glover's driver's license was revoked. The officer did not observe the driver of the truck commit any traffic infractions. The deputy nevertheless stopped the truck, identified the driver as Glover and arrested him. The trial court granted Glover's motion to suppress. The Kansas appellate court reversed the trial court, but the Kansas Supreme Court affirmed the trial court. It ruled that the deputy did not have reasonable suspicion to stop the truck because the inference that the registered owner was the driver of the truck amounted to a hunch, and reasonable suspicion cannot be based upon a hunch. The U.S. Supreme Court granted certiorari and reversed the Kansas Supreme Court.

The deputy knew that the registered owner of the truck had a revoked license and that the truck he observed matched the description of the truck on its registration. From these facts, the deputy "drew the commonsense inference that Glover was likely the driver of the vehicle, which provided more than reasonable suspicion to initiate the stop. The fact that the registered owner of a vehicle is not always the driver of the vehicle does not negate the reasonableness of [the deputy's] inference." "The inference that the driver of a car is its registered owner does not require any specialized training; rather it is a reasonable inference made by ordinary people on a daily basis." The Court also reiterated that reasonable suspicion takes into account the totality of the circumstances at the inception of the officer's actions. For example, if the apparent age of the driver observed by the officer is different than the age of the registered owner, the officer would not have reasonable suspicion to initiate the stop.

SEARCH AND SEIZURE POLICE CUSTODY

On April 3, 2020, the Indiana Court of Appeals issued its decision in Atkins v. State, ___ N.E.3d ___ (Ind. Ct. App. 2020). Lambert and another man reported to police that 2 men had entered their apartment and robbed them. They beat Lambert until he was unconscious and stole marijuana and computer laptops. Williams had purchased marijuana from the victims earlier that day, and a friend of Williams reported that Atkins was with Williams that day. Police located Williams at his apartment complex, and Atkins was with him. The men were separated, and a detective began talking to Atkins, who stated he had just arrived in town 20 minutes prior. Atkins had been carrying a backpack, and after searching Atkins for weapons and finding none, the detective asked Atkins if he could search the backpack for weapons. Atkins consented and opened the backpack for the detective. The detective looked inside, and observed laptops. He asked Atkins if he would remove the laptops from the backpack. Atkins zipped the backpack up and stated, "Why do I got to pull my stuff out." He started to walk away,

and the detective requested Atkins to come back and repeatedly told him to sit down on the curb. Atkins stated he needed to use the restroom, and the detective told him again to sit down. The detective continued questioning Atkins about where he had been that day and told Atkins that he was investigating a burglary in which laptops had been stolen. Atkins denied involvement in the burglary. The detective repeatedly asked him for consent to remove the laptops. A second detective then began speaking to Atkins. When the first detective returned to Atkins, his body camera recorded the second detective telling Atkins, “I get it, but when we’re asking questions, you gotta, you gotta cooperate, you know what I’m saying.” Atkins stated that he had purchased the laptops shortly before the detectives arrived. The detective then asked if he minded if detectives had a look at the laptops. At that point, about 30 minutes had elapsed since they first encountered Atkins. Atkins pulled the laptops out of his backpack, and when the detectives examined them, one of them had the username, “Mark Lambert.” Atkins was arrested 20 minutes later.

Atkins filed a motion to suppress the laptops and his statements to police. He alleged that the search violated the 4th Amendment and Article I, Section 11 of the Indiana constitution. He also alleged that the interrogation violated his 5th Amendment rights. Specifically, he was interrogated without having been advised of the Miranda warning and asked for consent to search without having been advised of the Pirtle warning. The trial court granted the motion to suppress. The state filed a motion to correct error, and a new judge reversed the prior judge’s ruling and denied the motion to suppress. The trial court then certified the order for interlocutory appeal.

On appeal the court found that Atkins was in police custody. Although he was not initially handcuffed, Atkins was restrained, was told he was a suspect in a crime, and was subjected to rigorous questioning about the contents of his backpack. Under these circumstances, his freedom of movement was curtailed because a reasonable person would not have felt free to leave, and Atkins was subjected to inherently coercive pressures.

Because Atkins was in custody, the police were required to advise of his Pirtle rights before he gave his consent. As they did not, the evidence they found in the backpack should have been suppressed. Likewise, he should have been of his Miranda rights before being questioned. The motion to suppress should have been granted; therefore, the court reversed the trial courts granting of the motion to correct error.

OPERATING WHILE INTOXICATED CHEMICAL TEST FOR INTOXICATION

On April 13, 2020, the Indiana Court of Appeals issued its decision in Pedigo v. State, ___ N.E.3d ___ (Ind. Ct. App. 2020). Pedigo crashed his tow truck into a Mazda that had stopped for a red light. The impact left the tow truck on top of the Mazda and killed the driver and seriously injured the passenger. When officers arrived, Pedigo was still in the driver’s seat of the tow truck. An officer asked Pedigo to exit the tow truck. Pedigo told the officer that he had looked down and then looked back up. At that point he saw that the traffic ahead of him had come to a stop. He stated to the officer that he slammed on the brakes but was unable to stop. The officer asked Pedigo if he’d anything to drink or had taken any drugs; Pedigo denied doing both. The officer administered the horizontal gaze nystagmus test to Pedigo; after Pedigo initially did not follow instructions, the officer observed no clues to indicate Pedigo was intoxicated. Pedigo also did not register any alcohol consumption when he submitted to a portable breath test. The officer then asked Pedigo to submit to a blood draw. Pedigo consented, and blood was taken at

the hospital and sent to the Indiana Department of Toxicology. Toxicology found that Pedigo's blood contained an inactive metabolite of THC and amphetamine and methamphetamine at 4 times the therapeutic level. An examination of the black box in Pedigo's tow truck indicated he was traveling at an unsafe speed. Pedigo was charged with reckless homicide and causing death while operating a vehicle with a Schedule I or II controlled substance in the blood.

Pedigo filed a motion to suppress the drug results. He argued that I.C. 9-30-7-3 prohibits an officer from obtaining a chemical test after receiving negative results from a portable breath test unless the officer has probable cause to believe the driver is under the influence of a controlled substance. The trial court denied the motion to suppress. Pedigo was ultimately convicted of all counts.

On appeal, the defendant argued that I.C. 9-30-7-3 required that "where a [portable breath test] result is negative and there is no probable cause for intoxication, police may not seek a blood sample." The Court of Appeals disagreed. "We, therefore, conclude that under Indiana Code section 9-30-7-3, a law enforcement officer is permitted to offer a subsequent chemical test to a person who the officer has reason to believe operated a vehicle that was involved in a fatal accident or an accident involving serious bodily injury when the officer has first administered a portable breath test that produces negative results even if the officer does not have probable cause to believe the person is under the influence of a controlled substance or another drug." The trial court was affirmed.