

SEARCH AND SEIZURE SCOPE OF SEARCH WARRANT

On June 23, 2020, the Indiana Supreme Court issued its decision in Hardin v. State, ___ N.E.3d ___ (Ind. 2020). Police had a search warrant for Hardin's home. The warrant was based on allegations of a drug dealing conspiracy and included information from a wiretap of a co-conspirator. Police also had information that Hardin drove a truck, but the warrant did not address search of Hardin's truck. When the police executed the search warrant, Hardin was not there. In the home, they found heat-sealed bags of methamphetamine and drug ledgers. A simultaneous warrant for the co-conspirator's home yielded information that Hardin had recently obtained a large amount of methamphetamine. Therefore, two officers left Hardin's home to look for Hardin, and two officers remained behind. After the two officers left, Hardin arrived at his home in his truck, drove his truck into the driveway, opened his garage door and was arrested when he walked into the house. Officers searched Hardin's truck in the driveway and found 108 grams of methamphetamine in a black bag beneath the driver's seat. At all times in these proceedings, the state contended, and the defendant did not dispute, that Hardin's truck was located within the curtilage of the home. Hardin was charged with dealing and possession of methamphetamine.

Hardin filed a motion to suppress the evidence found in the truck, contending that the search of his truck exceeded the scope of the warrant in violation of the Fourth Amendment of the Constitution of the United States, and Article I, Section 11 of the Indiana Constitution. The trial court denied the motion to suppress, finding that the truck was in the curtilage and fell within the scope of the warrant. Alternatively, it found that the police had probable cause to search the truck, and the automobile exception to the Fourth Amendment applied. Hardin was found guilty at trial. On appeal, the Court of Appeals upheld the conviction and found that the search did not violate the Fourth Amendment because the truck was in the curtilage, and likewise, there was no violation of Article I, Section 11.

On transfer, the Supreme Court found that the truck fell within the scope of the search warrant. A "warrant for a house generally allows searches of the things and places located in the curtilage that could contain the object of the search." As to vehicles parked in the curtilage, the court found that police may search the owner's or resident's vehicle, but that a warrant does not extend to a vehicle only temporarily parked in the curtilage. Since all parties agreed the truck was in the curtilage and it belonged to Hardin, it was, for Fourth Amendment purposes, covered in the warrant.

In Indiana, the analysis does not end there. Under Article I, Section 11, "a warrant does not necessarily make all law enforcement action related to the warrant reasonable." In applying the Litchfield balancing test, the court found that the "degree of concern" that a violation or crime had occurred was "extremely high." The search of the truck was supported by the search warrant and very recent information that indicated the evidence of a crime would be in the truck. It found that there was a "moderate degree" of intrusion into Hardin's personal liberty. How a search is conducted matters. While search of a vehicle is a high level of intrusion, it was moderated by the following facts: Hardin had

already been taken into custody, and the search of the truck was “no more extensive than a visual inspection of the interior of the vehicle.” The way officers conducted the search was “something someone might do to find a credit card or a French fry dropped between a seat and the center console.” Finally, the court found the extent of law enforcement needs was moderate. Law enforcement need to combat drug trafficking is great, but the court found it was a closer question whether police should have obtained a search warrant for the truck after Hardin himself had been secured. The fact that police already had a search warrant for the home, and Hardin drove the truck into the home’s curtilage during the warrant’s execution led the court to conclude that the Litchfield factors weighed moderately in the state’s favor; therefore, there was no violation of Article 1, Section 11. Hardin’s conviction was affirmed.

SEARCH AND SEIZURE CANINE SNIFF DURING A TRAFFIC STOP

On April 23, 2020, the Indiana Court of Appeals issued its decision in Thayer v. State, ___ N.E.3d ___ (Ind. Ct. App. 2020). An officer stopped Thayer driving a large truck shortly before midnight. Thayer was the sole occupant of the truck. The officer observed Thayer twisting his body, reaching for something under items on the passenger seat, and diving for something on the floor of the passenger side. Thayer also appeared nervous. Thayer did not have a driver’s license or an identification card and told the officer he was driving a friend’s truck. He was able to give the officer some form of registration papers. After about 5 minutes, the BMV was able to confirm that Thayer possessed a valid driver’s license. The officer also requested a criminal background check, and that check resulted in a red flag for “potential for violence.” At that point, the officer requested a back-up officer. He then began to run the license plate information. To write the citation, the officer had to manually enter Thayer’s information into the computer because he could not scan Thayer’s driver’s license. Five to ten minutes after he requested back-up, the K-9 officer arrived while the officer was still entering Thayer’s information into the computer. After he briefed the K-9 officer, the K-9 officer exposed his dog to the outside of the truck for a free air sniff, and the dog gave an active alert. The K-9 officer then searched the cab and found a methamphetamine pipe in the console. He then arrested Thayer and found 13.52 grams of methamphetamine in Thayer’s jacket pocket. Further search of the truck revealed various items of drug paraphernalia.

Thayer was charged, and he filed a motion to suppress the evidence and statements following the K-9 indication, which motion was denied. Thayer did not contest the reason for the traffic stop. In a bench trial, Thayer was convicted for Level 4 possession of methamphetamine. He appealed his conviction on the grounds that his continued detention after the purpose of the traffic stop had been completed violated the Fourth Amendment of the Constitution of the United States and Article I, Section 11, of the Indiana Constitution. In evaluating his Fourth Amendment claim, the Court found the canine sniff did not prolong the stop because the officer had not completed the purpose of the stop when the canine arrived and began its free air sniff. Therefore, there was no violation of the Fourth Amendment. As to Article I, Section 11, the officer had a high level of concern that a crime was being committed due to Thayer’s apparently concealing movement and nervous behavior in the cab of his truck. The level of intrusion into Thayer’s liberty was low because the canine sniff occurred before the officer could complete the citation, and a free air sniff is not ordinarily a search. Finally, there was a high level of law enforcement need due to Thayer’s actions in the cab and the violence flag that appeared when the officer did a criminal records check. Thayer’s conviction was affirmed.