

Police Prosecutor Update

Issue No. 339
September 2020

SUFFICIENCY OF THE EVIDENCE OPERATING A VEHICLE WITH A SUSPENDED LICENSE

On August 13, 2020, the Indiana Court of Appeals issued its decision in King v. State, ___ N.E.3d ___ (Ind. Ct. App. 2020). An officer stopped King for an infraction and in the process discovered that the Bureau of Motor Vehicles had suspended King's driver's license for failure to pay child support. King was given a summons. At his bench trial the state presented evidence that King's suspension began on 8/30/2018 and expired on 10/24/2018. The date of King's infraction stop was 11:30 a.m., October 24, 2018. King was convicted of driving while suspended and appealed. On appeal the court ruled that the expiration of King's suspension took effect at 12:00 a.m. on October 24 (that is, at the start of the day). Therefore, at the time he was stopped, his license was no longer suspended. His conviction was reversed.

SEARCH AND SEIZURE ADMISSION AGAINST PENAL INTEREST

On August 31, 2020, the Indiana Court of Appeals issued its decision in State v. Stone, ___ N.E.3d ___ (Ind. Ct. App. 2020). While investigating two separate burglaries in which guns were stolen, detectives identified Waltz as a suspect. One of the stolen guns had been discovered in the possession of Waltz during a traffic stop in Michigan. Detectives went to Michigan to interview Waltz, who informed detectives that he bought the gun from Putnam. Detectives then interviewed Putnam who confessed to burglarizing both residences and taking the guns. He admitted trading one gun to Waltz and to selling the other gun to Stone. Detectives discovered Stone had prior convictions for dealing methamphetamine and illegal possession of a handgun. Detectives obtained a search warrant for Stone's residence, and after executing the search warrant discovered multiple firearms and methamphetamine, but not the stolen gun. Stone was charged with unlawful possession of a firearm by a serious violent felon and possession of methamphetamine enhanced by a prior conviction. Stone filed a motion to suppress all the evidence obtained as a result of the search warrant, and the trial court granted the motion and stated that the case was controlled by the holding in State v. Spillers, 847 N.E.2d 549 (Ind. 2006), which held that the statement by the informant identifying the source of the controlled substance in his possession was not an admission against penal interest because the informant had been caught red-handed and the informant's statement added no new evidence that the state could use to prosecute the informant.

The state appealed and argued the search warrant was supported by probable cause. The court of appeals agreed and reversed the trial court's decision. To support probable cause to issue a search warrant, hearsay must contain reliable information to establish the credibility of the source and that there is a factual basis for the information. The trustworthiness of hearsay can be established when the informant has given correct information in the past, independent evidence corroborates the hearsay, some basis for the informant's knowledge is demonstrated, or the informant predicts conduct or activity that is not ordinarily easily predicted. An informant's declaration against penal interest can furnish the basis for establishing an informant's knowledge and credibility.

This is a publication of the Prosecutor's Office which will cover various topics of interest to law enforcement officers. Please direct any questions or suggestions you may have for future issues to the Prosecutor's Office.

The Court distinguished the informant's declaration in this case from the informant in Spillers. Putnam (the informant) was not under arrest when he gave the statement, and he had not been caught red-handed. Indeed, the evidence implicating him in the burglary of one of the homes was weak, and the police had no evidence of his involvement in the other burglary. During the interview, Putnam admitted to committing both burglaries and taking the guns, and provided details that had not previously been known to police. He corroborated the statement given to police by Waltz, and by telling police about the sale of the firearm to Stone, he implicated himself in another crime (transfer of a firearm to a serious violent felon). Putnam's statement was truly a statement against his penal interest.

Finally, the Court found that Putnam's statement provided a sufficient nexus to Stone's residence to justify a warrant to search the residence. Putnam stated Stone bought the gun three weeks earlier because he stated he liked it and wanted to keep it for himself. The court found that a reasonably prudent person could conclude that it was fairly probable that the gun would be found at Stone's home.

SEARCH AND SEIZURE COMMUNITY CORRECTIONS WAIVER

On August 10, 2020, the Indiana Court of Appeals issued its decision in State v. Ellis, ___ N.E.3d ___ (Ind. Ct. App. 2020). Ellis was serving a home detention sentence with community corrections. Pursuant to his placement, Ellis had signed a contract, which stated:

You waive your right against search and seizure, and shall permit MCCC staff, or any law enforcement officer acting on MCCC's behalf, to search your person, residence, motor vehicle, or any location where your personal property may be found, to insure compliance with the requirements of community corrections.

Ellis' case manager became suspicious that Ellis was not complying with the terms of community corrections and asked the law enforcement liaison to conduct a compliance check of Ellis' home. During a "protective sweep" of Ellis residence, officers observed marijuana and a book with a hidden compartment containing cash. At that point the compliance check ended, and officers obtained a search warrant. More evidence was found during the search warrant, and Ellis was charged with dealing in cocaine, possession of a firearm by a serious violent felon, escape, and various other offenses.

Ellis filed a motion to suppress alleging that he had not waived his rights against a suspicionless search by community corrections and that officers did not have reasonable suspicion to search his home. The trial court granted the motion to suppress, and the state appealed. The court of appeals reversed the trial court. "Ellis' Community Corrections Contract unambiguously authorized warrantless and suspicionless searches, without limitation. Accordingly, the officers did not need reasonable suspicion to search Ellis' residence."