**Police Prosecutor Update**

Issue No. 360
June 2024

***Reasonable suspicion to conduct an investigatory stop existed; Traffic stop not prolonged***

*Lemon v. State of Indiana, 2024 Ind. App. Unpub. LEXIS 681*

Officers had an active felony arrest warrant for Andrew Doalson. They also had information that Doalson would be returning from the Louisville, Kentucky, area in a grey Ford Edge with a large amount of illegal drugs.

Officers located and followed the vehicle until it pulled over on the highway exit ramp. Officers parked near the Edge, which they observed had an expired registration.

A K-9 unit arrived within 10 -15 minutes. A free-air sniff indicated there were likely illegal drugs in the Edge. During the search, officers found two bags in the glovebox containing THC wrappers, a digital scale, baggies of narcotics, powder-filled foils, and pills. Officers also found a digital scale with white crystal residue on it and a glass pipe in the center console cup holder.

After being convicted at trial, Lemon appealed, challenging the trial court’s admission of “drug evidence” because it was seized during an allegedly unconstitutional detention, alleging that there was no reasonable suspicion for his detention; and secondly, the purpose of the stop was prolonged for the K-9 unit to conduct the free air sniff.

A Terry stop, “must be justified by some objective manifestation that the person stopped is, or is about to be, engaged in criminal activity.” The reasonable suspicion standard takes into account the totality of the circumstances- the whole picture.”

Lemon’s illegal operation of the Edge was sufficient to support a reasonable suspicion that he had been engaging in criminal activity immediately prior to parking the Edge. The passenger had a felony arrest warrant, and the vehicle had an expired registration. Because officers had reasonable suspicion to conduct an investigatory stop of Lemon, their seizure of Lemon is not barred by the Fourth Amendment.

This free-air sniff—which is not a search protected by the Fourth Amendment and for which no degree of suspicion is required- gave officers probable cause to search the Edge. Doalson and Lemon were in custody and within 10 to 15 minutes when a K-9 unit arrived and conducted a free-air sniff of the Edge. Officers also ran Lemon’s information to determine the status of his driver’s license, and that search revealed Lemon was driving while suspended. All of this necessarily prolonged the time officers detained Lemon until that detainment was converted into an arrest. Conviction Affirmed.

**Pat-down search upheld under both Federal and Indiana Law**

*D.L. v. State, 2024 Ind. App. Unpub. LEXIS 617*

Officers initiated a traffic stop due to an unlawful lane change and an outdated registration sticker. The driver of the vehicle was an Uber driver. As officers spoke to the backseat passengers, they smelled the odor of raw marijuana coming from the rear passenger area.

The officers asked the occupants to exit. As D.L., a passenger, exited the vehicle, his "right hand went down low" and "was kind of lagging . . . towards his waistband." Once D.L. was handcuffed, officer performed a pat-down search for weapons and found two handguns on D.L.'s person. Officers found a handgun and cash on the other juvenile, as well as a bag of marijuana, a digital scale, and another handgun in his backpack.

D.L. challenges the pat-down search of his person by officers, asserting that the warrantless search violated his rights under the Fourth Amendment of the United States Constitution and article 1, section 11 of the Indiana Constitution and that the handguns found on his person should not have been admitted.

*Fourth Amendment Analysis*

The officers here were justified in detaining D.L. and his companion based upon the odor of raw marijuana. After making a Terry stop, an officer may, if he or she reasonably concludes that a suspect is armed and dangerous, frisk the outer clothing of that suspect in an attempt to discover weapons that might be used to assault him or her. The officer need not be absolutely certain that the individual is armed; the issue, rather, is whether a reasonably prudent man or woman in the circumstances would be warranted in the belief that his or her safety or that of others was in danger. To determine whether an officer acted reasonably, we consider the specific, reasonable inferences that the officer, in light of his or her experience, could draw from the circumstances. Courts have acknowledged it is common for firearms to be present in drug transactions. Thus, the odor of marijuana suggested to Officer Gunn that D.L. and/or his companion was involved with drugs, an activity for which one or both of them could possibly be armed.

*Indiana Constitution Analysis*

To analyze the legality of a search under article 1, section 11, we evaluate the reasonableness of the police conduct under the totality of the circumstances. *Litchfield v. State*, 824 N.E.2d 356, 359 (Ind. 2005). Our Supreme Court has determined that the reasonableness of a search turns on a balance of: (1) the degree of concern, suspicion, or knowledge that a violation has occurred; (2) the degree of intrusion the method of the search or seizure imposes on the citizen's ordinary activities; and (3) the extent of law enforcement needs. It is the State's burden to show the intrusion was reasonable.

First, in evaluating the degree of suspicion, courts consider 'the reasonableness of the officers' assumptions, suspicions, or beliefs based on the information available to them at the time. As discussed with the federal analysis, the odor of marijuana, which suggested the likelihood of the presence of weapons and D.L.'s hand movement all contributed to the reasonableness of the suspicions and concern that led to the pat-down.

Second, we evaluate the degree of intrusion from the perspective of the defendant. An ordinary pat-down of a suspect's outer clothing is considered only a minimal intrusion for purposes of the Indiana Constitution. The intrusion imposed upon D.L. was minimal as it was merely a routine pat-down of his outer clothing.

Finally, law enforcement needs were high as Officer Gunn justifiably believed that D.L. and/or his companion—who were in possession of marijuana—were armed. COA affirms D.L.'s adjudication as a delinquent

**Plain View Searches and Consent Searches Upheld**

*Baughman v. State,* *2024 Ind. App. Unpub. LEXIS 681 \* | 2024 WL 2796567*

Baughman overdosed at a residence owned and lived in by Holly Michael. Holly’s daughter Ashley lived in the basement of the same residence.

Officers found Baughman in the basement of the residence.

Baughman appeals his convictions for drug related offenses, specifically, the admission of the evidence seized from the basement and argues that Holly's consent to search was not valid.

The plain view exception to the Fourth Amendment's warrant requirement allows police to warrantlessly seize an object if they "are lawfully in a position from which to view the object, if its incriminating character is immediately apparent, and if [police] have a lawful right of access to the object." Officer Rivera testified that he saw "a bag / a purse" which was open and contained a green leafy substance. He testified he did not touch the bag or open the bag and did not have to move anything to see the bag. Officer McGillivray testified that he saw the pink bag behind the couch, the bag was in plain view, he did not touch the bag, and he could see into the bag.

Even if the discovery of marijuana was improper, we cannot say reversal is warranted in light of Holly's consent. "Authority to consent to a search can be either apparent or actual." "Actual authority requires a sufficient relationship to or mutual use of the property by persons generally having joint access to or control of the property for most purposes." "The test for evaluating apparent authority is whether 'the facts available to the officer at the time would cause a person of reasonable caution to believe that the consenting party had authority over the premises.'"

The record reveals that Holly testified that she lived at the residence for nine years and she was the homeowner. She had access to the basement and went there to do laundry. Holly testified that no door separated the living area in the basement and the top of the stairs. Although Holly indicated that she felt pressured into giving consent, she testified that the officers did not threaten her, yell, or place their hands on her. The Court concluded that Holly had authority to consent to the search and that her consent was voluntary and knowing, affirming the convictions.

**New Drugs On the Street**

**What to know about medetomidine, the latest sedative found in illicit Indy drug supplies**

Medetomidine is a surgical veterinary anesthetic used for both small and large animals. It is in the same drug class as xylazine, another veterinary tranquilizer, known as the “zombie drug."

It is not an opioid.

Similar to xylazine use, medetomidine is most commonly used to mix in samples of fentanyl, heroin and cocaine. Medetomidine has similar effects to xylazine, including slowing the heart rate (bradycardia), hypotension and central nervous system depression.

Because medetomidine is not an opioid, it alone does not respond to naloxone or Narcan.

However, forensic officials recommend using naloxone if someone is suspected to have overdosed because medetomidine is almost always used in combination with opioids.

Upcoming TRAININGS/CLEs:
Trial Advocacy 1

August 20-22, 2024, Crowne Plaza at Union Station

Indianapolis, Indiana

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