**Police Prosecutor Update**

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**Alonzo Wkly. v. State-** **2024 Ind. App. Unpub. LEXIS 699**

**Search Reasonable Under Article 1, Section 11**

Weekly appeals his conviction for Level 6 felony operating a vehicle as a habitual traffic violator. He raises two issues for our review, only one of which we will discuss here: (1) Did the trial court admit evidence in violation of Weekly's rights under Article 1, Section 11 of the Indiana Constitution?

Baldwin observed a black SUV's right-side tires "go onto the fog line." Baldwin believed he could have stopped the vehicle at that point but did not because he thought it would be an unsafe area for a stop. Instead of initiating a traffic stop at that time, Trooper Baldwin followed the vehicle. Baldwin conducted a BMV search of the vehicle's license plate number, check also revealed the male owner—Weekly—was a habitual traffic violator and both owners' licenses were suspended. Believing he had two valid reasons to do so, Trooper Baldwin initiated a traffic stop.

At trial, the jury found Weekly guilty as charged and the trial court sentenced him to one and one-half years imprisonment. Weekly appealed, first claiming he was unreasonably seized by Officer Baldwin; thus, the trial court admitted evidence in violation of his rights under Article 1, Section 11 of Indiana's Constitution

Although the language of Section 11 is nearly identical to its federal counterpart, our courts interpret the state provision "independently and ask whether the State has shown that a particular search or seizure was reasonable based on the totality of the circumstances. We determine the reasonableness of a law-enforcement officer's search or seizure by balancing three factors: "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.

Based on his BMV search, Trooper Baldwin had a high degree of knowledge Weekly was operating a vehicle as a habitual traffic violator ("HTV").

Next, we consider "the degree of intrusion the method of the search or seizure imposes on the citizen's ordinary activities. Baldwin stopped Weekly around 7:00 p.m. on a public highway. After stopping Weekly, Trooper Baldwin asked Weekly for his license and registration. Weekly gave Trooper Baldwin his ID card and explained he did not have a driver's license. In total, the stop lasted around ten minutes and consisted of routine procedures. The seizure amounted to a small intrusion on Weekly's ordinary activities.

Finally, the Court reviews the extent of law-enforcement needs "to act in a general way" and "to act in the particular way and at the particular time they did. The purpose of the HTV law is "not to impose punishment" but rather "to remove from the highway those drivers who have proven themselves to be unfit to drive, and who pose a substantial threat to the safety of others. Law enforcement has "at least a legitimate, if not a compelling, need to enforce traffic-safety laws.”

Baldwin's stop of Weekly was reasonable and did not violate Section 11. Thus, the trial court did not err in admitting evidence derived from the traffic stop. Conviction affirmed. **Note that this case was decided only on an Indiana analysis of Article 1, Section 11 of the Indiana Constitution!**

**Lamb v. State-** **2024 Ind. App. Unpub. LEXIS 837**

**Search Upheld as Valid Incident to an Arrest**

Fort Wayne Police Department responded to a 911 call regarding a domestic disturbance in progress. The call was being made from inside a car, and the caller told the dispatcher that she was in fear of being stabbed by the driver.

After observing the suspected vehicle make a turn and travel over the center line, Detective Norton activated his emergency lights. The Buick stopped, and Lamb exited the car. Detective Nicodemus, who suspected that Lamb was armed and dangerous based on the 911 call, handcuffed him and patted him down for officer safety. During the pat down, Detective Nicodemus felt in the back pocket of Lamb's pants what he suspected from his training and experience to be a crack pipe. When Detective Nicodemus told the other officers on the scene that he had found a crack pipe, Lamb, without being asked, confirmed that it was a crack pipe. Detective Nicodemus arrested Lamb for possession of paraphernalia. Lamb was then searched incident to arrest, and cocaine was found on his person. A large amount of cocaine was later found in a backpack on the front passenger seat of the car.

Lamb contends the trial court erred in admitting the cocaine into evidence because the detectives couldn't tell whether he was committing a misdemeanor or an infraction in his possession of the crack pipe, they didn't have probable cause to arrest him, thereby invalidating the search incident to arrest.

According to Indiana Code section 35-33-1-1(a)(4), a police officer may arrest a person when the officer has probable cause to believe that the person is committing or attempting to commit a misdemeanor—not an infraction—in the officer's presence.

While there are paraphernalia offenses that are infractions, they are for manufacturing paraphernalia and **dealing in** paraphernalia. Lamb, however, was arrested for **possession of** paraphernalia, which is a misdemeanor. The detectives had probable cause to arrest Lamb for possession of paraphernalia upon finding the crack pipe with burnt residue in his pocket during the protective search for weapons. Because the search incident to arrest was valid, the trial court did not err in admitting the cocaine. **REMEMBER! The pat-down in this case was valid because the officers specified about their belief that the suspect was armed and dangerous!!**

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