**Police Prosecutor Update**

Issue No. 362  
August 2024

**Baston v. State- Search and Seizure- Terry Stop and Reasonable Suspicion**

**2024 Ind. App. Unpub. LEXIS 936, Ind. Ct of App. (2024)**

* Baston's truck ran out of gas, and he abandoned it in the roadway.
* Deputy Hicks found Baston walking away from the truck and detained him to investigate.
* Baston became aggressive, resisted detention, and kicked Deputy Hicks.
* Baston was convicted of battery on an officer and resisting law enforcement.
* Baston maintains that Deputy Hicks lacked reasonable suspicion that Baston had committed an infraction or a crime when he detained him.

The Fourth Amendment protects citizens from search or seizure absent a warrant supported by probable cause.

One exception to the warrant requirement is the *Terry* stop. *Id.* This exception "permits a police officer to stop and detain a person for investigative purposes if the officer has a reasonable suspicion, supported by articulable facts, that criminal activity 'may be afoot[,]' even if the officer lacks probable cause." *Id.* (quoting *Terry v. Ohio*, 392 U.S. 1, 30, 88 S. Ct. 1868, 20 L. Ed. 2d 889 (1968)).

The State presented evidence that, at the time Deputy Hicks confronted him, Baston had violated Indiana Code section 9-21-16-1(b), which provides that a person "may not stop, park, or leave standing an attended or unattended vehicle upon the paved or main traveled part of a highway outside of a business or residence district, if it is practicable to stop, park, or leave the vehicle off the highway." A violation of that statute is a Class C infraction.

The State presented evidence that, when Deputy Hicks first asked Baston about the abandoned truck, Baston admitted that it was his. At that point, Deputy Hicks had reasonable suspicion sufficient to briefly detain Baston based on the infraction.

The court found Deputy Hicks had reasonable suspicion to detain Baston based on the apparent traffic infraction. Therefore, the evidence obtained after the lawful detention was properly admitted.

The court affirmed Baston's convictions and sentence.

**Streeter v. State- Search and Seizure- Vehicle Searches and the Automobile Exception**

**2024 Ind. App. Unpub. LEXIS 919, Ind. Ct of App. (2024)**

* Streeter's car was illegally parked, and the taillights were blinking.
* When the officer approached the car, he smelled a strong odor of raw marijuana emanating from inside the vehicle.
* A search of the car revealed over 10 pounds of marijuana in bags and containers.
* The search of Streeter's car was lawful under the automobile exception to the Fourth Amendment's warrant requirement because (1) the car was readily mobile, and (2) the officer had probable cause to believe the car contained contraband based on the strong odor of marijuana.
* The search of Streeter's car did not violate Article 1, Section 11 of the Indiana Constitution under the totality of the circumstances, considering the high degree of suspicion, the moderate degree of intrusion, and the strong law enforcement needs.

For the Fourth Amendment holding, the court found that the automobile exception applied because the car was readily mobile and the officer had probable cause based on the strong odor of marijuana. The automobile exception is well established, allowing officers to conduct a warrantless search of a vehicle where: (1) the vehicle was readily mobile or capable of being driven when the police first seized it; and (2) probable cause existed that the vehicle contained contraband or evidence of a crime. Under this exception, "an operational vehicle is inherently mobile, whether or not a driver is behind the wheel or has ready access.

The car was "illegally parked" and that the taillights were blinking on the car. The Court found that the car was readily mobile or capable of being driven. Further, the Courts have consistently held that probable cause exists to search a vehicle when an officer detects the odor of marijuana. Sergeant Boynton had probable cause to search the car after he and Officer Willis had both smelled the strong odor of marijuana coming from the car.

For the Indiana Constitution holding, the court applied the Litchfield test, finding a high degree of suspicion, a moderate degree of intrusion, and strong law enforcement needs, making the search reasonable under the totality of the circumstances.

There was a high degree of concern, suspicion, or knowledge that a violation had occurred. Boynton testified that there was a strong odor of marijuana coming from the car. The smell of marijuana by an officer "established a high degree of suspicion of criminal activity. The degree of intrusion on Streeter was moderate. Once officers conducted the search of the car because of the officers' detection of the odor of marijuana, the intrusion was moderate. Officers did not dismantle any part of the car or cut into the seat cushions during their search. Further, the extent of law enforcement needs were high because the search was consistent with law enforcement's responsibility to deter crime, to intercept criminal activity, and to apprehend its perpetrators.

The Court of Appeals affirmed Streeter's conviction for Level 5 felony dealing in marijuana.

**Bredemeier v. State- Search and Seizure- Constructive Possession and Search Warrants**

**2024 Ind. App. Unpub. LEXIS 871, Ind. Ct of App. (2024)**

* Bredemeier was the passenger in a car stopped for traffic violations.
* A drug dog alerted to the front passenger seat where Bredemeier was sitting.
* Police found 13 grams of meth under Bredemeier's seat near his phone.
* Bredemeier admitted the meth was his.
* Police got a warrant to search Bredemeier's phone and found drug dealing evidence.
* A jury convicted Bredemeier of possessing meth with intent to deliver.

The court held the evidence was sufficient to prove possession because Bredemeier admitted the meth was his, he was seen moving around when police approached, and the meth was found near him and his belongings. This was constructive possession. Possession of contraband may be actual or constructive. Constructive possession is established by showing that the defendant has the intent and capability to maintain dominion and control over the contraband. When possession of the premises on which the contraband is discovered is not exclusive, constructive possession may still be established by showing circumstances that indicate knowledge of the presence of the contraband and the ability to control it.  Those circumstances include incriminating statements by the defendant, attempted flight or furtive gestures, a drug manufacturing setting, proximity of the defendant to the contraband, contraband in plain view, and the proximity of the contraband to items owned by the defendant.

The evidence establishing that Bredemeier had possessed the contraband discovered during the search is overwhelming. First, Bredemeier admitted that it was his methamphetamine. Second, Trooper Widner observed Bredemeier "reaching" and "moving around" before the vehicle stopped, and Bredemeier admitted that he had placed the methamphetamine under the seat when Trooper Widner had seen him moving around. Third, troopers discovered the methamphetamine under the seat in which Bredemeier had been sitting near his telephone.

The search warrant was valid because it specified Bredemeier's phone and that police could search for evidence related to drug crimes in stored communication files, providing examples. This level of particularity is acceptable under precedent. A warrant must describe the place to be searched and the items to be searched for with sufficient particularity; however, "there is no requirement that there be an exact description.

The search warrant specified that police would search Bredemeier's telephone for evidence of methamphetamine possession and intent to distribute in "[a]ny and all stored communication files" and provided an enumerated list of specific items that constituted stored communication files, including text messages. The warrant to search for "[a]ny and all stored communication files" related to his drug dealing and possession is not impermissibly broad.

The Indiana Court of Appeals affirmed Bredemeier's convictions and sentence.

Drug School

**Fentanyl**

Narcotics (Opioids)

What is Fentanyl?

Fentanyl is a potent synthetic opioid drug approved by the Food and Drug Administration for use as an analgesic (pain relief) and anesthetic. It is approximately 100 times more potent than morphine and 50 times more potent than heroin as an analgesic. Clandestinely produced fentanyl is encountered either as a powder or in fake tablets and is sold alone or in combination with other drugs such as heroin or cocaine. Fentanyl is a Schedule II narcotic under the United States Controlled Substances Act of 1970.

Street Title

Apace, China Girl, China Town, Dance Fever, Friend, Goodfellas, Great Bear, He-Man, Jackpot, King Ivory, Murder 8, Poison and Tango & Cash

How is it consumed?

snorted/sniffed, smoked, orally by pill or tablet, spiked onto blotter paper, patches, sold alone or in combination with heroin and other substances, has been identified in fake pills, mimicking pharmaceutical drugs such as oxycodone.

What is their effect on the body?

Similar to other opioid analgesics, fentanyl produces effects such as: relaxation, euphoria, pain relief, sedation, confusion, drowsiness, dizziness, nausea and vomiting, urinary retention, pupillary constriction, and respiratory depression.

What are the effects of an overdose?

Overdose can cause stupor, changes in pupil size, clammy skin, cyanosis, coma, and respiratory failure leading to death. The presence of a triad of symptoms such as coma, pinpoint pupils, and respiratory depression strongly suggests opioid intoxication.



A lethal dose of fentanyl



Fake rainbow oxycode M30 tablets containing fentanyl



Fake oxycodone tablets containing fentanyl

Upcoming TRAININGS/CLEs:  
Advanced Trial Advocacy

September 4 - 6, 2024, Crowne Plaza at Union Station

Indianapolis, Indiana

More info and register on our website!