**Police Prosecutor Update**

Issue No. 363
September 2024

**Jones v. State- Search and Seizure**

**2024 Ind. App. Unpub. LEXIS 1071, Ind. Ct of App.**

* officers were dispatched to a store on the report of someone breaking into vehicles
* suspect (Landaker) gave information that Jones was supplying drugs to a woman named Amanda; that Jones was holding Amanda against her will at the trailer; and that Amanda was from Elwood and had arrest warrants for failing to return to work release
* Officers corroborated this information with the director of work release, and Landaker identified Jones and Burke in photographs.
* Officers decided to do a welfare check on Jones’s residence based on this information.
* Jones appeals his conviction, arguing that the traffic stop and his subsequent arrest for resisting law enforcement were unlawful because Lieutenant Richwine was not wearing a distinctive uniform or operating a clearly marked police car as required by Indiana Code section 9-30-2-2(a); and secondly, the officers' unlawful entry "undisputably tainted" the subsequent search warrant, which was based in part on the observation of the paraphernalia.

**I. The officers complied with Indiana Code section 9-30-2-2**

 (a) **Except as provided in subsection (b)**, a law enforcement officer may not arrest or issue a traffic information and summons to a person for a violation of an Indiana law regulating the use and operation of a motor vehicle on a highway or an ordinance of a city or town regulating the use and operation of a motor vehicle on a highway unless at the time of the arrest the officer is:

(1) wearing a distinctive uniform and a badge of authority; or

(2) operating a motor vehicle that is clearly marked as a police vehicle;

that will clearly show the officer or the officer's vehicle to casual observations to be an officer or a police vehicle.

(b) Subsection (a) does not apply to an officer in an unmarked police vehicle making an arrest or issuing a traffic information and summons:

(1) **when there is a uniformed officer present at the time of the arrest**

Although Lieutenant Richwine exited his unmarked car first at Jones's trailer, Sergeant Bowling arrived soon thereafter in his clearly marked police car and wearing a distinctive uniform, ordered Jones to stop, and then tased him when he didn't. Because Sergeant Bowling was present when Lieutenant Richwine initiated the stop and when Jones was arrested, the requirements of Section 9-30-2-2 were satisfied. Accordingly, the traffic stop and Jones's arrest for resisting law enforcement were lawful, and the trial court did not err in admitting the drugs found during the search incident to arrest.

**II**. **The officers did not violate the Fourth Amendment to the United States Constitution or Article 1, Section 11 of the Indiana Constitution**

*Fourth Amendment Analysis*

Exigent circumstances existed because "officers believed Jones was holding Burke hostage based on a corroborated tip. Landaker told officers that Jones was holding Burke against her will at his trailer. Landaker explained that Burke was from Elwood and had arrest warrants for failing to return to work release. Officers corroborated this information with the director of work release, and Landaker identified Jones and Burke in photographs. Additionally, Landaker said Jones had methamphetamine in his home, and officers found methamphetamine on Jones's person during the search incident to arrest that occurred right outside his home. After Jones was arrested, officers saw a man inside the trailer. When officers asked the man through the screen door if a woman was inside, the man gave a response that they thought was odd. Based on the totality of these circumstances, the officers' decision to enter the trailer without a warrant to search for and check on Burke was objectively reasonable. There was no Fourth Amendment violation, and the trial court did not err in admitting the drugs found during the execution of the search warrant.

*Indiana Constitutional Analysis*

We evaluate 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.

For the first factor, officers had a high degree of concern, suspicion, or knowledge that a violation had occurred. First, officers received information from Landaker that Jones had methamphetamine in his home and was holding a woman named Amanda—who was from Elwood and had arrest warrants for failing to return to work release—against her will

Second, officers had a high degree of knowledge that Jones resisted law enforcement when a "convoy" of police cars—which included a fully marked car and a fully uniformed officer—initiated a traffic stop. Jones then accelerated on his motorcycle and drove erratically until he came to a "skidding" stop on his porch before attempting to retreat into his home. The degree of intrusion of the traffic stop was low. Although the traffic stop culminated in Jones being tased, Jones's actions in fleeing from the officers caused that to happen. However, the degree of intrusion of the warrantless entry into Jones's home to search for and check on Burke was high.

Finally, officers had a high degree of concern for Burke's safety when they entered Jones's home without a warrant as a man inside the trailer gave an evasive answer when asked whether Burke was inside. Law-enforcement needs exist not only when officers conduct investigations of wrongdoing but also when they provide emergency assistance or act to prevent some imminent harm. Officers were investigating a report that Jones was holding Burke against her will, and when they arrived at Jones's trailer, the circumstances only confirmed their concern for Burke's safety.

Conviction Affirmed.

**Ivy v. State- Search and Seizure**

**2024 Ind. App. Unpub. LEXIS 1146, Ind Ct. of App**

* Officers with the Indianapolis Metropolitan Police Department Violence Reduction Task Force conducted a protective sweep of Ivy's house.
* Officers found a brown wallet containing Ivy's driver's license in what officers referred to as "[B]edroom 1.
* Inside the closet in Bedroom 1, Officer Brown found a "big purple bookbag" which gave off the strong "odor of raw marijuana" and, when it was opened, he found a zippered bag within that contained what appeared to be "a large amount of marijuana.
* Additionally, officers located a black silk drawstring bag hanging on the closet door in Bedroom 1 that contained "small sandwich baggies that were all tied off" filled with what "looked to be cocaine," and which was later tested and determined to be 5.081 grams of cocaine.
* Ivy's Facebook page and observed that Ivy had posted photos of himself wearing some of the same clothing found in the closet in Bedroom 1.

Constructive possession occurs when a person has the capability and intent to maintain control over the contraband*.* The capability element is met when the State shows the defendant is able to reduce the contraband to his personal possession. *Goliday v. State*, 708 N.E.2d 4, 6 (Ind. 1999). To show the intent element, the State must demonstrate the defendant's knowledge of the presence of the contraband. This knowledge may be inferred from either the exclusive control over the premises containing the contraband or, if the control is non-exclusive, evidence of additional circumstances pointing to the defendant's knowledge of the contraband's presence. Some possible examples of such circumstances include (1) incriminating statements; (2) attempting to leave or making furtive gestures; (3) the location of contraband like drugs in settings suggesting manufacturing; (4) the item's proximity to the defendant; (5) the location of contraband within the defendant's plain view; and (6) the mingling of contraband with other items the defendant owns.

* Ivy's wallet, identification, birth certificate, and personal mail were all found in Bedroom 1
* Cocaine was found in a bag inside the closet in Bedroom 1, near clothing that additional evidence suggested belonged to Ivy
* In close proximity to Ivy's birth certificate and in plain view in Bedroom 1, officers located two digital scales and heat seal envelopes which officers testified are items indicative of a drug manufacturing setting
* Officers also found baggies typically used to store and sell drugs in the closet near the cocaine, and a large amount of what officer's suspected was marijuana
* ***HOWEVER, the State failed to prove "(1) that the substance was marijuana, and (2) the amount involved was at least thirty (30) grams because the State did not present evidence "of the delta-9 THC concentration or the weight" of "the suspected marijuana found in the bedroom*.**

The Court affirmed Ivy's conviction for possession of cocaine, but reversed his conviction for dealing in marijuana, and remanded with instructions for the trial court to vacate the marijuana conviction and sentence.

Drug School

Kratom

**WHAT IS KRATOM**? Kratom is a tropical tree native to Southeast Asia. Consumption of its leaves produces both stimulant effects (in low doses) and sedative effects (in high doses), and can lead to psychotic symptoms, and psychological and physiological dependence. Kratom leaves contain two major psychoactive ingredients (mitragynine and 7-hydroxymytragynine). These leaves are crushed and then smoked, brewed with tea, or placed into gel capsules.

**What are the effects**? At low doses, kratom produces stimulant effects with users reporting increased alertness, physical energy, and talkativeness. At high doses, users experience sedative effects. Kratom consumption can lead to addiction. Several cases of psychosis resulting from use of kratom have been reported, where individuals addicted to kratom exhibited psychotic symptoms, including hallucinations, delusion, and confusion.

**What is its legal status**? Kratom is not controlled under the Controlled Substances Act; however, there may be some state regulations or prohibitions against the possession and use of kratom. The FDA has not approved Kratom for any medical use. In addition, DEA has listed kratom as a Drug and Chemical of Concern. Since the passage of Indiana Senate Bill 305, kratom has been classified as a Schedule I controlled synthetic substance. (see I.C. 35-48-2-4(g) and I.C. 35-31.5-2-321) Therefore, kratom is illegal for sale, purchase, possession, and consumption throughout the state of Indiana.

[**Indiana News**](https://fox59.com/indiana-news/)

**New drink illegal in Indiana, selling in Illinois**

by: Cole Nobbe

Posted: Sep 16, 2024 / 11:11 AM EDT

Updated: Sep 16, 2024 / 11:11 AM EDT

WABASH VALLEY (WTWO-WAWV) — A drink that claims to be a euphoric seltzer.

It’s called New Brew, and it is banned in Indiana, but selling in Illinois.

The website says it’s the first non-alcoholic beverage with affects you can feel. It does this with two plants, kava and kratom, that interact with receptors in your brain.

Yet, the company warns that the product is addictive and should not be consumed every day.

The drink is illegal in Indiana because of one of the ingredients.

Indiana State Police say, no matter the drink, you should know and understand what you are putting in your body.

*“The most important thing is, as a consumer, you need to know and understand anything that you put in your body. Number one, what are you taking and what are the effects of that is going to be on your body. We all know what’s going to happen when we drink water, however if you consume too much alcohol, or you are consuming this type of drink that’s going to make you become addicted to it, is that something that you want to be in your body on a regular basis.”*

***Sgt. Matt Ames – Public Information Officer – Indiana State Police***

ISP also reminds people that driving under the influence of anything that impairs your motor skills is cause for arrest.





Upcoming TRAININGS/CLEs:
PR/Media Training- Oct 18, 2024

Indiana Government Center

IPAC Winter Conference- December 9-11

Westin Hotel

More info and register on our website!