

Police Prosecutor Update

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Issue 365

Editor's Note: Don't panic! You didn't miss the November or December issue! Those months have been combined into this update!

Richard Lynell Pigott v. State of Indiana

2024 Ind. App. Unpub. LEXIS 1375

Search and Seizure: Officer had probable cause to search incident to an arrest

- Officer Armstrong conducted a license plate check on a vehicle that he was following.
- The check revealed that the registered owner of the vehicle had an active warrant.
- Armstrong stopped the car and discovered that the driver and sole occupant of the vehicle was not the owner but was instead Pigott.
- Armstrong was familiar with Pigott and had knowledge from prior encounters that Pigott had a suspended license.
- Armstrong noticed a backpack with a small figurine attached in the back seat of the vehicle. Armstrong recognized the backpack from a prior encounter with Pigott.
- Pigott denied ownership of the backpack.
- Based on the denial of ownership of the backpack and his extremely nervous behavior, Officer Armstrong requested a K-9 officer.
- The dog indicated to the odor of drugs inside of the vehicle.
- Armstrong searched Pigott and found a bag of what he believed to be marijuana on his person. A subsequent search of the vehicle and the backpack uncovered a digital scale, marijuana roaches, and substances later confirmed to be methamphetamine, marijuana, and a mix of heroin and fentanyl.

Pigott was convicted at trial and appealed the admission of the evidence found in the backpack due to the extension of the traffic stop for the K-9 sniff.

4th Amendment Analysis

Since the K-9 sniff occurred after the completion of the traffic stop, the issue is whether officers possessed reasonable suspicion that Pigott was engaged in criminal activity to justify the extended detention.

Under the 4th Amendment, the Court looks at the totality of the circumstances to determine if a reasonable suspicion of criminal activity exists.

Here, Armstrong was familiar enough with Pigott to know he had no valid driver's license. From his prior encounters with Pigott, Armstrong was aware that he had also had prior drug charges and recognized the backpack in Pigott's vehicle as belonging to him. When asked about the

backpack, Pigott stated that the backpack belonged to someone else. Based on these facts, the Court concluded that Armstrong had sufficient independent reasonable suspicion to justify the continued detention of Pigott for the K-9 sniff.

Article 1, Section 11

To determine if police conduct is reasonable under the Indiana Constitution, the Court used the *Litchfield* balancing test, looking at 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.

Here, Pigott violated the law by operating a motor vehicle without a valid license, which is enough to satisfy the first prong of the balancing test. This suspicion was heightened when Anderson recognized the backpack from a prior search involving Pigott, Pigott's false statements about the backpack, and his nervous behavior.

The degree of intrusion prong was low. Pigott was delayed by approximately 25 minutes, 10-15 of which was for the K-9 to arrive.

The extent of law enforcement needs was high. The need for law enforcement to find evidence of drug activity to protect society is an important function of the police.

Balancing these factors, the Court held that the warrantless search was reasonable considering the totality of the circumstances and found that there was no error by the trial court in admitting the evidence found during the search of Pigott's vehicle.

Conviction Affirmed.

Young v. State

2024 Ind. App. LEXIS 279 Indiana Court of Appeals

Search and Seizure: Looking behind a loose door panel was not unreasonable search

- Franklin Police Department conducted surveillance on Young because he had an outstanding warrant for his arrest. Officers observed Young sitting in a vehicle in front of his residence for over an hour.
- Officers pulled in behind Young's vehicle, and ordered him out of the vehicle, placing him into handcuffs. A pat-down search revealed methamphetamine and a substance believed to be marijuana.
- Police ran a K-9 around the vehicle, which indicated drug odors inside of the vehicle.
- A search was completed for the vehicle, which showed multiple tools and signs that the center console had been disassembled.
- Police found a magnetic box where an air vent was missing, containing baggies, marijuana, and a pipe.

- Continuing their search, officers noticed that the driver's interior door panel was "super loose." Pulling on the panel, officers uncovered 19 grams of meth, a scale, latex gloves, syringes, and unused baggies.

Young was convicted of level 2 felony Dealing in Methamphetamine; level 6 felony Unlawful Possession of a Syringe; and was found to be a habitual offender. He appealed his conviction claiming that the warrantless search of his vehicle, including looking in the loose door panel, violated his 4th Amendment and Indiana Constitutional rights.

4th Amendment

The State has the burden of proving that an exception applies to a warrantless search. One such exception is the automobile exception.

"Where there is probable cause to search a vehicle, a search is not unreasonable if it is based on facts that would justify the issuance of a warrant, even though a warrant has not been obtained." *Meister v. State*, 933 N.E.2d 875, 879 (Ind. 2010). "Probable cause to issue a search warrant exists where the facts and circumstances would lead a reasonably prudent person to believe that a search would uncover evidence of a crime." *Id.*

Before pulling on the door panel, police had already found drugs on Young's person. A K-9 had given a positive indication for the presence of drugs inside of the vehicle. Police had already found the magnetic box with drugs and paraphernalia hidden inside the vehicle, as well as tools indicating that parts of the vehicle had been disassembled. The Court held that a reasonably prudent person could conclude that more drugs could be hidden inside the vehicle. Since probable cause existed to justify looking behind the door panel, police action in looking behind the door panel did not violate Young's 4th Amendment rights.

Article 1, Section 11 Indiana Constitution

Indiana Courts use the *Litchfield* balancing test in determining if a search is unconstitutional, focusing on 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.

Police had a high degree of suspicion or concern that a violation occurred based on the K-9 indication of the presence of drugs in Young's vehicle.

The degree of intrusion was low, as the search was a minimal disruption of Young's normal activities since he was already under arrest for the outstanding warrant.

The extent of law enforcement needs was also high because the need to stop drug use and sales is a threat to society.

Given all these factors, the Court held that the warrantless search of Young's vehicle was not unreasonable.

Conviction affirmed

**Note that the Court distinguished this case from Bell v State, 818 N.E.2d 481 (Ind. Ct. App. 2004) where police dismantled a glove box to find drugs behind the glove box and into the chassis of the vehicle. This is likely given the fact that there were no signs that the glove box had been taken apart in Bell. Here, however, officers found clear signs that the door panel was loose, and the center console had been disassembled. **

Moore v. State of Indiana

**2024 Ind. App. LEXIS 273 | 244 N.E.3d 934 | 2024 WL 4352158 Court of Appeals of Indiana
Firearms: Law prohibiting a person under indictment from possessing a firearm held constitutional**

- Moore, the driver and sole occupant of his vehicle, crashed into a wooded area near an apartment complex.
- Firefighters on the scene noticed a firearm in the car and notified police.
- Moore had pending felony charges against him.
- Moore was charged with Unlawful Carrying of a handgun under the theory that he could not possess a firearm as a person under indictment.

Moore was found guilty at a bench trial, and appealed the conviction, contending that Indiana Code Section 35-47-2-1.5(b)(6) violated his right to bear arms under the Second Amendment to the United States Constitution and Article 1, Section 32 of the Indiana Constitution.

2nd Amendment claim

The Court applied a three-part analysis: (1) Is Moore someone whom the Second Amendment protects? (2) Is the weapon Moore carried in common use today? (3) Does the plain text of the Second Amendment protect Moore's specific conduct?

The parties agreed that Moore is someone whom the Second Amendment protects, satisfying part 1.

Under part 2 of the analysis, the Court considered whether Subsection (b)(6) is consistent with traditional firearm regulations. In finding that Moore's Second Amendment rights were not violated, the Court held:

[Traditional firearm regulations] applied only to criminal defendants awaiting trial for alleged, serious crimes. Similarly, Subsection (b)(6) targets only those "under indictment" for an offense punishable by a year or more imprisonment. Moreover, subsection (b)(6)'s restriction is temporary—it applies only so long as Moore is under indictment...Subsection (b)(6) is less restrictive of Moore's right to bear arms than the historical record...Instead of completely disarming Moore, Subsection (b)(6) strips only his right to lawfully carry a handgun...

-One historical justification for pretrial detention and disarmament was to protect the public from future criminal acts by the accused. Subsection (b)(6) seeks to achieve the same protective function by temporarily disarming individuals accused of serious wrongdoing to reduce the risk he or she will harm the public, most prominently by misusing a handgun. Subsection (b)(6)'s prohibition fits within this Nation's tradition of disarming criminal defendants facing serious pending charges. (Internal citations omitted)

As for Moore's specific conduct, the Court found that felony offenses are the most serious category of crime, and therefore the fact that he was facing felony charges did not protect his right to possess a firearm under these circumstances.

Article 1, Section 32 of the Indiana Constitution

The Court begins the analysis by applying a rational basis review to determine whether the firearm restriction is a valid exercise of the State's "police power to promote health, safety, comfort, morals, and welfare of the public." If the restriction passes rational basis review, the Court must then determine whether it "materially burdens one of the core values" embodied in Indiana's Bill of Rights.

State action "does not impose a material burden . . . if *either* the 'magnitude of the impairment' is slight" or the exercise of the right "threatens to inflict 'particularized harm' analogous to tortious injury on readily identifiable private interests." Allowing Moore to carry a handgun while under indictment would leave open the possibility that he would pose a further threat of violence on society. For this reason, the Court held that prohibiting Moore from carrying a firearm while under indictment did not impose a material burden on his rights.

Conviction Affirmed.

Watson v. State of Indiana- Court of Appeals of Indiana 2024 Ind. App. Unpub. LEXIS 1644

Search and Seizure: Pat-down search held reasonable under Emergency Aid Exception to Warrant Requirement

- Officers responded to a dispatch regarding an overdose
- Watson "was lethargic" and "was sweating profusely."
- Watson's "pupils were dilated" and he looked like he "needed medical attention."
- Officers believed that Watson was intoxicated and testified that Watson had trouble communicating
- Officers conducted a pat-down of Watson before putting him into an ambulance and discovered a baggy of believed to contain cocaine or Fentanyl in his pocket.
- Watson was convicted of level 6 felony Possession of Cocaine and appealed, arguing putting him into the ambulance against his will was an unconstitutional seizure.

4th Amendment Analysis

When a search is conducted without a warrant, the State has the burden of proving that an exception to the warrant requirement existed at the time of the search.

The relevant exception here is the *emergency aid exception*, which applies when a law enforcement officer has "an objectively reasonable basis for believing that medical assistance was needed, or persons were in danger." The State must show that the circumstances as they appeared

at the time of the stop would lead a reasonable, experienced law enforcement officer to believe that someone required immediate assistance.

The pat-down search of Watson in the ambulance did not violate the Fourth Amendment because officers had an objectively reasonable basis to believe that Watson might need medical assistance, and it was not unreasonable for officers to be concerned about his safety and the safety of the attending emergency medical personnel when they rendered assistance to Watson.

Article 1, Section 11 Analysis

The Court relied on the *Litchfield* balancing test to determine if the officer(s) actions were reasonable under the totality of the circumstances, 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.

The degree of concern that emergency medical assistance was needed was high based on the initial observations of the officers regarding Watson's condition.

The degree of intrusion was moderate. The officers ordered Watson into the ambulance to receive medical care due to his signs of intoxication and elevated vitals.

Police still have important roles to play when they help during emergencies or work to stop a possible danger. Law enforcement had a significant need in this situation because the officers searched Watson to ensure the safety of both themselves and the emergency medical staff while they helped him. The search of Watson was fair considering all the factors involved and did not break the rules set by Article 1 Section 11 of the Indiana Constitution.

Conviction Affirmed.

Williams v. State of Indiana- Court of Appeals of Indiana

2024 Ind. App. Unpub. LEXIS 1559

Sufficiency of Evidence: Police must show more than mere possession or absence of medical use for a conviction under I.C. 16-42-19-18

- Williams was in the front passenger seat of the vehicle operated by Mathew Campofiore-Audet when police stopped the vehicle.
- Upon approach, the officer detected the odor of burnt marijuana coming from the vehicle
- Both occupants admitted there were syringes in the vehicle
- Some of the syringes had fresh blood on them, indicating that they had been recently used
- Williams admitted to using methamphetamine earlier in the day
- Williams claimed that they were taking the syringes to a needle exchange
- Williams was convicted of level 6 felony Possession of a Syringe

Mere possession of syringes and the absence of evidence of a medical use for the syringes is not sufficient to support a conviction under Indiana Code section 16-42-19-18. Cases in which courts have found sufficient evidence of unlawful intent generally include evidence of prior narcotics convictions; admissions to drug use; the presence of illegal drugs or drug residue on the

paraphernalia; track marks on the defendant's arms or hands; or withdrawal symptoms showing recent drug use.

Here, the syringes in the vehicle had blood on them, indicating recent use. Williams admitted to prior use of methamphetamine, and the co-defendant testified that they searched for methamphetamine that Williams had thrown out of the vehicle previously. Additionally, Williams' tattoos made it difficult to identify injection sites. Based on these circumstances, the Court held that the State had presented enough evidence to show that Williams possessed the syringes with the intent to inject a controlled substance into his body in violation of the law.

Conviction Affirmed.

Hope everyone enjoyed the holidays!

This is a publication of Indiana Prosecuting Attorneys Council which will cover caselaw and various topics of interest to law enforcement officers. Please direct any questions or suggestions you may have for future issues to Dave Thornburg, Drug Resource Prosecutor at IPAC – DaThornburg@ipac.in.gov