

Police Prosecutor Update

April 2025

Issue 368

Vanlandingham v. State of Indiana

Court of Appeals of Indiana March 20, 2025, 2025 Ind. App. Unpub. LEXIS 324

- Police had an anonymous tip that Vanlandingham was selling drugs out of a local hotel.
- Officers stopped a vehicle leaving the hotel.
- A K-9 gave a positive indication for drugs being located inside the vehicle.
- Police found drugs on the people inside the vehicle, who admitted to purchasing the drugs from Vanlandingham at the hotel.
- Text messages found on the phone of one of the passengers showed messages setting up the purchase and details of the transaction with Vanlandingham.
- Using this information, police sought a warrant to search the room registered to Vanlandingham.
- During the search, police found over 14 grams of fentanyl, 7 grams of methamphetamine, scales, baggies, spoons, and other evidence of drug use and sales.
- Defendant moved to suppress the evidence seized from his hotel room, claiming that the warrant authorizing the search lacked probable cause.
- The trial court denied the motion to suppress, and the defendant was convicted on all charges.
- Defendant appealed the conviction, again arguing that there was no probable cause for the issuance of the search warrant, specifically, that the anonymous sources who reported that the defendant was dealing drugs out of his room in the hotel never had their reliability established in the search warrant.

Analysis

“A warrant must be supported by an affidavit that establishes probable cause for the search. When the affidavit is based on hearsay, it must either: (1) ‘contain reliable information establishing the credibility of the source and of each of the declarants of the hearsay and establishing that there is a factual basis for the information furnished’; or (2) ‘contain information that established that the totality of the circumstances corroborates the hearsay.’”

The COA found that the search warrant affidavit in this case was supported by probable cause. The affidavit detailed how officers observed a vehicle leaving the parking lot outside the room where Vanlandingham was located. There was a valid traffic stop of this vehicle,

along with a positive K-9 indication that drugs were inside the vehicle. There were admissions made by the suspect inside the vehicle that he had just bought drugs from Vanlandingham, which was corroborated by text messages from the suspect's phone.

Conviction Affirmed.

Davis v. State of Indiana

Court of Appeals of Indiana March 18, 2025, 2025 Ind. App. Unpub. LEXIS 312

- Tippecanoe County Community Corrections received a tip that someone was going to be bringing contraband into the community corrections penal facility.
- Davis was subjected to a strip search by Officer Ogle to check for any contraband upon his return to the facility.
- Officer Ogle checked the room to make sure that there was nothing left from a prior search before beginning the search on Davis.
- During the search, Davis was asked to remove his underwear. When he did so, a plastic bag fell from his underwear and fell to the floor, which was witnessed by Officer Ogle.
- After Davis redressed, Ogle retrieved the bag and observed that it contained a white crystalline substance, which he recognized to be methamphetamine.
- Davis denied knowing anything about the bag that fell from his underwear.
- Davis was charged with Possession of Methamphetamine as a Level 5 Felony and convicted at trial.
- Davis appealed, alleging that there was insufficient evidence to show that he committed the crime.

The Court used an analysis of actual and constructive possession. Actual possession occurs when the contraband is found directly on the person. Constructive possession occurs "when the person has 1) the capability to maintain dominion and control over the item; and 2) the intent to maintain dominion and control over the item."

In reviewing the evidence, the testimony of Officer Ogle established that he checked the body search room to ensure that nothing had been left behind from a previous search. Ogle did not observe any other contraband in the area. He also testified that he watched the plastic bag fall from Davis's underwear and heard the baggie hit the floor. The Court concluded that Davis had actual possession of the baggie.

Conviction Affirmed.

Dunem v. State of Indiana

Court of Appeals of Indiana March 14, 2025, 2025 Ind. App. LEXIS 73

- Police initiated a traffic stop on a Greyhound bus for driving left of center and crossing over the fog line.

- Deputies asked the driver for consent to search the bus and were told that permission would have to come “from Greyhound.”
- A K-9 officer arrived on the scene approximately 10-12 minutes after the initial traffic stop while officers were waiting on permission from Greyhound to search the bus.
- An open-air sniff of the bus showed a positive indication for drugs in a pink suitcase, which was found to have roughly 15 pounds of marijuana. The pink suitcase had no indication of who it belonged to.
- Deputies also located an AR-15 pistol in a different backpack, along with a pair of handguns on another passenger.
- Police also observed a black duffle bag located in the passenger overhead compartment. None of the passengers would claim ownership of the bag.
- A search of the bag revealed more narcotics, along with passenger Dunem’s bus ticket.
- Dunem was taken into custody but still denied ownership of the bag.
- The entire traffic stop lasted about one hour and yielded over one hundred grams of drugs, fifteen pounds of marijuana, several handguns, and several people wanted on warrants.
- Dunem moved to suppress the items found in the duffle bag claiming that his rights were violated under both the Fourth Amendment and Section 1, Article 11 of the Indiana Constitution.
- The trial court denied the motion to suppress, and this matter went to the Court of Appeals on an interlocutory appeal.

Fourth Amendment Analysis

Dunem makes two Fourth Amendment arguments.

First, the open-air sniff impermissibly prolonged the traffic stop in violation of the Fourth Amendment. The Court disagreed. “Police ‘may conduct certain unrelated checks during an otherwise lawful traffic stop,’ but they ‘may not do so in a way that prolongs the stop[.]’” *Rodriguez v. United States*, 575 U.S. 348, 354.

At the time that the K-9 officer arrived, it had only been 10-12 minutes. The stopping officer was still in the process of issuing a warning ticket to the bus driver when the K-9 began the open air-sniff. The goal of the traffic stop was to issue a warning to the bus driver. That goal was still in the process of being completed. Summoning the K-9 to the scene did not prolong the traffic stop, and therefore, there was no violation of the Fourth Amendment under this argument.

Dunem’s second argument under the Fourth Amendment was that his rights were violated when police searched the duffle bag without a warrant

The Court found that the automobile exception allowed police to search the bus without a warrant due to it being readily mobile and there being probable cause to believe that the vehicle contained evidence of a crime. “[W]hen there is probable cause to search for contraband in a car, it is reasonable for police officers . . . to examine packages and containers without a showing of individualized probable cause for each one.” *Wyoming v. Houghton*, 526 U.S. 295 at 302. For this reason, the Court held that the search of the duffle

bag was reasonable and justified under the automobile exception to the warrant requirement.

Article 1, Section 11 of the Indiana Constitution Analysis

When reviewing a claim of an Article 1, Section 11 violation of the Indiana Constitution, the Court uses the *Litchfield* balancing test to determine if the search or seizure was reasonable under the totality of the circumstances. The Court determines 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."

The degree of concern, suspicion, or knowledge was high based on the positive K-9 indication of narcotics being on the bus. This was heightened when officers also located drugs, guns, and wanted individuals located on the bus.

Traffic stops typically result in a short, temporary intrusion on a person's ordinary activities. Here however, the traffic stop lasted around an hour while police investigated the drugs and guns found on the bus. The Court found this to be a moderate intrusion into Dunem's ordinary activities.

The Indiana Supreme Court has recognized that "law enforcement needs related to drug interdiction are significant." The K-9 alert, the recovery of drugs and guns, and the finding of several wanted individuals served to increase law enforcement needs.

In balancing all three factors, the Court found that the significant law enforcement needs and degree of concern, suspicion, or knowledge that a violation had occurred outweighed the intrusion on Dunem's ordinary activities, and upheld that the search was reasonable and did not run afoul of Article 1, Section 11.

Denial of Motion to Suppress Affirmed.

State of Indiana v. Jeremiah Allen Hendricks, Sr.

Court of Appeals of Indiana, March 12, 2025, 2025 Ind. App. LEXIS 71

- Officers went to Hendricks's house at around 11:30 p.m. searching for a suspect named Jackson and his associate Giovanni, Hendricks's son.
- Jackson was a suspect in a recent shooting and there was an active warrant for Jackson's arrest.
- Officers knew Giovanni had lived at Hendricks's house approximately two years earlier, but they did not have any information that he was living there at the time of their visit.
- Officer Anthrop walked across Hendricks's front yard to the front door and smelled marijuana odor.
- Based on the odor of marijuana, officers applied for a search warrant.
- After obtaining a search warrant based on the marijuana odor, entered Hendricks's home and found firearms, marijuana, and psilocybin mushrooms.

- Hendricks filed a motion to suppress any evidence under the Fourth Amendment, claiming that the initial entry onto the curtilage was a search of his home, and therefore illegal.
- The trial court granted the motion to suppress.
- The State filed a Motion to Correct Error, claiming that the evidence would have inevitably been discovered had Officer Anthrop used the sidewalk to the front door, rather than cutting through the yard. The Court granted the State's motion, holding that the suppressed evidence would be admissible through the inevitable discovery exception to the Fourth Amendment.
- Hendricks filed another motion to suppress, this time under Article 1, Section 11 of the Indiana Constitution, claiming that the search of the curtilage of his property violated the Indiana Constitution. The trial court agreed and ruled that the inevitable discovery exception to an invalid search is not found in the Indiana Constitution, and therefore the odor of marijuana discovered by police after the approach onto the curtilage of the property cannot be admitted.
- The State filed this appeal, challenging the trial court's suppression of the evidence.

Because this issue was resolved under the Indiana Constitution, the Court used the *Litchfield* balancing test to evaluate the reasonableness of the police conduct. The Court balances three factors in determining whether the police conduct was reasonable: 1) the degree of concern, suspicion, or knowledge that a violation has occurred; 2) the degree of intrusion the method of search or seizure imposes on the citizen's ordinary activities; and 3) the extent of law enforcement needs.

The first factor is evaluated by looking at what information was available to officers at the time of the search or seizure. In this case, the officers had known that Giovanni had lived at Hendrick's house approximately two years prior but had no knowledge or information that he was living there at the time of the search. They merely had a hope or generalized suspicion that he was there. For this reason, the Court concluded that the first factor was very low and weighed against the State.

Under the second factor, the Indiana Constitution protects against warrantless intrusions onto the curtilage of the property. There is no unreasonable search if officers enter the curtilage of the property that is used as normal means of ingress or egress- in this case, the sidewalk. Officers did not use the sidewalk, but walked through the yard- one to the back of the house, and one through the front yard. The Court also considered the time of the approach by officers. They did not have an arrest warrant but were merely looking for an individual. While the officer smelled marijuana, "he still exceeded societal norms by approaching the front door to summon the house's occupants at a time when the occupants rightfully expected not to be disturbed." The Court concluded that the degree of intrusion was high.

Under the last factor, the Court held that the needs of law enforcement were low. There were no emergency or exigent circumstances that required officers to approach the residence. The shooting that Jackson was involved in happened several days prior, and

there was no active threat of danger when officers entered the curtilage of the home without a warrant.

Under the totality of the circumstances, the Court held that the entry of the officers onto Hendrick's property was unreasonable under the Indiana Constitution and affirmed the motion to suppress.

Motion to Suppress Affirmed.

Nelson v. State of Indiana

Court of Appeals of Indiana March 7, 2025, 2025 Ind. App. Unpub. LEXIS 275

- Police received a tip that Nelson was purchasing and transporting methamphetamine and heroin from South Bend to Wabash County.
- Based on this information, police began to surveil Nelson to corroborate the tip.
- The information provided to police was that Nelson would use his own vehicle, a blue Volkswagen Jetta, to transport the drugs. The surveillance confirmed that Nelson in fact drove a blue Volkswagen Jetta.
- A trash pull was done outside of a residence Nelson frequently visited. Police found multiple plastic baggies with residue and other indicators of drug use.
- A K-9 was used to conduct a free-air sniff of Nelson's vehicle when it was parked on the street outside his residence. This resulted in a positive indication from the K-9 for the presence of drugs.
- Based on these observations, officers applied for and were granted a search warrant for Nelson, his residence, and his car.
- When officers observed Nelson driving his vehicle the next day, they initiated a traffic stop to execute the search warrant.
- While speaking with Nelson, officers observed a plastic bag sticking out of his shoe. This bag contained over seven grams of methamphetamine.
- Nelson filed a motion to suppress the evidence found during the search, arguing that the search was illegal because the affidavit for the search warrant did not establish probable cause since it was based on an anonymous tip.
- The trial court denied the motion, and Nelson was convicted of possession of methamphetamine as a Level 4 Felony.
- Nelson appealed the conviction under both the Fourth Amendment and Article 1, Section 11 of the Indiana Constitution, again arguing that the search warrant was not supported by probable cause and that the search was unreasonable under the Indiana Constitution.

Fourth Amendment Analysis

"An affidavit must provide the [warrant-issuing judge] with a substantial basis for determining the existence of probable cause . . ." *Illinois v. Gates*, 462 U.S. 213, 238, 103 S. Ct. 2317, 76 L. Ed. 2d 527 (1983)). This must be something more than uncorroborated hearsay. However, if the hearsay is corroborated, then this can be enough to find probable cause existed.

Here, the surveillance confirmed that Nelson in fact drove a blue Volkswagen Jetta. A trash pull resulted in multiple plastic baggies with residue and other indicators of drug use being found. A free-air sniff of Nelson's vehicle resulted in a positive indication from the K-9 for the presence of drugs. Therefore, the Court of Appeals held that the anonymous tip was sufficiently corroborated, and the search warrant was supported by probable cause.

Article 1, Section 11 Analysis of Probable Cause

"An anonymous tip, without more, cannot support a finding of probable cause. However, an officer can bolster the trustworthiness of a source of unknown credibility by including in the search warrant affidavit the basis of the informant's knowledge or facts obtained through independent police investigation that corroborate the source." *Bailey v. State*, 131 N.E.3d 665, 679 (Ind. Ct. App. 2019) (citing *McGrath v. State*, 95 N.E.3d 522, 527 (Ind. 2018)).

Here, the Court of Appeals held that the independent investigation corroborating the anonymous tip established that probable cause existed, the same as it did for the Fourth Amendment challenge.

Article 1, Section 11 Analysis of Reasonableness

Lastly, Nelson argued that the search was unreasonable under Article 1, Section 11. The Court of Appeals applied the *Litchfield* balancing test to determine if the search was reasonable. This test looks 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.

Under the first factor, the independent investigation done by officers to corroborate the anonymous tip led to a high degree of suspicion that Nelson possessed illegal drugs. For the second factor, the Court found that there was nothing illegal about the traffic stop of Nelson's vehicle, and the search of his person was done pursuant to a valid warrant. Additionally, the degree of intrusion was minimal since the bag was found by officers in plain sight sticking out of Nelson's shoe. Lastly, the third factor, the extent of law enforcement needs, was high since officers had corroborated the information from the anonymous tip that Nelson was in possession of drugs.

Based on these three factors, the Court of Appeals held that the search of Nelson was not unreasonable, and did not violate his rights under Article 1, Section 11 of the Indiana Constitution.

Conviction Affirmed.

Drug School

Inhalants

WHAT ARE INHALANTS? Inhalants are invisible, volatile substances found in common household products that produce chemical vapors that are inhaled to induce psychoactive or mind-altering effects.

Common street names include:

- Gluey, Huff, Rush, Whippets, Snappers, Poppers, Bolt, or Bullet

Common household products such as glue, lighter fluid, cleaning fluids, and paint all produce chemical vapors that can be inhaled. The most common types of products used as inhalants are glue, shoe polish, toluene, Nitrous oxide or “whippets”, gasoline, spray paint, lighter fluid, paint thinner, white-out (correction fluid), and Amyl nitrite or “poppers.”

The term “inhalants” is used to describe a variety of substances whose main common characteristic is that they are rarely, if ever, taken by any route other than inhalation.

Inhalants are breathed in through the nose or the mouth in a variety of ways, such as:

- “Sniffing” or “snorting”
- “Bagging”— sniffing or inhaling fumes from substances sprayed or deposited inside a plastic or paper bag
- “Huffing” from an inhalant-soaked rag stuffed in the mouth, or inhaling from balloons filled with nitrous oxide

The common household products that are misused as inhalants are legally available for their intended and legitimate uses. Many state legislatures have attempted to deter youth who buy legal products to get high by placing restrictions on the sale of these products to minors.

Even though some substances are not currently controlled by the Controlled Substances Act, they pose risks to individuals who misuse them.



Household Cleaner



Nitrous Oxide 1



Lighter Fluids



Amyl nitrite or poppers



Paint Stripper or Paint Thinners

Upcoming Trainings

IPAC Spring Seminar
May 16, 2025
Marriot Indianapolis North

IPAC Summer Conference
June 18-20
Embassy Suites South Bend

Indiana Covert Drug Investigation School, aka Top Gun
September 21- 26, 2025
Camp Atterbury, Edinburgh, Indiana

Application Deadline is May 19, 2025!!!

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