

Police Prosecutor Update

May 2025

Issue 369

Johnson v. State of Indiana
2025 Ind. App. Unpub. LEXIS 401
Indiana Court of Appeals
April 10, 2025

Evidence sufficient to show constructive possession of a firearm by serious violent felon

- Andre Johnson was on probation and unable to possess a firearm because he is a serious violent felon.
- He lived with his girlfriend, Deayra Whitworth
- Marion County probation and IMPD officers conducted a compliance check at their home.
- No contraband was found inside the home, but two firearms were found in two different vehicles outside- a white Dodge Charger, and a green Dodge Charger.
- Whitworth had a lifetime carry permit, and owned both firearms
- The white Charger was owned and registered to Johnson.
- Officers found a hat inside the vehicle that in their opinion was a hat that a male would wear, along with paperwork from a mechanic's garage that had Johnson's name and contact information on it.
- Fingerprint and DNA samples were collected from both firearms.
- The DNA profile for the gun found in the white Charger showed that Johnson's DNA was found on the gun. The second gun from the green Charger did not have any of Johnson's DNA present.
- Johnson was charged and convicted of a Level 4 Unlawful Possession of a Firearm by a Serious Violent Felon.
- Johnson appealed the conviction, alleging that the State failed to prove that he constructively possessed a firearm.

Constructive possession occurs when a person does not have direct physical control over contraband but does have both the capability and the intent to maintain dominion and control over the item.

A possessory interest in the premises where an item is found can lead to an inference of capability to maintain dominion and control over contraband, even if that

possessory interest is not exclusive. If the possessory interest is not exclusive, the State must show additional circumstances to show that the defendant has knowledge of the contraband. This can include evidence such as:

“1) a defendant’s incriminating statements; 2) a defendant’s 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.” *Gray v. State*, 957 N.E.2d 171, 175 (Ind. 2011).

Courts have held that “[F]inding contraband hidden from plain view on premises in which a defendant has a nonexclusive possessory interest when the defendant was not even present will not, without more, support a conviction on a theory of constructive possession.” *Id.*

In this case, the Court relied on the evidence presented by the State showing that Johnson’s knowledge of the presence of the firearm in the white Charger could be inferred. Johnson was the registered owner of the white Charger at the time the vehicle was searched; the finding of the hat described as a hat that a man would wear inside the vehicle; and most importantly, the DNA evidence found from areas of the firearm that would indicate the person held the gun, which indicated that Johnson had held the firearm. “[T]he presence of a defendant’s DNA on an item could be considered a circumstance pointing to the defendant’s knowledge of the presence of the item. *Williams v State*, 240 N.E.3d 1285, 1291-92 (Ind. Ct. App. 2024).

For these reasons, the Court found that the evidence was sufficient from which the jury could reasonably conclude that Johnson constructively possessed the firearm in the white Charger.

Conviction Affirmed.

Bubb v. State of Indiana
2025 Ind. App. Unpub. LEXIS 394
Indiana Court of Appeals
April 8, 2025

Evidence sufficient to support conviction that defendant “voluntarily” possessed firearm

- Bubb was driving a car with a trailer to haul his belongings. He had already dropped one load of items off at his new home and was headed back to pick up more items.

- He became unable to pass a large pickup truck driven by Grizzle, who had his wife in the truck with him.
- Grizzle's wife indicated that she thought Bubb was pointing a handgun at them as Bubb finally passed them in the left lane.
- Grizzle also saw the gun in Bubb's hand and called 911 while following Bubb's vehicle.
- Both vehicles pulled over near a weigh station, and Bubb exited his vehicle to confront Grizzle.
- When Bubb began to drive away, an ISP trooper arrived and initiated a traffic stop on Bubb, who had also called 911 at this point.
- Bubb admitted to the troopers that he had a firearm in the vehicle because he was moving, and that it had been on the front seat. He claimed to only grab the gun to put it in the center console of his vehicle during the incident.
- Bubb was charged with a Level 4 Unlawful Possession of a Firearm by a Serious Violent Felon and a Level 6 Pointing a Handgun.
- Bubb's girlfriend testified at trial that it was her firearm, and that she had forgotten to get the gun out of the glovebox before Bubb left.
- The trooper's bodycam showed that Bubb told the officers that he was going to leave the gun in a safe already delivered to the new residence, but forgot to do so, and left it on the front passenger seat of his vehicle until he moved it to the center console during the encounter with the Grizzles.
- Bubb was convicted of the Level 4 felony, and after being unable to reach a verdict on the Level 6 felony, the State dismissed the Pointing a Handgun count.
- Bubb appeals the conviction, arguing that he did not "voluntarily" possess a firearm.

The State was required to prove that Bubb knowingly or intentionally possessed a firearm while he was a serious violent felon. Bubb did not dispute being a serious violent felon. His argument is that he did not act voluntarily nor had the requisite intent to do so in possessing the firearm. He had only handled the firearm to secure it and had no reasonable ability to terminate his possession of the firearm since he was traveling on a roadway and hours away from his home.

Bubb's argument relied on Indiana's Voluntariness Statute under Indiana Code 35-41-2-1(b). This statute was designed to create a defense in the situation where the person is not aware of his or her possession of illegal property at the time it is found. For the statute to apply, the defendant "must not have been aware that he possessed the handgun." Because Bubb was aware that he possessed the handgun, the Voluntariness Statute does not apply to him.

The Court held that even if the statute did apply to him, there was plenty of evidence to disprove his defense. Bubb's girlfriend testified at trial that she called him the morning of the incident, to tell him that she had left the gun in the vehicle. This was several hours before the encounter with the Grizzles. He had told police that he was going to place the firearm in a safe at his new residence yet forgot to do so.

There appeared to be no dispute that during the encounter on the highway, Bupp picked up the firearm from the seat while he was driving beside the Grizzlies. The Court held that while this might not have been enough evidence for the jury to convict on the Pointing a Handgun charge, it was enough to support an inference that Bubb's possession of the handgun was not inadvertent and was voluntary. Therefore, the evidence was sufficient to prove beyond a reasonable doubt that Bubb did knowingly or intentionally possess the handgun while he was a serious violent felon.

Conviction Affirmed.

Holmes, II v. State of Indiana
2025 Ind. App. Unpub. LEXIS 389
Indiana Court of Appeals
April 8, 2025

Search warrant upheld as under "cooperative citizen" was reliable, and police did not exceed the scope of the search warrant.

- Holmes moved in with his girlfriend Owens.
- One of the items Holmes moved into Owens' apartment was a safe, which Owens saw contained a gun.
- After an argument, Owens ended her relationship with Holmes and told him to leave the apartment.
- Holmes contacted the police for help to get his property from Owens' apartment.
- Holmes told police about the safe in the apartment that belonged to him.
- Owens told officers that Holmes had a prior felony conviction and that the safe contained a gun.
- Owens' statement was supported by a voicemail from Holmes that mentioned the gun being in the safe in her apartment.
- Holmes became nervous and gave excuses why he could not get the safe containing the gun, even though he had told the police about getting the safe.
- Holmes took his property, minus the safe, and left the residence.
- Finding Holmes's reaction suspicious, combined with the information provided by Owens and verified by officers, the police requested a search warrant to search for and seize the safe and its contents.
- Inside the safe, police found a firearm, ammunition, drugs, a scale, baggies, and documentation that had Holmes name on it.
- DNA testing also revealed that Holmes' DNA was on the firearm.
- Holmes was charged with Unlawful Possession of a Firearm by a Serious Violent Felon, a Level 4 Felony, and Possession of a Narcotic Drug as a Level 5 Felony.
- Holmes filed a motion to suppress, arguing that the search warrant contained "false and misleading representations with a reckless disregard for the truth" when the warrant application stated that Holmes had been convicted of specific crimes and that the voicemail indicated that the firearm was inside the safe.

- The Court denied the motion to suppress since Holmes did have a prior Domestic Battery conviction that prohibited him from having a firearm, and that even if the incorrect statements were removed from the affidavit, there was still enough evidence to support the issuance of the search warrant.
- Holmes took a second swing at suppressing the evidence, arguing that the wording of the warrant did not authorize police to search the contents of the safe, and thus the police search of the contents of the safe was in violation of his constitutional rights.
- Again, the Court denied the motion to suppress because the request for the search warrant authorized the search and seizure of the safe and its contents.
- Holmes was convicted as charged at trial, and appeals the conviction, arguing that the court erred by admitting evidence seized pursuant to the search warrant, making the same arguments regarding the false and misleading statements about Holmes' convictions and about the location of the firearm.

The Court of Appeals agreed that the warrant request contained incorrect information. However, even without the incorrect information, the remaining facts were correct: that Holmes had gone to the apartment to retrieve a safe that belonged to him; that Owens told police that the safe contained a gun and she observed him shoot the gun; and that the correct conviction was still one that prohibited Holmes from possessing a firearm. Holmes' argument was that this information still does not provide probable cause for the search warrant because there was no information in the search warrant affidavit that established Owens' reliability.

Under Indiana Code § 35-33-5-2(b), where a warrant is sought based on hearsay information, the affidavit 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 establishes that the totality of the circumstances corroborates the hearsay.

The Court used the test set out in *State v. Spillers*, 847 N.E.2d, 949, 954 (Ind. 2006) to establish the trustworthiness of hearsay. The trustworthiness of hearsay for the purpose of proving probable cause can be established in a number of ways, including where: (1) the informant has given correct information in the past, (2) independent police investigation corroborates the informant's statements, (3) some basis for the informant's knowledge is demonstrated, or (4) the informant predicts conduct or activity by the suspect that is not ordinarily easily predicted.

The Court also noted that there are two types of informants: professional informants, and cooperative citizens.

Owens was considered by the Court to be the latter, a cooperative citizen who observed a crime. Owens knew of Holmes' prior felony conviction that made him unable to

possess a firearm, the fact that he kept a gun in the safe and she had observed the gun in the safe. Her statements to police were corroborated by the voicemail from Holmes discussing the fact that there was a firearm in her apartment. Based on these factors, the Court found Owens to be reliable, and her information to the police was sufficient to establish probable cause for the issuance of the search warrant.

Holmes again tried the argument that the retrieval of the contents of the safe exceeded the scope of the search warrant. The Court of Appeals also denied this argument as well, for the same reasons as the trial court: the warrant specifically was to search and seize the safe and its contents. "It is well settled that we read 'the warrant and the incorporated affidavit together[.]'" *Thompson v. State*, 613 N.E.2d 461, 465 (Ind. Ct. App. 1993). The probable cause affidavit clearly established that the officers sought to both seize the safe and to search it as well. Even though the face of the warrant itself allowed officers to search for and seize the safe, taken together, the affidavit and the warrant gave officers the authority to search and seize the contents of the safe.

Conviction Affirmed.

Satterfield v. State of Indiana
2025 Ind. App. Unpub. LEXIS 470
Indiana Court of Appeals
April 30, 2025

Defendant not in custody for purposes of Miranda during traffic stop

- Officer observed a man and a woman acting strangely by hanging around a gas station and getting in and out of their vehicle for approximately 20 minutes.
- The officer ran the license plate on the vehicle and found the registered owner to have an active warrant for her arrest.
- The officer followed the vehicle when it finally left the gas station and observed the driver of the vehicle to make an illegal U-turn.
- The officer initiated a traffic stop based on the driving behavior and the fact that the registered owner had an active warrant for her arrest.
- Satterfield, the defendant, was seated in the passenger seat of the vehicle.
- The defendant began to look through the glovebox of the vehicle for the vehicle registration, placing several items on the vehicle dashboard, including a vape pen.
- Satterfield admitted that it was a THC pen and that it was his.
- The officer removed the occupants of the vehicle to conduct a search of the vehicle and read them their Miranda Rights based on the finding of the THC pen.
- Another officer arrived and conducted the search of the vehicle, finding fentanyl.
- Satterfield admitted that the fentanyl was his.
- Satterfield was charged with a Level 6 Possession of a Narcotic Drug.
- Satterfield filed a motion to suppress his statements regarding the vape pen.
- The trial court denied the motion to suppress, and Satterfield was convicted as charged.

- Satterfield appealed the conviction, arguing that he was under custodial interrogation when he was asked if the vape pen contained THC in violation of the Fifth Amendment to the U.S. Constitution and Article 1, Section 14 of the Indiana Constitution.

"'Interrogation' for purposes of *Miranda* constitutes questions, words, or actions that the officer knows or should know are reasonably likely to elicit an incriminating response." *State v. Brown*, 70 N.E.3d 331, 335 (Ind. 2017). "Custody" under *Miranda* occurs when two criteria are met: (1) "the person's freedom of movement is curtailed to the degree associated with formal arrest" and (2) "the person undergoes the same inherently coercive pressures as the type of station house questioning at issue in *Miranda*." *State v. Diego*, 169 N.E.3d 113, 117 (Ind. 2021).

"To determine whether a person's freedom of movement was curtailed akin to formal arrest, courts examine the totality of objective circumstances surrounding the interrogation, including "the location, duration, and character of the questioning; statements made during the questioning; the number of law-enforcement officers present; the extent of police control over the environment; the degree of physical restraint; and how the interview begins and ends." *State v. E.R.*, 123 N.E.3d 675, 680 (Ind. 2019).

Under both the United States Constitution and the Indiana Constitution, a person who is temporarily detained during a traffic stop is not in custody for purposes of *Miranda*. The Court of Appeals found that under these facts, there was nothing that suggested that Satterfield's freedom of movement was inhibited to the level of a formal arrest, nor were the questions asked by the officer inherently coercive as the type of questioning at issue in *Miranda*. In other words, this was merely a traffic stop and had not yet become a custodial arrest. As such, the trial court did not err when admitting Satterfield's statements at trial.

Conviction Affirmed.

Gibson v. State of Indiana
2025 Ind. App. Unpub. LEXIS 464
Indiana Court of Appeals
April 29, 2025

Evidence sufficient to show the Defendant constructively possessed drugs

- Gibson had an active warrant for his arrest.
- Detectives with the Evansville Police Department observed Gibson walking down the sidewalk.
- Gibson began to run when Detective Blair drove beside him and ordered him to stop.
- Detective Gibson deployed his K-9 to apprehend Gibson.
- Gibson was caught by the K-9 in an alley next to a parked car.

- A subsequent search of Gibson revealed a large sum of cash, a pipe, and a cellphone.
- Backup officers searched along the route Gibson fled to search for anything he may have discarded while fleeing.
- Underneath the car near where Gibson was caught, officers found a brown sock that contained clear bags of methamphetamine.
- Gibson admitted that the drugs found in the sock were methamphetamine weighing approximately sixteen grams.
- While in jail, Gibson placed a phone call where he admitted that he had drugs on him at the time he fled.
- During a second phone call, Gibson admitted to being a “small time” drug dealer.
- Both phone calls were admitted into evidence at the trial over Gibson’s objection.
- Gibson was convicted at trial of Level 2 Dealing in Methamphetamine and Class A Misdemeanor Resisting Law Enforcement.
- Gibson appealed his conviction, arguing that there was insufficient evidence to prove that he constructively possessed the methamphetamine, specifically the intent element.

Possession of an item can be proven to be either actual or constructive. Actual possession is proven when the contraband is found directly on the suspect. Constructive possession is proven when a suspect has both the intent and capability to maintain dominion and control over the item.

The intent element of constructive possession can be proven by showing that the defendant had knowledge of the presence of the contraband. “A defendant’s knowledge may be inferred from either the exclusive dominion and 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 presence of contraband.” *Goliday v. State*, 708 N.E.2d 4, 6 (Ind. 1999). “These additional circumstances may include: ‘(1) a defendant’s incriminating statements; (2) a defendant’s 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.’ *Gray v. State*, 957 N.E.2d 171, 175 (Ind. 2011).”

In reviewing the evidence, the Court of Appeals found that there was sufficient evidence of the intent element to find Gibson guilty of constructive possession of the methamphetamine. The sock containing the drugs was found near where Gibson was apprehended and arrested. Gibson made incriminating statements, namely that the drugs in the sock were methamphetamine and weighed approximately sixteen grams. Also, Gibson made incriminating statements on his jail phone calls that he had drugs on him at the time of his arrest.

Conviction Affirmed.

Drug School

LSD

WHAT IS LSD? Lysergic acid diethylamide is a potent hallucinogen that has a high potential for misuse and currently has no accepted medical use in treatment in the United States. LSD is a Schedule I substance under the Controlled Substances Act. LSD is an odorless and colorless substance with a slightly bitter taste. LSD is available in saturated absorbent paper (e.g., blotter paper, divided into small, decorated squares, with each square representing one dose), tablets or “micro dots,” saturated sugar cubes, or in a liquid form.

LSD is taken orally, and can cause dilated pupils, higher body temperature, increased heart rate and blood pressure, sweating, loss of appetite, sleeplessness, dry mouth, and tremors.

Common names for LSD include: Acid, Dots, Mellow Yellow, and Window Pane



LSD Blotter sheet



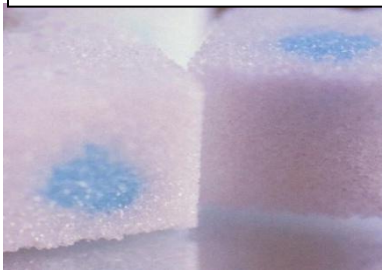
LSD pill



LSD Blotter sheet



LSD capsules



LSD sugar cube



LSD capsule and powder

Upcoming Trainings

IPAC Summer Conference
June 18-20
Embassy Suites South Bend

Trial Advocacy 1
August 19-21
Crowne Plaza Downtown at Union Station

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