

# Police Prosecutor Update

JUNE 2026

Issue 370

## New Law Change to Eyewitness Identification Procedures

Effective July 1, 2025

IC 35-33-4.5 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2025]:

### Chapter 4.5. Eyewitness Identification Procedures

Sec. 1. As used in this chapter, "eyewitness" means a person whose identification by sight of another person may be relevant in a criminal proceeding.

Sec. 2. As used in this chapter, "facial recognition technology" means a computer application that uses biometric algorithms to analyze facial features and is used to assist in the unique personal identification of individuals in still or video images.

Sec. 3. As used in this chapter, "filler" means a person or a photograph of a person who is not suspected of the offense under investigation and is included in a lineup.

Sec. 4. As used in this chapter, "lineup" includes a photo lineup.

Sec. 5. As used in this chapter, "lineup investigator" means the person who conducts a lineup and who is a current employee of a law enforcement agency, regardless of the person's primary job description.

Sec. 6. As used in this chapter, "photo lineup" means a procedure in which an array of photographs is displayed to an eyewitness for the purpose of determining if the eyewitness can identify the perpetrator of a crime.

Sec. 7. (a) Except as provided in subsection (b), a lineup conducted by a law enforcement agency, or an employee of a law enforcement agency, shall be conducted in accordance with this chapter.

(b) If it is impossible or impracticable to follow the procedures set forth in this chapter, a law enforcement agency may conduct a lineup using an alternative procedure approved by the law enforcement training board.

(c) Failure to comply with any of the requirements of this chapter, or, if applicable, an alternative procedure approved by the law enforcement training board, is admissible to support a claim of eyewitness misidentification, if the evidence is not otherwise inadmissible.

Sec. 8. If facial recognition technology is used to identify a suspect, a law enforcement agency, or an employee of a law enforcement agency, may not conduct a lineup unless there is other evidence, in addition to the use of facial recognition technology, to support a belief that the suspect committed the crime under investigation.

Sec. 9. (a) Except as provided in section 7 of this chapter, a lineup must be conducted as follows:

- (1) A lineup investigator shall conduct the lineup.
- (2) Only one (1) suspect may be included in the lineup.
- (3) No one may speak to the eyewitness concerning the suspect's position in the lineup or regarding anything that might influence the eyewitness's identification.
- (4) Each filler in the lineup must generally resemble the eyewitness's description of the perpetrator.
- (5) The composition of the lineup must ensure that the suspect does not unduly stand out from the fillers.
- (6) The lineup must include at least five (5) fillers who resemble, as much as practicable, the eyewitness description of the perpetrator in significant features, including any unique or unusual features.
- (7) If the eyewitness has previously viewed a lineup in connection with the identification of another person suspected of involvement in the offense, the fillers in the lineup in which the current suspect participates must be different from the fillers used in any prior lineups.
- (8) If there are multiple eyewitnesses, the suspect must be placed in a different position in the lineup for each eyewitness.
- (9) If the eyewitness makes an identification during the lineup, the lineup investigator shall document any statement from the eyewitness as to the eyewitness's confidence level that the person identified in the lineup is the perpetrator.

(b) Before conducting a lineup, the lineup investigator shall instruct the eyewitness that:

- (1) the perpetrator may or may not be in the lineup;
  - (2) the eyewitness is not required to make an identification;
  - (3) it is as important to exclude innocent persons as it is to identify the perpetrator;
- and
- (4) the investigation will continue with or without an identification.

Sec. 10. If the eyewitness is presented with a photo lineup, the photograph of the suspect must be recent and, to the extent practicable, must resemble the suspect's appearance at the time of the offense. All procedures set forth in section 9 of this chapter must also be followed.

Sec. 11. (a) This section applies to an in-person witness identification procedure in which, shortly after the commission of a crime:

- (1) a law enforcement officer requests that a witness observe an individual in person; and
- (2) the witness is being asked to observe the individual for the purpose of determining whether the witness can identify the individual as the perpetrator of a crime.

(b) An in-person witness identification described in subsection (a) shall be recorded by video, unless a law enforcement recording device is not available to the officer and recording is otherwise not practicable under the circumstances.

(c) Failure to comply with the requirements of this section is admissible to support a claim of eyewitness misidentification, if the evidence is not otherwise inadmissible.

S.B. 141 introduces critical reforms to eyewitness identification procedures in Indiana:

- Law enforcement must now inform witnesses that the accused may or may not be present in the lineup and that they will continue their investigation whether an identification is made, reducing pressure to make a selection.
- Non-suspect fillers chosen for lineups must resemble the witness' description and the suspect should not noticeably stand out from the fillers. People shown in a lineup must have similar features, so they can't look vastly different than the alleged suspect.
- Witnesses' confidence levels at the time of identification must be recorded, providing context for the reliability of their testimony. The witness will be required to sign a statement saying that they have identified the person with confidence.
- Lineups must be conducted by a lineup administrator who is not part of the investigation.

Additionally, S.B. 141 stipulates that if facial recognition technology is used to identify a suspect, law enforcement must corroborate this identification with additional evidence before proceeding with a lineup, ensuring that facial recognition alone does not serve as the sole basis for suspect identification.

### **Want to learn more?**

ILEA is hosting a one-day class presented by the Innocence Project on Eyewitness Identification and Lineups. This will take place on July 29 at 9:00 a.m. at the ILEA in Plainfield. William G. Brooks, a retired Massachusetts police chief and recognized expert on eyewitness identification, will talk about the science, and about protocols that police are implementing across the U.S. This course is a "train-the-trainer" and officers who attend will receive access to instructor materials. Among other topics, the presentation will include:

- Cautions for dispatchers and first responders
- Interview techniques
- Witnesses instructions
- Handling multiple witness cases
- Assembling and showing photo arrays
- Blind administration
- Assessing witness confidence
- Issues with sketches and composites
- Identifying inanimate objects

This is a **FREE** training opportunity!! To register, please contact Winnie Ye at [wye@innocenceproject.org](mailto:wye@innocenceproject.org).

Whitehead v. State of Indiana  
May 30, 2025, Indiana Court of Appeals  
2025 Ind. App. Unpub. LEXIS 613

### **Evidence sufficient to prove constructive possession**

- Officers responded to the hospital and observed Whitehead in a hospital bed with a gunshot wound.
- Whitehead claimed that he and his girlfriend picked up a hitchhiker who pulled a gun on them and tried to rob them of their money.
- During a struggle, the gun allegedly fired and shot Whitehead in the leg.
- Police located and collected a thirty-two-caliber gun from the floorboard of Whitehead's vehicle. Whitehead claimed that this was the handgun that the hitchhiker used to shoot him.
- Officers went to the location where the shooting allegedly occurred and looked for additional evidence.
- The investigation led officers to believe that what Whitehead had told them was not what happened and began a further investigation into Whitehead and his girlfriend.
- Police obtained a search warrant for the address given by Whitehead as his girlfriend's address where he sometimes stayed.
- Drug paraphernalia was found in plain view, as well as blood, bandages and other first aid items, an AR rifle, and a large number of small baggies. They also discovered documents with Whitehead's name and address on them and a ledger belonging to Whitehead's girlfriend that showed Whitehead was paying rent for the residence. The big find was over 500 grams of an off-white crystal-like substance that tested positive for methamphetamine.
- Police also collected a surveillance system from the residence and a phone from Whitehead.
- On the phone, detectives found an incriminating message from Whitehead to an unknown individual about needing to get out of the hospital immediately, referring to his belief that perhaps the police were on to his operation.
- Whitehead was charged with and convicted of Dealing in Methamphetamine as a Level 2 felony; Carrying a Handgun without a License; and False Informing.
- Whitehead appealed the conviction, arguing that while there was sufficient evidence that someone possessed the methamphetamine with the intent to deal it, there was not sufficient evidence to show that he was this person.

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 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. *Gray v. State*, 957 N.E.2d 171, 175 (Ind. 2011).

Whitehead identified the address as his. Inside, police found drug paraphernalia in plain view, scales and baggies throughout the home, and over 500 grams of methamphetamine. Mail and credit cards with Whitehead's name were found, along with men's clothes, and the ledger kept by his girlfriend showing that he paid rent for the residence. Additionally, the surveillance video showed Whitehead limping from the residence the morning of the shooting. These factors all indicated Whitehead's knowledge of the methamphetamine's presence in the home, and therefore it was enough to show that Whitehead had constructively possessed the drugs.

### **Conviction Affirmed.**

Lopez v. State of Indiana  
May 30, 2025, Indiana Court of Appeals  
2025 Ind. App. Unpub. LEXIS 610

### **Traffic stop was not unreasonably prolonged in violation of Fourth Amendment**

- State trooper conducted a traffic stop on a van for making an abrupt and sudden lane change without signaling.
- The driver and passenger (Lopez) gave the trooper their story and travel plans, which the trooper found to be suspicious because they claimed to be traveling from California to visit Lopez's brother in Indianapolis, yet could not give the brother's name, and were driving from Memphis because they accidentally bought tickets to Memphis instead of Indianapolis.
- The trooper observed several large black trash bags in the back of the van. The driver of the vehicle told the trooper that this was their clothing.

- Based on the suspicious nature of their story and travel plans, the trooper requested a K-9 unit to his location before beginning the process of issuing a warning for the traffic violation.
- When the K-9 arrived, the trooper was issuing the traffic warning and running the occupants' information to check for warrants. The trooper asked the driver of the vehicle if there was anything illegal in the van, to which she indicated that she did not know what was in the garbage bags, a different story that she had previously stated.
- The trooper read the driver her Miranda rights and asked for consent to search the van, which she consented to.
- The search uncovered over 58 grams of methamphetamine and over 39 grams of fentanyl.
- Lopez, the passenger, was charged and convicted of Dealing in a Narcotic Drug, Dealing in Methamphetamine, Possession of a Narcotic Drug, and Possession of Methamphetamine.
- Lopez filed a motion to suppress the evidence due to the traffic stop being prolonged in violation of his rights, which was denied by the trial court.
- Lopez appealed the conviction, again arguing that the traffic stop was unreasonably prolonged under the Fourth Amendment.

The Court held that the record clearly showed that the trooper did not prolong the detention of Lopez past the scope of the initial traffic stop. The trooper was in the process of completing the traffic warning when he called for the K-9. His actions were still furthering the purpose of the traffic stop.

Even if the stop had been prolonged, the police had a reasonable suspicion to do so. The story and travel plans, which the trooper found to be suspicious, along with the contradictory statements about the contents of the black bags were enough to provide the trooper with reasonable suspicion that criminal activity was afoot, and therefore prolonging the traffic stop was reasonable.

### **Conviction Affirmed.**

Clinton M. Trease v. State of Indiana  
 May 29, 2025, Indiana Court of Appeals  
 2025 Ind. App. Unpub. LEXIS 602

### **Arrest and search of suspect did not violate Fourth Amendment of Article 1, Section 11 of the Indiana Constitution**

- Employees found a black bag on the floor of their building that contained a white substance later identified as methamphetamine.
- A review of the security cameras in that location identified Trease as the employee that dropped the bag.
- Police arrived with a K-9 to perform an open-air sniff around Trease's vehicle.

- The K-9 indicated a positive alert to the presence of narcotics in Trease's vehicle.
- Trease was placed under arrest, and during the pat-down, a glass pipe was found in his pocket, which tested positive for methamphetamine.
- A search warrant was applied for and granted, and the subsequent search uncovered another pipe in Trease's vehicle.
- Trease was charged with Possession of Methamphetamine as a Level 6 Felony, and Possession of Paraphernalia as a Class C Misdemeanor.
- Before trial, Trease filed a motion to suppress, arguing that he was arrested without probable cause.
- The trial court denied the motion to suppress, and Trease was convicted as charged at trial.
- Trease appealed the conviction, contending that the warrantless search of his person was in violation of the Fourth Amendment of the U.S. Constitution and Article 1, Section 11 of the Indiana Constitution on the basis that there were no facts connecting him to the methamphetamine found in the black bag, making his arrest improper. Further since the arrest was improper, the glass pipe found during the search incident to arrest should be suppressed.

#### *Fourth Amendment Analysis*

Under the facts in this case, Trease was identified as the person that dropped the black bag on the floor. Two other employees and the officer watched the security footage and were able to identify the clothes on the suspect in the video matched the exact clothing that Trease was wearing on that day. This gave officers probable cause to arrest Trease for the methamphetamine that was found after it fell out of his pocket. Because Trease was being lawfully arrested, this gave officers permission to perform a search incident to an arrest where they located the glass pipe containing methamphetamine.

#### *Article 1, Section 11 Analysis*

The Court used the *Litchfield* balancing test to determine if the officers' actions were reasonable under the totality of the circumstances. In determining the reasonableness of a seizure, the Court looks at "1) the degree of concern, suspicion, or knowledge that a violation had 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." *Litchfield v. State*, 824 N.E.2d 356, 359 (Ind. 2005)

The degree of concern, suspicion, or knowledge that a violation had occurred was very high. Security video showed a person wearing the same clothes as Trease drop a black bag out of his pocket. The identification was made by two employees and an officer on the scene that viewed the footage. This was sufficient to give officers probable cause to arrest Trease for possession of the methamphetamine.

The degree of intrusion was high. The State conceded this point.

The extent of law enforcement needs was also high. Police had probable cause that Trease had committed a felony based on the identification and video of the methamphetamine dropping out of his pocket.

Weighing these three factors, the Court held that the police action in arresting Trease and conducting a search incident to arrest did not violate either the Fourth Amendment of the U.S. Constitution or Article 1, Section 11 of the Indiana Constitution.

### **Conviction Affirmed.**

Stafford, Jr. v. State of Indiana  
May 22, 2025, Indiana Court of Appeals  
2025 Ind. App. Unpub. LEXIS 575

### **Evidence sufficient to prove actual possession to support dealing convictions**

- Police obtained a search warrant for Stafford's residence
- Before executing the warrant, officers observed Stafford exiting the residence with a black backpack and approach a Volkswagen on the property.
- Stafford returned to his residence without the backpack; however, officers could not see him place the backpack in the vehicle.
- While executing the search warrant, police found 7.54 grams of cocaine and cash, as well as 1.85 grams of fentanyl.
- A K-9 conducted a free-air sniff of the vehicle that Stafford had gone to on the property and gave a positive indication for the presence of drugs inside the vehicle.
- A second search warrant was applied for and granted to search the vehicle.
- Inside the vehicle, documents linking Stafford to the vehicle were located, along with a suitcase containing unused needles and the black backpack that was observed earlier.
- A search of the black backpack produced three firearms, 764.58 grams of cocaine, 40.99 grams of fentanyl, and 1.78 grams of methamphetamine.
- Stafford was arrested and charged with nine counts of drug and weapons charges.
- After his arrest, police intercepted a phone call where Stafford talked about a safe at his father's house.
- Based on that phone call, another warrant was obtained to search his father's residence for the safe.
- The safe was found to contain an additional 127.59 grams of cocaine.
- Stafford appealed the convictions for dealing in cocaine and dealing in a narcotic drug, arguing that the State failed to prove that he possessed either the 764.58 grams of cocaine or 40.9996 grams of fentanyl found in the backpack in the Volkswagen, or the 127.56 grams of cocaine found in the safe at his father's house. He maintained that without those amounts, the State did not prove that he possessed at least ten grams of either cocaine or fentanyl.

The Court held that while officers did not "definitively" see Stafford place the backpack inside of the vehicle, they did observe that Stafford made no contact with any other person after he left the vehicle without the backpack. Due to this, it can be inferred that Stafford placed the backpack in the Volkswagen. Therefore, Stafford had actual possession of the

drugs. Adding the weight of the drugs found in the backpack, the Court reasoned that the State did present enough evidence to support the convictions for dealing in cocaine and a narcotic drug.

### **Conviction Affirmed.**

Roberts v. State of Indiana  
May 16, 2025, Indiana Court of Appeals  
2025 Ind. App. Unpub. LEXIS 551

### **Evidence sufficient to prove possession was knowing and intentional**

- Roberts was the passenger in a vehicle stopped by police for an improper display of a license plate.
- The stopping officer had a K-9 in his vehicle, so he did a free-air sniff of the vehicle that resulted in a positive indication for the presence of narcotics.
- Roberts and the driver were removed from the vehicle to conduct a vehicle search based on the positive indication by the K-9.
- Inside Roberts' purse, police found a flashlight that was missing the battery cover and had an empty battery compartment where officers observed a white powdery residue suspected to be methamphetamine.
- Roberts claimed that a friend had given her the flashlight.
- Roberts was charged with Possession of Methamphetamine as a Level 6 Felony.
- At trial, lab reports were introduced to confirm that the residue was methamphetamine.
- Roberts was convicted as charged.
- Roberts appealed the conviction, arguing that even though the evidence was sufficient to prove that she was in possession of methamphetamine, it was not sufficient to show that she *knowingly* possessed it.

In *Beeler v. State*, 807 N.E.2d 789 (Ind. Ct. App. 2004), the Court held that the State "must only prove that the defendant possessed an identifiable amount" of a controlled substance and establish that such possession was knowing or intentional. Conduct has been held to be "knowingly" if when the person engages in conduct, he/she is aware of a high probability that he/she is doing so.

In this case, the flashlight was found in Roberts' purse, along with other items belonging to her. She immediately recognized the flashlight and claimed that the only reason she had it was because a friend had given it to her. A reasonable jury could infer from her attempt to not claim ownership of the flashlight was that she knew that it contained methamphetamine. Additionally, since the battery cover and battery were missing, allowing the officers to see the methamphetamine residue, a reasonable person could infer that the flashlight was used to store drugs.

### **Conviction Affirmed.**

Sanders v. State of Indiana  
May 9, 2025, Indiana Court of Appeals  
2025 Ind. App. Unpub. LEXIS 517

**Evidence sufficient to prove actual possession- you don't need to be caught "red-handed"**

- Sanders matched the description of a suspect leaving the scene of a shots fired dispatch.
- Sanders initially evaded police pursuit but was identified by his BMV photo.
- Sanders was spotted by police exiting a yard nearby and was observed to have a handgun sticking out of his waistband.
- Sanders continued to run and got into a vehicle that pulled up to him. Police stopped this vehicle after a short distance.
- When Sanders got out of the vehicle, a handgun fell from Sanders and landed beside the vehicle.
- Sanders was charged and convicted of Carrying a Handgun Without a License as a Level 5 Felony.
- Sanders appealed the conviction, arguing that the State failed to show that he possessed a handgun.

The parties agreed that this was a case of actual, and not constructive possession of the handgun. "A person actually possesses contraband if he has direct physical control over it." *Gray v. State*, 957 N.E.2d 171, 174 (Ind. 2011) (citing *Henderson v. State*, 715 N.E.2d 833, 835 (Ind. 1999)). Indiana courts have held that having possession of contraband does not depend on a person being caught "red-handed" with said contraband.

The evidence in this case showed that Sanders had a gun in his waistband as he fled the scene and that the gun fell from his waistband when he exited the vehicle from which he was attempting to flee. The Court held that this was sufficient evidence to show that Sanders was in actual possession of the handgun and affirmed the conviction.

**Conviction Affirmed.**

Manning v. State of Indiana  
May 8, 2025, Indiana Court of Appeals  
2025 Ind. App. Unpub. LEXIS 514

**Search and Seizure- Consent to search was voluntary**

- Police went to Manning's home to investigate a tip that he possessed child pornography.
- Manning's fiancé searched his computer looking for signs of infidelity but instead found images of child pornography.
- Manning initially attempted to shove the officer out of his doorway, which ended up with him being placed into handcuffs.

- Manning was read his Pirtle and Miranda rights.
- Manning signed a written authorization to search his residence, which again listed his rights to refuse consent and rights to consult with a lawyer.
- Manning took officers to his computer and typed in his password, where images of child pornography were found in a folder bearing Manning’s name.
- A search warrant was obtained for a forensic search of the computer, which revealed ten images of child pornography.
- The State charged Manning with ten counts of Level 6 Possession of Child Pornography.
- Manning sought to suppress the evidence, arguing that his consent was not valid due to the coercive nature of being placed in handcuffs.
- The Court denied the motion to suppress, and Manning was convicted of all counts at trial.
- Manning appealed the conviction, again arguing that his consent was not valid, and that there was insufficient evidence to show that he “knowingly” possessed the images.

### *Consent*

To determine the voluntariness of consent, the Court looks at factors such as:

“whether the defendant was advised of his Miranda rights prior to the request to search; the defendant's degree of education and intelligence; whether the defendant was advised of his right not to consent; whether the detainee has previous encounters with law enforcement; whether the officer made any express or implied claims of authority to search without consent; whether the officer was engaged in any illegal action prior to the request; whether the defendant was cooperative previously; and whether the officer was deceptive as to his true identity or the purpose of the search.” *Navarro v. State*, 855 N.E.2d 671, 675 (Ind. Ct. App. 2006).

Here, the police were truthful in the reason why they were at his residence. Manning was advised of his rights multiple times and given his education level, had the ability to comprehend those rights in deciding to consent to the search. Further, his actions in taking officers to his laptop and entering in the password demonstrate the voluntariness of his consent. The Court noted that while Manning was in police custody while he was handcuffed, he was not handcuffed when he signed the consent form.

### *Sufficiency of the Evidence*

Where a possessory interest is non-exclusive, the defendant's intent to maintain dominion and control over contraband can be inferred if supported by additional circumstances indicating the defendant knew of the contraband. That is the situation here, where Manning shared the residence with his fiancé.

The Court found that the State had presented enough evidence to prove that Manning knowingly possessed the child pornography images. Manning's fiancé testified that the laptop belonged to Manning and that she only used the computer occasionally, never downloaded any child pornography, and the timestamp on the files containing child pornography were times that she was at work. Given that the folder containing the child pornography images had Manning's name on it, that Manning provided police with the laptop password, and the testimony of his ex-girlfriend, the Court held it reasonable for the lower court to conclude that Manning knowingly possessed the child pornography images.

**Conviction Affirmed.**

## Drug School

### Cocaine

WHAT IS COCAINE? Cocaine is an intense, euphoria-producing stimulant drug with strong addictive potential.

Common street names include: Blow, Coca, Coke, Crack, Flake, Snow, and Soda Cot

Powdered cocaine (i.e., cocaine hydrochloride) can be snorted or injected into the veins after dissolving in water. Cocaine base (crack) is smoked, either alone or on marijuana or tobacco. Cocaine is also used in combination with an opiate, like heroin, a practice known as "speedballing." Although injecting into veins or muscles, snorting, and smoking are the common ways of using cocaine, all mucous membranes readily absorb cocaine.

Cocaine is a Schedule II drug under the Controlled Substances Act, meaning it has a high potential for abuse and has an accepted medical use for treatment in the United States.

Cocaine hydrochloride is usually distributed as a white, crystalline powder. Cocaine base (crack) looks like small, irregularly shaped chunks (or "rocks") of a whitish solid.



Cocaine Powder



Crack Cocaine



Crack Cocaine

## Upcoming Trainings for Prosecutors

Trial Advocacy 1

August 19-21

Crowne Plaza Downtown at Union Station

More info and register on our website!

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