

Police Prosecutor Update

July 2025

Issue 371

Medlin v. State of Indiana
2025 Ind. App. Unpub. LEXIS 620
Indiana Court of Appeals, June 2, 2025

The police did not impermissibly prolong the traffic stop; consent to the search was given; search held reasonable

- Police stopped a truck for not having a visible license plate and license plate light.
- The driver of the vehicle was unable to produce a driver's license or registration to the vehicle.
- The officer also observed the driver and front seat passenger to be "fidgety" and showing signs of nervousness, such as heavy breathing.
- While checking the driver's information, the officer observed the passenger, Medlin, moving all around the vehicle.
- Upon reapproaching the vehicle, the officer observed Medlin reaching under the center console of the vehicle.
- The officer asked the driver of the vehicle for consent to search based on the driver and passenger movements inside the truck. Consent was denied.
- The officer requested a K-9 officer come to the scene and had the occupants exit the vehicle due to safety concerns and all the movement inside of the truck.
- The officer asked Medlin whether she would consent to a pat down. She did consent. Upon patting her down, the officer located a smoking device inside of her pocket.
- Believing that he had probable cause to search the vehicle now, the officer cancelled the K-9 and began a search of the vehicle, locating two white prescription pills inside of Medlin's purse.
- While being booked into the jail, Medlin advised that she had more drugs, which led to a more thorough search which led to the discovery of marijuana, methamphetamine, and a glass pipe that she concealed inside her body.
- Medlin filed a motion to suppress the evidence recovered from the truck and her person as an illegal search, which was denied by the trial court.
- Medlin then filed an interlocutory appeal.

Fourth Amendment

The first argument made by Medlin is that the traffic stop was unreasonably prolonged by making inquiries about weapons and rugs, asking for consent to search the vehicle, and

requesting a K-9 after the initial purpose of the traffic stop was completed. Second, Medlin argues that she did not consent to the search of her pockets and that police lacked concern that she was armed and dangerous; therefore, the pat down search was not justified.

The Court rejected both arguments.

The Traffic Stop was not Unreasonably Prolonged

“The ‘tolerable duration’ of a seizure for a traffic violation is shaped by the stop’s ‘mission’—addressing the traffic violation that warranted the stop and attending to related safety concerns”. *Rodriguez v. United States*, 575 U.S. 348, 354, 135 S. Ct. 1609, 191 L. Ed. 2d 492 (2015). "Beyond determining whether to issue a traffic ticket, an officer's mission includes 'ordinary inquiries incident to the traffic stop,' like checking the driver's license, determining whether there are outstanding warrants against the driver, and inspecting the automobile's registration and proof of insurance. *Id.* at 355 (quoting *Illinois v. Caballes*, 543 U.S. 405, 407, 125 S. Ct. 834, 160 L. Ed. 2d 842 (2005)).

The stop was not unreasonably prolonged. When the officer first approached the truck, he obtained a copy of the registration and verbal identifications of the occupants. He then ran the driver’s information to ensure that he was a valid driver and whether either occupant had any outstanding warrants. Upon reapproaching the vehicle to obtain proof of insurance for the vehicle, the officer asked if there was anything illegal in the truck and whether the driver consented to a search of the vehicle. While the officer was in the process of issuing the warning ticket, he observed Medlin making movements throughout the vehicle. During this time, the officer was still in the process of issuing the warning ticket for the infractions. The purpose of the stop had not yet been completed. Because of this, the Court held that the traffic stop had not been extended unreasonably.

Consent was given to search Medlin’s pockets

Absent consent, a pat down can only be performed if the officer had a reasonable suspicion that the suspect was armed and dangerous. "Whether consent to a search was given voluntarily 'is a question of fact to be determined from the totality of all the circumstances.'" *State v. Cunningham*, 26 N.E.3d 21, 23 (Ind. 2015). (quoting *Schneckloth v. Bustamonte*, 412 U.S. 218, 227, 93 S. Ct. 2041, 36 L. Ed. 2d 854 (1973)).

Here, the Court found that there was nothing in the record to conclude that Medlin’s consent was the product of fraud, duress, fear, or a submission to the authority of law enforcement. When asked, Medlin denied having anything illegal on her person, and when the officer asked if he could pat her down, she consented. The officer did not raise his voice during any of this, nor did he tell Medlin that refusing the search of her person was not an option. Based on the totality of the circumstances, the Court ruled that the consent was freely and voluntarily given.

Article 1, Section 11 of the Indiana Constitution

The reasonableness of a law-enforcement officer's search or seizure is analyzed 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." Litchfield v. State, 824 N.E.2d 356 (Ind. 2005)

Nervousness may indicate potential wrongdoing. However, courts generally give it little weight because it is not unusual for a person to be nervous when approached by law enforcement. For this reason, courts generally require something more than mere nervousness. Here, the officer described Medlin continually moving around the passenger seat of the vehicle, claiming to be searching for the driver's glasses, which the officer quickly observed on the dashboard of the vehicle. Certain conduct innocent to the untrained observer may acquire significance when viewed by a trained law enforcement officer. State v. Quirk, 842 N.E.2d 334,343 (Ind. 2006). Under these facts, the Court held that the officer's degree of concern or suspicion that a violation had occurred was reasonable.

The Court held that the degree of intrusion in this case was low. Medlin had given the officer permission to search her. The search was brief and did not extend past the scope of Medlin's consent.

Finally, the extent of law enforcement needs was moderate. "Law enforcement needs related to drug interdiction are significant." State v. Timbs, 169 N.E.3d 361, 373 (Ind. 2021).

Under the totality of the circumstances, the officer's actions were reasonable and did not violate Medlin's Article 1, Section 11 rights under the Indiana Constitution, and properly denied her motion to suppress evidence.

Conviction Affirmed.

Ogilvie v. State of Indiana
2025 Ind. App. LEXIS 184
Indiana Court of Appeals, June 5, 2025

Evidence sufficient to prove intent to possess syringe

- Ogilvie, a trustee at the Fayette County Jail, found a syringe that had a colored liquid inside of it. When he did, he exclaimed, "Happy Birthday!" and tasted the liquid inside. He later admitted that it did not taste like methamphetamine, and he guessed it was fentanyl.
- Ogilvie was later found unresponsive in his cell and had to be given three doses of Narcan to bring him back to consciousness.
- Field testing on the substance Ogilvie injected into his arm came back negative for a controlled substance. The ISP lab, pursuant to their policy, would not accept the syringe for testing.
- Ogilvie was charged with Unlawful Possession of a Syringe, a Level 6 Felony, as well as being a habitual offender.

- Jail officers testified that they believed that Ogilive suffered from an overdose, and therefore the substance had to be some sort of opioid based on his reaction to the Narcan.
- Ogilive appealed his conviction, arguing that there was insufficient evidence that he possessed the syringe with the required intent under the statute. The field tests did not show the presence of a controlled substance; there was no blood test performed that showed the presence of a controlled substance in his body; there was no evidence presented of injection or track marks on his body; and there were no controlled substances found on Ogilive or in his cell.

In Berkhardt v. State, 82 N.E.3d 313 (Ind. Ct. App. 2017), the Court observed that "sufficient evidence of unlawful intent generally include[s] 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."

This Court determined that the following elements were present to demonstrate the intent necessary for a conviction: the syringe contained a colored fluid; Ogilive said, "Happy birthday," expressing his excitement at the discovery; his statement that the liquid did not taste like methamphetamine; the syringe was discovered in his hand when he was passed out in his cell; it took three doses of Narcan to revive him; and Ogilive told police that he thought the syringe contained fentanyl based on his reaction to the Narcan; and his prior drug use.

Based on Ogilive's statements and reaction to the injection, the Court determined that a jury could have reasonably concluded that he had the syringe and intended to inject a controlled substance into his body.

Conviction Affirmed.

Richey v. State of Indiana
2025 Ind. App. Unpub. LEXIS 651
Indiana Court of Appeals, June 9, 2025

Search of residence upheld as reasonable under 4th Amendment and Indiana Constitution

- Police arrived at Richey's residence with a warrant for her arrest
- After identifying Richey and confirming her identity, police smelled the odor of marijuana coming from inside the residence.
- The officer asked Richey if there was anyone else inside the residence, and she told police that her friend was inside.
- After placing Richey into handcuffs, the officer continued inside the residence and had Richey lead him into the kitchen of the home.
- The officer, while standing in the kitchen, observed another female in the living room, and observed drugs and paraphernalia in plain view.
- A search of this woman uncovered six bags containing methamphetamine, cocaine, and marijuana.

- Officers found a third person sleeping in another bedroom and observed more paraphernalia.
- Richey was tried and convicted of Level 2 Dealing in Methamphetamine, Level 3 Possession of Methamphetamine, and Possession of Paraphernalia, as well as being a Habitual Offender.
- Richey appealed the convictions arguing that the search of her residence was not proper.

Fourth Amendment

In Maryland v. Buie, 494 U. S. 325, S. Ct. 334-35. 108 L. 1093. Ed. 2d 276 (1990), the U.S. Supreme Court explained that protective sweeps are constitutionally permissible as an incident to arrest. Under Buie, a protective sweep is permitted in either the rooms directly next to the arrest site or in any other location that might, based on information the searching officer can articulate, contain a hiding person who could endanger the safety of the officers.

Officers had a warrant for Richey's arrest on charges of Dealing in Methamphetamine when they approached her home. The officer testified that it was unsafe to execute the arrest warrant outside the home in the dark of night on an elevated, wooden platform porch. Richey was taller than the arresting officer, and others inside the home could launch an attack on him and the other officers. They moved inside after Richey told him there was another person in the house. Once in the house, he had to move from the vestibule or “fatal funnel” into a more open area. He then found a woman, the friend Richey told him was inside, in the living room area. She had baggies of drugs in the waistline of her pants and other drugs were visible in plain view. And officers learned that yet another person was located in a bedroom in the home where more evidence of criminal activity was visible. Under these circumstances, the Court held that the protective sweep performed by the officer was reasonable and did not violate the Fourth Amendment.

Indiana Constitutional Analysis

To evaluate the reasonableness of the officers' actions, the Court considers: 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 that a violation has occurred was high. Police were at the home to serve a warrant for her arrest on drug-related charges. The officers smelled the odor of marijuana coming from her home. Possession of marijuana remains illegal in Indiana.

The degree of intrusion was low. Richey opened the door when the officer knocked, and the officer had the authority to step inside to protect his and the other officers' safety while executing the arrest warrant. When the officer walked into the kitchen, he observed another person sitting in the living room and observed drugs and paraphernalia in plain view.

Finally, the extent of law enforcement need was high. Richey admitted to the officer that there was at least one other person inside the residence. The officer testified that officers needed to protect themselves from an attack from inside the home.

Based on these factors, the Court held that the search and seizure did not violate the Indiana Constitution, and the trial court did not err when it admitted evidence found in plain view during the protective sweep.

Conviction Affirmed.

McKinney v. State of Indiana 2025 Ind. App. Unpub. LEXIS 653 Indiana Court of Appeals, June 10, 2025

- Lee, a jail inmate, gave information to police about McKinney dealing drugs out of his residence.
- The information from Lee included statements about buying drugs from McKinney, which he turned around and sold to others; and that Lee had moved to Indiana because he was wanted for attempted murder in South Carolina.
- Police conducted surveillance on McKinney's residence based on the information provided by Lee, and verified the residence as being the one he had bought drugs from McKinney; the vehicle that he had seen McKinney drive; and a photo of McKinney's baby's mother.
- Police performed a trash pull from the garbage bin located in front of the residence, and found items that had residue on them, which tested positive for cocaine, as well as marijuana "roaches", along with paperwork that showed the residence was where McKinney lived.
- Lee also identified McKinney out of a photo lineup.
- Police then obtained a search warrant for the residence and found substantial amounts of cocaine and marijuana, various pills, and large amounts of cash.
- McKinney admitted to police that the drugs were all his and he had been dealing for the past year.
- McKinney was charged and convicted of Dealing in Cocaine, a Level 2 felony; Possession of Cocaine, a Level 3 felony; Dealing in a Narcotic Drug, a Level 2 felony; and Possession of a Narcotic Drug, a Level 3 felony.

McKinney argued that when the police searched his trash, they lacked reasonable suspicion. Trash searches need specific, individualized suspicion to be justified. McKinney contends that Lee gave the police unreliable, stale, and uncorroborated information, and that the search of his trash was inappropriate.

Lee's Credibility

The question is whether the police had reasonable suspicion to search the trash, not whether they had probable cause. When evaluating a finding of reasonable suspicion to justify a search without a warrant, the Court looks at the entire case to determine whether

the police had a specific and articulable reason to suspect illegal activity. An officer is said to have reasonable suspicion when the facts they know and the reasonable conclusions they draw from them lead a normally prudent person to believe that criminal activity has occurred or is about to occur.

Reasonable suspicion can be established not only with information that is less reliable than that needed to demonstrate probable cause, but also with information that differs from that needed to establish probable cause in terms of quantity or content.

The information Lee gave Officer Lim was trustworthy enough to create a reasonable suspicion that allowed the search of McKinney's trash. Given that the police knew Lee's identity and that he was not an anonymous or unknown informant, he could face criminal charges for giving them false information.

Lee acknowledged purchasing cocaine from McKinney and reselling it to other customers, which went against his own criminal interests. Lee also acknowledged that he was wanted in South Carolina on an attempted murder warrant. Additionally, the police verified some of Lee's claims. In addition to confirming that McKinney lived at the residence Lee identified, the police also confirmed that Ware-Curtis, McKinney's girlfriend, was the registered owner of the red Pontiac parked in front of the house. Lee was able to identify McKinney from a photo lineup and Ware-Curtis from her driver's license photo. Lee supplied enough trustworthy information to create a reasonable suspicion that justified the search of McKinney's trash.

Staleness of Information from Lee

“[T]he general rule is that ‘stale information cannot support a finding of probable cause.’” (quoting Washburn v. State, 868 N.E.2d 594, 600 (Ind. Ct. App. 2007)). However, the State must show that the police had merely reasonable suspicion, not probable cause, when evaluating the constitutionality of the trash search.

Lee described continuing and ongoing criminal activity, manufacturing and selling cocaine. "The passage of time is not of critical importance." Scott v. State, 883 N.E.2d 147, 157 (Ind. Ct. App. 2008) Lee was a known informant and subject to additional criminal liability if he provided false information; he provided information that was against his own penal interests by admitting to additional, serious criminal offenses; and he correctly identified McKinney's home, car, and girlfriend. Police had a reasonable, articulable, and individualized suspicion that McKinney was selling illicit drugs. This justified the search of the trash outside McKinney's house.

Conviction Affirmed.

Gavarrete v. State of Indiana
2025 Ind. App. Unpub. LEXIS 698
Indiana Court of Appeals, June 20, 2025

Evidence sufficient to prove constructive possession

- A license plate check revealed that the temporary tag on Gavarrete's truck came back to a different vehicle.

- After performing a traffic stop on the vehicle, the officer observed drugs and drug paraphernalia inside the vehicle.
- The officer asked Gavarrete if there were any weapons located in the vehicle, which Gavarrete eventually said that there were not.
- Due to his observations of drugs and paraphernalia inside of the vehicle, the officer had the occupants of the truck exit and performed a search of the interior of the vehicle.
- A firearm holster was found in the driver's side door, and a firearm was located under the driver's seat.
- Gavarrete admitted that the gun was his but would later change his story and say that it was not his gun.
- Gavarrete was charged and convicted of Unlawful Possession of a Firearm by a Serious Violent Felon, a Level 4 felony.
- Gavarrete appealed the conviction, contending that the State failed to prove that he knowingly or intentionally possessed the item found in the car and that the item was a firearm.

Possession Argument

Possession can be either actual or constructive. Actual possession occurs when a person has direct physical control over the item. Constructive possession is when the person has both (1) the capability to maintain dominion and control over the item; and (2) the intent to maintain dominion and control over it.

Officers found a gun holster in the driver's side door. They also found the firearm in Gavarrete's truck under the driver's seat, where he had been sitting. The officer testified that it would be "reasonable" for a driver to place an object in the area where the item was found. Gavarrete admitted that the gun was his, even though he would change his story and say that it was not his gun. That evidence supported a reasonable conclusion that he had both the capability to maintain dominion and control over the item and the intent to do so.

Firearm Argument

Gavarrete next argued that the State failed to prove that the item found in his truck was a firearm. Indiana Code § 35-47-1-5. defines a "firearm" as any weapon that is "capable of expelling," "designed to expel," or "that may readily be converted to expel" a "projectile by means of an explosion". Detective Chappell, who was also on scene, had received training to be a firearms liaison and testified that the item retrieved from Gavarrete's truck was a "Glock Model 48" and that it was a "real firearm." The Court found that these facts provided sufficient evidence from which a reasonable jury could conclude that the item was a firearm.

Based on these two findings, the Court held that the State presented sufficient evidence to show that Gavarrete knowingly or intentionally possessed a firearm.

Conviction Affirmed.

Spencer, Jr. v. State of Indiana
2025 Ind. App. Unpub. LEXIS 722
Indiana Court of Appeals, June 25, 2025

Search upheld as conducted by a private citizen; evidence sufficient to prove constructive possession

- Police went to Spencer's apartment to speak to him about his probation.
- One officer went to the front door, while the other went to a sliding glass door, where he could see inside of the apartment.
- Spencer made motions to his roommate to tell the police that he was not there, which the officer at the sliding glass door was able to observe.
- This officer entered the apartment through the sliding glass door and tried to place Spencer under arrest.
- Spencer fled to the bathroom, where he was eventually taken into custody.
- While escorting Spencer out of the bedroom, one of the officers backed into an adjacent bedroom to allow the other officer to pass by with Spencer.
- While in that bedroom, the officer observed syringes, pills, and a crystal-like substance, along with other paraphernalia in plain view.
- Spencer admitted to recent drug use.
- Before the officers drove away with Spencer, Spencer's roommate approached and asked them back into the apartment.
- While in the apartment, Spencer's roommate went back into the bedroom where the drugs and paraphernalia were found and opened desk drawers, revealing more drugs and a firearm.
- The officer directed the roommate to stop opening the drawers and applied for a search warrant.
- The further search produced numerous items of drugs, paraphernalia, cash, and a handgun, along with a cell phone and a hospital report with Spencer's name on it.
- Spencer was found guilty of Unlawful Possession of a Firearm by a Serious Violent Felon, Dealing in a Narcotic Drug, Dealing in Marijuana, Unlawful Possession of a Syringe, Possession of a Controlled Substance, and Possession of Paraphernalia.
- Spencer appealed his convictions, specifically argued that the police officers violated the Fourth Amendment when they unlawfully seized additional contraband after Johnson opened desk drawers in the bedroom.

Fourth Amendment Analysis

Private entities are not covered by the Fourth Amendment. Two elements in the instrument or agent analysis are 1) whether the government was aware of and consented to the intrusive behavior, and 2) whether the private party's intent was to support law enforcement agents or to further its own goals.

Johnson asked the officers to return to the apartment. He proceeded to open the drawers on the desk, exposing additional contraband to the officers. When he asked the officers to return to the apartment and when he opened the desk drawers, the Court held that Johnson was acting as a private citizen and not as a government actor. Therefore, the Fourth Amendment is not applicable to Johnson's search.

Spencer presented nothing to support his contention that Johnson was acting as a governmental actor and not as a private citizen.

Spencer also argued that there was insufficient evidence supporting his convictions.

Marijuana Conviction- *REVERSED*

The State is "now require[d] to prove beyond a reasonable doubt that a substance is marijuana by proving that the substance's delta-9-THC concentration exceeds 0.3% on a dry weight basis." *Fritz v. State*, 223 N.E.3d 265, 277 (Ind. Ct. App. 2023). The State did not submit the alleged marijuana for testing and, thus, did not show that the delta-9-THC concentration of the alleged marijuana exceeded 0.3%. Therefore, there was insufficient evidence supporting Spencer's Level 5 felony dealing in marijuana conviction.

Possession of Drugs and Gun found in the Bedroom

Proof of possession of contraband may rest upon proof of either actual or constructive possession. Constructive possession requires a showing that the defendant had both the intent and capability to maintain dominion and control over the contraband.

"The proof of a possessory interest in the premises on which illegal [items] are found is adequate to show the capability to maintain dominion and control over the items in question." *Gee v. State*, 810 N.E.2d 338, 340 (Ind. 2004).

Spencer lived in the apartment. Spencer asked the officers to gather some of his clothing from his bedroom. Officers found medical paperwork with Spencer's name in the bedroom. The evidence thus supports the capability prong of constructive possession.

The intent element of constructive possession is shown if the State demonstrates the defendant's knowledge of the presence of the contraband. *Goliday v. State*, 708 N.E.2d 4, 6 (Ind. 1999). If the control is non-exclusive, evidence of additional circumstances pointing to the defendant's knowledge of the presence of contraband, 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.

In reviewing the evidence presented, the Court noted that Spencer was observed motioning to his roommate to tell police that he was not in the apartment; when he was spotted by police in the apartment, Spencer fled into the bathroom; Spencer made incriminating statements about recently using drugs; he asked police to retrieve some of his clothing from the bedroom; and the bedroom also had medical paperwork with Spencer's name on it, showing the mingling of contraband with other items that he owned.

Based on these facts, the Court held that this was sufficient evidence of constructive possession of the drugs, paraphernalia, and firearm found in the bedroom.

Evidence of Possession with Intent to Deal Fentanyl

Spencer also argued that there was insufficient evidence that he possessed fentanyl with the intent to deliver. The Court disagreed. The amount of fentanyl recovered from the search totaled approximately 33.51 grams. Testimony from police detectives was that this quantity was consistent with dealing rather than personal use. Also, there were scales, plastic baggies, multiple pieces of drug paraphernalia, a large amount of cash, and a handgun. These items were all found to be sufficient evidence of Spencer possessing the fentanyl with the intent to deliver.

Conviction Affirmed in Part, Reversed in Part.

Craft v. State of Indiana

2025 Ind. App. Unpub. LEXIS 735

Indiana Court of Appeals, June 27, 2025

Evidence sufficient to support dealing conviction

- After being stopped with marijuana in his vehicle, the driver offered to produce a drug dealer in exchange for some leniency in his case.
- The driver became a confidential informant for the police and agreed to purchase drugs from Craft.
- The informant was given recorded currency and thoroughly searched prior to going to buy drugs from Craft and arranged to stop by Craft's home to purchase drugs from him.
- The informant went into Craft's house and came out with a bag of methamphetamine, as well as the buy money.
- Upon his return to the police station, the informant and his vehicle were again searched, and he turned over to police 27.94 grams of methamphetamine that he had purchased from Craft.
- Craft was tried and convicted of Level 2 Felony Dealing in Methamphetamine and appealed the conviction.

Craft argued the State failed to prove Craft was the one who delivered the methamphetamine to the CI because the CI did not testify that he received the methamphetamine directly from him.

The CI knew Craft, knew where Craft lived, and was able to contact Craft by phone. The CI testified he called Craft and asked if the CI could "stop by and get some stuff from [Craft], some drugs." The CI testified that Craft agreed and would determine the price for the drugs upon the CI's arrival at Craft's house. Detectives and the CI testified that before the CI left the police station to go to Craft's house, they searched the CI's person and car and fitted the CI with a listening device. Detectives and the CI testified that other officers followed the CI to and from Craft's house. Detectives testified there was another detective

stationed near Craft's house to observe the CI. When the CI returned, he was searched again. The CI and detectives both testified the CI provided detectives with a "bag of white crystal substance," and the \$240 in buy money, explaining that Craft wanted to receive payment later because he did not want the people at his house see him dealing drugs.

The Court held that there existed circumstantial evidence that Craft gave the CI the methamphetamine that the CI ultimately turned over to detectives. Therefore, the State presented sufficient evidence to prove Craft committed Level 2 felony dealing in methamphetamine.

Conviction Affirmed.

Lord v. State of Indiana

2025 Ind. App. Unpub. LEXIS 738

Indiana Court of Appeals, June 27, 2025

Evidence sufficient to prove constructive possession

- Lord shared the basement of a house with his girlfriend Omand.
- Police conducted surveillance on the residence, and observed Smith and Winkler arrive at the residence and go inside the detached garage.
- Police initiated a traffic stop on the vehicle driven by Smith and Winkler, where they found methamphetamine inside Winkler's pocket.
- Winkler admitted to the police that he purchased the methamphetamine from Lord, and that there was a lot more at Lord's residence.
- While this was occurring, Lord gave Omand a backpack containing a safe containing methamphetamine, which she placed in the basement of the residence.
- Lord and Omand were later stopped by police in a vehicle driven by Omand's friend.
- Police found a substance believed to be methamphetamine in a prescription bottle with Omand's name on it in her bag found where she was sitting in the vehicle.
- Using all this information together, the police obtained a search warrant for the house of Lord and Omand.
- Two safes were found- one of which police were able to open because Omand provided the combination for the lock. Inside this safe, police found drugs, baggies, and scales, as well as a Ziplock bag of methamphetamine.
- In the detached garage, police located another bag of methamphetamine in a toaster sitting on top of a box.
- The combined weight of the two bags of methamphetamine was over 33 grams.
- At trial, the homeowner, Wise, testified that she rented the house where she and her two children occupied the first and second floors, and Lord and Omand occupied the basement.
- Wise also testified that another person, Campbell, lived at the home for a short time, but had moved out. Campbell kept items throughout the entire home, including the basement and the garage.

- The jury found Lord guilty of Count I, Dealing in Methamphetamine as a level 3 felony; Count II, Dealing in as a level 2 felony; Count III, Possession of Methamphetamine as a level 4 felony; and found him to be a Habitual Offender.

Lord's argument was that the evidence was insufficient to support the conclusion that he possessed more than ten grams of methamphetamine. This argument was based on the State not being able to prove that he possessed all the methamphetamine that was found during the search of the residence. Specifically, "the premises were non-exclusive," "the proximity of the contraband to [him] was not close," the methamphetamine found "in a toaster in the garage . . . was mixed in with various other household items left by former tenant Riley," and "the basement was shared with Omand who was later discovered possessing methamphetamine[.]"

One of the Ziplock bags contained 17.28 grams of methamphetamine, while the other bag contained 15.85 grams according to the Indiana State Police Laboratory's analysis results. The amount of methamphetamine found in the Ziplock bags could be established with this evidence alone.

To establish the possession element, the Court found the following facts dispositive:

"One of the Ziplock bags was found in a safe in the basement where Lord was living, and Omand testified that Lord handed her a backpack, the safe was in the backpack, she knew the safe contained methamphetamine, and she took it to the basement. Omand also testified that she and Lord had the combination to the safe, and she provided the combination to the police. Police found the other ziplock bag in a toaster on a box in the garage where Lord worked on mopeds and where police observed Lord smoke a cigarette and meet with Smith and Winkler. Winkler testified that he purchased about seven grams of methamphetamine from Lord in the garage and that, when Lord retrieved the methamphetamine, Winkler saw "[t]here was a lot more methamphetamine] in this big Ziplock bag."

Based on the facts, the Court ruled that Lord had the capability to maintain control of the methamphetamine and knew of its presence.

Conviction Affirmed.

Drug School

Heroin

An opiate (narcotic) drug processed from morphine and extracted from certain poppy plants. It is a highly addictive drug and it is a rapidly acting opioid. Heroin comes in a white

or brownish powder, or a black sticky substance known as “black tar heroin.” Often “cut” with other drugs or substances, especially fentanyl.

Common street names for heroin include: Big H, Black Tar, Chiva, Hell Dust, Horse, Negra, Smack, and Thunder.

Heroin can be injected, smoked, or sniffed/snorted. High purity heroin is usually snorted or smoked.

Heroin is a Schedule I narcotic under the Controlled Substances Act meaning that it has a high potential for abuse, no currently accepted medical use in treatment in the United States, and a lack of accepted safety for use under medical supervision

What’s it Look Like?



Black Tar Heroin



Brown and White Powder Heroin

Upcoming Trainings for Prosecutors

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

Top Gun- **CLASS FULL**
September 21-27
Camp Atterbury

Applied Professionalism
October 24
Indiana Government Center South

Jury Selection
November 18-20
Hyatt Place Indianapolis Downtown

Winter Conference
December 8-10
Sheraton Indianapolis North

Get 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