

Z. SEARCH AND SEIZURE

Z.1. Protected Areas and Interests

TITLE: People v. Schafer

INDEX NO.: Z.1.

CITE: 946 P.2d 938 (Colo. 1997)

SUBJECT: Protected Areas -- Tent

HOLDING: Fourth Amendment and Colorado Constitution were violated when police conducted warrantless search of zipped tent that had been set up on unfenced, unimproved private land that had not been posted against trespassing. Although land on which tent was set up was privately owned by another, it was publicly accessible and widely used by townspeople for partying and camping. *Citing* long tradition of tent dwelling in American West, Court held that tent was entitled to constitutional protection afforded to permanent homes.

TITLE: Soldal v. Cook County, Illinois

INDEX NO.: Z.1.

CITE: 506 U.S. 56, 113 S. Ct. 538, 121 L.Ed.2d 450 (1992)

SUBJECT: Search and Seizure; property interest

HOLDING: Fourth Amendment protects property interests even in situations in which neither privacy nor liberty interests are implicated. Cook County sheriff's deputies assisted trailer park landlord in "seizing" without entering, plaintiff's mobile home during unlawful eviction, plaintiff filed 1983 action alleging that sheriff conspired with landlord to violate his fourth amendment rights. District Court granted summary judgment for Ds based on lack of evidence of conspiracy. Seventh Circuit Court of Appeals affirmed on ground that, while there was state action, removal of trailer did not constitute seizure for purposes of Fourth Amendment. U.S. Supreme Court unanimously reversed Court of Appeals. While modern cases have shifted emphasis of Fourth Amendment to privacy [citations omitted], this shift has not "snuffed out" previously recognized protection for property interests. Court's "plain view" decisions make it clear that Fourth Amendment protection extends to pure property interests; if boundaries of Fourth Amendment were defined exclusively by rights of privacy, "plain view" seizures would not implicate Fourth Amendment at all. Neither does Fourth Amendment application depend on why seizure is made. Finally, Court of Appeals' fear that applying Fourth Amendment to pure property interests would federalize traditionally state-law regulated area of repossessions and attachments is unfounded, since most repossessions and attachment would involve an entry of some sort and would, therefore, trigger Fourth Amendment scrutiny even under Court of Appeals' holding. Moreover, reasonableness is still ultimate standard under Fourth Amendment, so that only unreasonable seizures would fail to survive constitutional scrutiny. Issue of reasonableness of seizure in instant case is not before Court. Held, reversed and remanded to District Court.

TITLE: U.S. v. Jenkins
INDEX NO.: Z.1.
CITE: 124 F.3d 768 (6th Cir. 1997)
SUBJECT: Curtilage -- Rural Backyard Surrounded by Wire Fence
HOLDING: Rural backyard, partially surrounded by wire fence and set well back from public road, constituted curtilage of residence, and was entitled to 4th Amendment protection. Factors considered indetermining whether area is curtilage: proximity to home, whether area is included within enclosure surrounding home, uses to which area is put, and steps taken to protect area from observation by passersby, all weigh in favor of finding of curtilage.

TITLE: U.S. v. Verdugo-Urquidez

INDEX NO.: Z.1.

CITE: 494 U.S. 259, 110 S. Ct. 1056, 108 L.Ed.2d 222 (1990)

SUBJECT: Property owned by nonresident alien in foreign country

HOLDING: 4th Amend. does not apply to search & seizure by U.S. agents of property owned by nonresident alien & located in foreign country. Here, Government obtained arrest warrant for D, a Mexican citizen. Mexican police transported him to U.S. for arrest. Following arrest, U.S. agents searched D's Mexican residence & seized documents without warrant. 4th Amend. provides "right of the people to be secure..." by its terms it refers to class of persons who are part of national community or who have otherwise developed sufficient connection with this country to be considered part of that community. D is not U.S. citizen & has no previous significant voluntary connection with U.S. Fact that he was lawfully present in U.S. at time of search is not dispositive because D's presence was not voluntary. Nor does differing treatment of aliens from citizens violate equal protection clause of 5th Amend. Result of accepting D's claim that 4th Amend. applies to search here "could significantly disrupt the ability of the political branches to respond to foreign situations involving our national interest." Held, 4th Amend. has no application to resident of Mexico with no voluntary attachment to U.S. where place searched located in Mexico. Kennedy, CONCURRING; Stevens, CONCURRING IN JUDGMENT, joined by Marshall, DISSENTING.

Z. SEARCH AND SEIZURE

Z.1. Protected Areas and Interests

Z.1.a. In general (Katz v. U.S.)

TITLE: Arizona v. Hicks

INDEX NO.: Z.1.a.

CITE: 480 U.S. 321, 107 S. Ct. 1149, 94 L.Ed.2d 347 (1987)

SUBJECT: Actions which constitute search / seizure

HOLDING: Officers lawfully entered D's apartment following shooting incident to look for shooter, other victims, & weapons. During search officers noticed 2 sets of expensive stereo equipment. Suspecting they were stolen, officer moved some of the equipment to record serial numbers. Officer called headquarters with serial numbers, was advised that turntable had been taken in armed robbery & immediately seized it. It was later determined that some of other components were also taken in armed robbery & warrant obtained. State argues officer's actions constituted neither "search" nor "seizure" within meaning of 4th Amend. Court finds mere recording of serial numbers did not constitute seizure because it did not "meaningfully interfere" with D's possessory interest in serial numbers/equipment. MD v. Macon (1985), 472 U.S. 463, 469, 105 S. Ct. 2778, 86 L.Ed.2d 370. However, officer's moving of equipment did constitute "search" separate & apart from search for shooter, victims & weapons that was lawful objective of entry into apartment. Held, taking action, unrelated to objectives of authorized intrusion, which exposed to view concealed portions of apartment or its contents, did produce new invasion of D's privacy unjustified by exigent circumstances that validated entry. Distinction between looking at suspicious object in plain view & moving it even a few inches is important for 4th Amend. analysis. White, CONCURS. Powell, joined by Rehnquist & O'Connor, DISSENTS; O'Connor, joined by Rehnquist & Powell, DISSENTS.

RELATED CASES: Shultz, App., 742 N.E.2d 961 (although officer's using flashlight to read VIN was not search, wiping VIN with rag so VIN could be read was search).

TITLE: California v. Greenwood

INDEX NO.: Z.1.a.

CITE: 486 U.S. 35, 108 S. Ct. 1625, 100 L.Ed.2d 30 (1988)

SUBJECT: Legitimate expectation of privacy - discarded trash

HOLDING: 4th Amend. applies only when person manifests subjective expectation of privacy that society accepts as objectively reasonable. O'Connor v. Ortega (1987), 480 U.S. 709, 107 S. Ct. 1492, 94 L.Ed.2d 714. Here, police conducted warrantless search & seizure of D's trash which was left on street for collection in opaque bags. Even if D did not expect that contents of garbage would become known to police/public, there is no 4th Amend. protection unless society is prepared to recognize that expectation as objectively reasonable. Court concludes that D exposed garbage to public sufficiently to defeat 4th Amend. protection. "What a person knowingly exposes to the public, even in his own home or office, is not a subject of 4th Amend. protection." Katz v. U.S. (1967), 389 U.S. 347, 351. 88 S. Ct. 507, 19 L.Ed.2d 576. Plastic garbage bags left at side of public street are readily accessible to animals, children, scavengers, snoops, & other members of public. Police cannot reasonably be expected to avert their eyes from evidence of criminal activity that could have been observed by any member of public. Society would not accept as reasonable D's claim to expectation of privacy in trash left for collection in area accessible to public. Held, 4th Amend. inapplicable. Kennedy, not participating; Brennan, joined by Marshall, DISSENTING.

TITLE: City of Ontario v. Quon

INDEX NO.: Z.1.a.

CITE: (06-17-10), U.S., 130 S. Ct. 2619

SUBJECT: Privacy - application of Fourth Amendment to text messages sent to private party from government-supplied electronic device

HOLDING: A police officer using his government-issued pager to send personal, non-work related messages had no reasonable expectation of privacy that would preclude his supervisors from retrieving and reading the messages without a search warrant. Government supervisors may examine Aprivate@ texting by their employees without Fourth Amendment process if: (1) the device is provided by the agency; (2) the worker is told in advance that messages sent from the device would be subject to management audit; (3) the examination of the messages is not to discover evidence of crime but for work-related purposes such as restricting unauthorized misuse of the device; (4) there must be some grounds that indicate misuse by the employee. Here, the search that turned up Quan's excessive personal text messages was an audit of city-owned pagers designed to determine if the city's prepaid contract was insufficient for the volume of characters and messages legitimately used by its employees. Court found that the search satisfied the "special needs" of the workplace standard and was reasonable under that approach. The Court suggested also that off-duty messages be deleted before transcripts are inspected. Held, Ninth Circuit Court of Appeals' opinion at 529 F.3d 892 reversed. Stevens, J., CONCURRING, would not have used the "operational realities of the workplace" test.

TITLE: Collins v. Virginia
INDEX NO.: Z.1.a.
CITE: (5/29/2018), 138 S. Ct. 1663 (2018)
SUBJECT: Automobile exception does not allow warrantless entry into curtilage to investigate whether motorcycle in driveway was stolen
HOLDING: The automobile exception to the warrant requirement did not authorize a police officer's warrantless entry of D's curtilage to search D's motorcycle.

Officer David Rhodes investigated two traffic incidents involving an orange and black motorcycle; he learned D had likely stolen the motorcycle. Officer Rhodes discovered photographs on D's Facebook profile of an orange and black motorcycle that was parked in the driveway of a house; he drove to the house and parked on the street, where he saw what appeared to be the motorcycle under a white tarp parked in the same location as the motorcycle in the photograph. Without a search warrant, Officer Rhodes walked to the top of the driveway, removed the tarp, confirmed that the motorcycle was stolen, took a photograph of the uncovered motorcycle, replaced the tarp, and returned to his car to wait for D; when D appeared, Officer Rhodes arrested him. D filed a motion to suppress, arguing that Officer Rhodes violated the 4th Amendment when he trespassed on the house's curtilage to conduct a search. The Tr. Ct. denied the motion, and D was convicted of receiving stolen property. The Virginia Court of Appeals affirmed as did the State Supreme Court, which held the warrantless search was justified under the automobile exception.

The rationale for the automobile exception applies only to automobiles, not homes, and therefore, as a constitutional matter, a search of a home and its curtilage are treated differently. California v. Carney, 471 U.S. 386, 390, 392 (1985). Curtilage - the area immediately surrounding the home - is considered part of the home itself under the 4th Amendment. Florida v. Jardines, 569 U. S. 1, 6 (2013). Therefore, "[w]hen a law enforcement officer physically intrudes on the curtilage to gather evidence, a search within the meaning of the Fourth Amendment has occurred. Id., at 11. Such conduct thus is presumptively unreasonable absent a warrant." Thus, the automobile exception does not authorize a search of a vehicle parked in a curtilage because it does not justify an intrusion on a person's separate and substantial 4th Amendment interest in his home and curtilage.

Here, the part of the driveway where D's motorcycle was parked and subsequently searched is curtilage. Because the automobile exception extends no further than the automobile itself, it did not justify Officer Rhodes' invasion of the curtilage. Allowing the automobile exception to allow a search of a vehicle parked in a curtilage would undermine the core 4th Amendment protection afforded to a home and its curtilage. Riley v. California, 134 S. Ct. 2473 (2014).

On remand, the Virginia courts shall determine whether Officer Rhodes' warrantless intrusion on the curtilage may have been reasonable for different reasons, such as exigent circumstances. Held, cert. granted, 292 Va. 486, 790 S.E.2d 611 reversed, and remanded. Sotomayor, joined by Roberts, C.J., and Kennedy, Thomas, Ginsburg, Breyer, Kagan, and Gorsuch, JJ; Thomas, J., concurring; Alito, J., dissenting.

NOTES:

A. Similar Indiana Case

Perez v. State, 27 N.E.3d 1144 (Ind. Ct. App. 2015) held that a warrantless canine sniff of D's front door physically intruded onto curtilage of his home and was an unconstitutional search.

B. Cases Called into Question

1. Cases About Entry of Curtilage

Divello v. State, 782 N.E.2d 433 (Ind. Ct. App. 2003) (When police enter onto private property to conduct investigation or for another legitimate purpose and restrict their entry to places that other visitors would be expected to go, such as walkways, driveways, or porches, any observation made from these areas is permissible).

Hardister v. State, 849 N.E.2d 563 (Ind. 2006) (Fact that officers entered D's curtilage to conduct an otherwise lawful Terry stop did not ipso facto render physical invasion of curtilage an unlawful search).

2. Knock & Talk Cases (where police enter curtilage without a warrant to seek consent to investigate). See, e.g., Redden v. State, 850 N.E.2d 451 (Ind. Ct. App. 2006)

TITLE: Conn v. State
INDEX NO.: Z.1.a.
CITE: (12/20/2017), 89 N.E.3d 1093 (Ind. Ct. App. 2017)
SUBJECT: Unlawful warrantless entry onto private conservation club
HOLDING: Police officers' warrantless entry onto a private conservation club was unreasonable and violated Article 1, Section 11 of the Indiana Constitution. Thus, Tr. Ct. erred in admitting evidence obtained after the officers' illegal search. D was shooting firearms at a target with friends at the conservation club when a nearby neighbor called police to report gunfire. When the officers arrived, the gunfire had ceased, and a locked gate blocked their entrance to the club. The officers either jumped over or maneuvered around the gate and were walking through the property when they observed D walking behind the club's building. Upon further investigation and questioning by the officers, D admitted to hiding a firearm behind the building. D led the officers to the location where he had hidden the firearm, ammunition, methamphetamine and paraphernalia.

When D objected to the admission of this evidence at trial, the prosecutor responded there had been "no evidence that the D has any kind of reasonable expectation of privacy on private property whether it's his or had any right to be there." Court of Appeals first concluded that the State waived its argument that D lacked standing to bring his state constitutional challenge because it failed to challenge his standing at trial. Applying the three-part test under Litchfield v. State, 924 N.E.2d 356, 359 (Ind. 2005), Court concluded the officers' conduct was unreasonable under the state constitution. The officers' degree of concern, suspicion or knowledge of unlawful activity was minimal, considering the shooting had stopped by the time they arrived and there was no evidence of poaching or killing any animals. However, the degree of intrusion on D was substantial, given the fact that the officers had to maneuver around the locked gate to gain access to the property. "[W]hen Indiana citizens put mechanisms in place to keep others out, ignoring these obstructions constitutes highly intrusive conduct by law enforcement." See, e.g., Carpenter v. State, 18 N.E.3d 998 (Ind. 2014). Finally, the majority determined there was no evidence of an emergency or threat to the public in this situation, so the extent of law enforcement needs was low. There was no evidence of exigent circumstances that justified the officers' unlawful intrusion. Held, convictions for possession of methamphetamine, possession of a firearm by a domestic batterer, and possession of paraphernalia reversed. Vaidik, C.J., dissenting on basis that D did not have standing to challenge the evidence.

NOTE: Initial sentence of majority's opinion: "For purposes of privacy interests protected by Article 1, Section 11 of the Indiana Constitution, closed doors matter; high fences matter; roped-off drives matter; closed drapes matter; and in this case, a closed and locked gate matters."

TITLE: Divello v. State
INDEX NO.: Z.1.a.
CITE: (3rd Dist., 1-29-03) 782 N.E.2d 433 (Ind. Ct. App 2003)
SUBJECT: Warrantless entry & invasion of D's curtilage
HOLDING: Tr. Ct. erred in denying D's motion to suppress evidence found as result of police officers' unconstitutional presence on his property. Officers came to D's residence to speak with him about anonymous tip that he was growing marijuana on property. After knocking on front & back door & receiving no response, officers crossed through private backyard & through privacy gate to D's adjacent property. After officers elicited no response at adjacent property, they ran license plate check on truck parked behind house, smelled odor of marijuana coming from southwest corner of house & obtained search warrant.

When police enter onto private property to conduct investigation or for another legitimate purpose & restrict their entry to places that other visitors would be expected to go, such as walkways, driveways, or porches, any observation made from these areas is permissible under Fourth Amendment. Shultz v. State, 742 N.E.2d 961 (Ind. Ct. App. 2001). Here, although officers' initial entry onto D's property was permissible, they failed to limit their visit to areas that could reasonably have been viewed as open to them for legitimate police business & remained on D's property after it became clear to them that purpose for their visit could not be properly fulfilled. Officers should not have crossed through private backyard of D's property to his adjacent property, as this area cannot be regarded as one through which uninvited visitors would be expected to travel under circumstances. After receiving no response at adjacent property, officers should have left, as purpose for their visit to that property terminated due to lack of response from any occupant. Otherwise, well-established right of citizens to refuse to answer their door would be illusory. Cox v. State, 696 N.E.2d 853 (Ind. 1998). Because officers were within area for which D had reasonable expectation of privacy & without warrant when they smelled marijuana odor, their actions violated Fourth Amendment & all evidence obtained pursuant to subsequently obtained search warrant must be suppressed. Held, judgment reversed; Sullivan, J., dissenting.

RELATED CASES: Collins, (5/29/2018), ____ N.E.3d ____ (U.S. Supreme Court 2018) (arguably overruling Divello, 782 N.E.2d 433, and Hardister, 849 N.E.2d 563, because in Collins, U.S. Supreme Court held that a warrantless search into a curtilage to conduct an investigation is an unauthorized entry, unless there are exigent circumstances); Jadrich, 999 N.E.2d 1022 (Ind. Ct. App. 2013) (where there was no indication that anyone was home after the police knocked on D's front door, police entry into fenced backyard passing multiple no trespassing signs was not justified by the purpose of the visit, i.e., service of a protective order); Dora, 957 N.E.2d 1049 (Ind. Ct. App. 2011) (D implicitly invited the officers to remain on his curtilage when he led the officers to an RV and trailer in order for the officers to inspect them for damage; thus, the officer's conduct in walking around to the driver's side of the RV was not so incompatible with his legitimate purpose to transfer his observation of the marijuana into an unconstitutional search under either the Fourth Amendment or article I, § 11 of the Indiana Constitution); Boggs, 928 N.E.2d 855 (Ind. Ct. App. 2010) (because police officer was on D's property for legitimate purposes, did not stray from places a visitor might go, and did not move or manipulate anything in order to make his observation, his observation of a small propane tank inside D's vehicle parked in his driveway did not violate the Fourth Amendment); Lundquist, 834 N.E.2d 1061 (App.) (unlike facts & circumstances presented in Divello, officers had legitimate reason for remaining on property after officer's knock on front door failed to elicit a response; because D was likely hiding on property, officers legitimately invaded curtilage of his property in an attempt to find him).

TITLE: Dumbsky v. State
INDEX NO.: Z.1.a.
CITE: (6/18/87), Ind., 508 N.E.2d 1274
SUBJECT: Police experiment was not a search
HOLDING: Tr. Ct. did not err in admitting photograph showing picture of truck with gas cap (which police had found at scene of robbery). Here, officer was properly on D's property to serve arrest warrant. Officer tried gas cap on truck; it fit. Ct. compares case to Cardwell v. Lewis, (1974), 417 U.S. 583, 94 S. Ct. 2464, 41 L.Ed.2d 325. In Cardwell, after D was placed under arrest, police had his car towed to station. Small paint sample was taken from car & later determined to match paint on fender of homicide victim's car. U.S. S. Ct. concluded in plurality opinion that procedure was not a search. In US v. DeBardleben, (CA6 1984), 740 F.2d 440, secret service agent unlocked car door with key taken from suspect. Agent relocked door without opening it. 6th Cir. held agent did not search car but merely identified it as belonging to D. In present case, Ct. concludes officer did not search D's truck. He merely identified gas cap as belonging to truck. Held, no error.

TITLE: Engram v. State

INDEX NO.: Z.1.a.

CITE: (2nd Dist., 09-19-08), Ind. App., 893 N.E.2d 744

SUBJECT: Police test-firing of gun is not a search under Fourth Amendment

HOLDING: Tr. Ct. did not abuse its discretion in admitting results of ballistics test that had been performed three years earlier on D's handgun. Handgun was seized as part of an inventory search and police department test-fired it and recorded the results in a national ballistics database pursuant to a department policy. Court found no violation of the Fourth Amendment because test-firing policy does not constitute a search. D did not show that he exhibited an actual, subjective expectation of privacy in the unique markings made by his handgun on bullets and casings fired from that weapon. Further, D did not show that the markings made by his firearm on bullets and casings constitutes a privacy interest that society is prepared to recognize as reasonable. Society has a substantial interest in maintaining a record of firearms confiscated by law enforcement incident to a valid arrest. Test-firing of D's handgun revealed no private information but did provide an additional means to identify his weapon apart from its serial number. Held, judgment affirmed.

TITLE: Ferguson v. Charleston

INDEX NO.: Z.1.a.

CITE: 532 U.S. 67 (2001)

SUBJECT: Fourth Amendment, drug testing, pregnancy, consent

HOLDING: A public hospital adopted a written policy ordering drug screen tests on urine samples from pregnant patients who were suspected of using cocaine. The hospital argued that the drug tests were consensual searches and would have been reasonable under the Fourth Amendment even if not consensual. Held, the hospital's drug testing policy was designed to obtain evidence of criminal conduct so that the tested patients could be prosecuted. The Fourth Amendment's general prohibition against warrantless and suspicionless searches applies, and the policy was unreasonable unless the searches were consensual. The Court of Appeals not having reached the consent issue, the case was remanded.

TITLE: Grady v. North Carolina

INDEX NO.: Z.1.a.

CITE: (3/30/2015), 135 S. Ct. 1368 (U.S. Supreme Court 2015)

SUBJECT: Compelling recidivist to wear GPS is 4th amendment search

HOLDING: Per Curiam. The State of North Carolina conducted a Fourth Amendment search by requiring Petitioner, a sexual recidivist, to wear a GPS device for the rest of his life. United States v. Jones, 132 S. Ct. 945 (2012); Florida v. Jardine, 133 S. Ct. 1409 (2013). The fact that the GPS was ordered in a civil proceeding is inconsequential because Fourth Amendment protections extend beyond criminal cases. Ontario v. Quon, 560 U.S. 746, 755 (2010). However, the matter was remanded for the state courts to decide whether the search was reasonable. Held, cert. granted, judgment of North Carolina Supreme Court vacated, and remanded.

TITLE: Hardister v. State
INDEX NO.: Z.1.a.
CITE: (06-28-06), Ind., 849 N.E.2d 563
SUBJECT: Warrantless entry onto D's curtilage & observation through window
HOLDING: Tr. Ct. properly admitted police officers' testimony regarding what they observed through side & rear windows of D's residence plus weapons, drugs & other items seized after officers obtained a search warrant. Anonymous tip that residents were "cooking drugs" inside house disclosed neither a basis of knowledge nor evidence of reliability & was insufficient standing alone to establish reasonable suspicion for investigatory stop. However, residents' headlong flight toward rear of the house coupled with anonymous tip & location in area known for narcotics traffic furnished reasonable suspicion justifying investigative stop of fleeing occupants.

Although officer's efforts to intercept fleeing occupants was justified as necessary to pursue investigation, flight did not create exigent circumstance that justified warrantless entry & pursuit of fleeing residents through house. Once officers observed D dumping cocaine down kitchen sink drain, they were presented with exigent circumstances that justified entry into residence to prevent destruction of evidence. Fact that officers entered D's curtilage to conduct an otherwise lawful Terry stop did not ipso facto render physical invasion of curtilage an unlawful search. Public or private status of sidewalk running through D's backyard was not controlling, because officer's physical invasion of area surrounding house was not a search, which by definition involves an "exploratory investigation." Their invasion of area surrounding house involved nothing more than pursuit of fleeing suspects along sidewalk that leads to back door. Once officers were lawfully present in backyard, their looking into kitchen through side & rear windows was reasonable as an effort to locate fleeing suspects.

Ct. rejected claim that officers created exigency, noting that there was no evidence that police foresaw that residents would attempt to destroy evidence in response to their "knock & talk" investigation. Held, transfer granted, Ct. App.' opinion at 821 N.E.2d 912 vacated, judgment affirmed in part & reversed in part.

RELATED CASES: Collins, (5/29/2018) (U.S. Supreme Court 2018) (arguably overruling Divello, 782 N.E.2d 433, and Hardister, 849 N.E.2d 563, because in Collins, U.S. Supreme Court held that a warrantless search into a curtilage to conduct an investigation is an unauthorized entry, unless there are exigent circumstances); Jadrich, 999 N.E.2d 1022 (Ind. Ct. App. 2013) (where there was no indication that anyone was home after the police knocked on D's front door, police entry into fenced backyard passing multiple no trespassing signs was not justified by the purpose of the visit, i.e., service of a protective order); Seidl, 939 N.E.2d 679 (Ind. Ct. App. 2010) (police did not need reasonable suspicion to walk up D's gravel driveway and the parking lot near his barn; thus, there was no constitutional violation when police saw into a barn window from driveway and lot).

TITLE: Holt v. State
INDEX NO.: Z.1.a.
CITE: (8/30/85), Ind., 481 N.E.2d 1324
SUBJECT: Protected interests - phone conversation at police station
HOLDING: Tr. Ct. did not err in admitting evidence seized after police overheard D telephone his girlfriend to get rid of the stuff at her house & his apartment. Here, D had no reasonable expectation of privacy where he spoke in muffled voice (indicating his awareness of lack of privacy) 12 feet from officers who were guarding door & could not help but overhear D talking. Ct. rejects D's reliance on Katz v. US, (1967), 389 U.S. 347, 88 S. Ct. 507, 19 L.Ed.2d 576 (telephone booth case). Overheard conversations are admissible even though D was "talking confidentially & indiscreetly with one he trusted." US v. White, (1971), 401 U.S. 745, 91 S. Ct. 1122, 28 L.Ed.2d 453. Held, no error.

TITLE: J.K. v. State
INDEX NO.: Z.1.a.
CITE: (4/29/2014), 8 N.E.3d 222 (Ind. Ct. App. 2014)
SUBJECT: Unlawful entry onto D's curtilage and into home - "suspicion of criminal activity is not an exception to the warrant requirement"

HOLDING: Police officers' entry onto J.K.'s curtilage, their nearly one-hour knock and talk and eventual residential entry were unreasonable searches under the Fourth Amendment. Police received reports of teens riding around in a shopping cart at 1 a.m. being loud and causing dogs to bark. Police saw a shopping cart in a truck parked in front of J.K.'s house. The truck belonged to T.T. Believing the cart to be stolen, the officers called for a tow truck. While waiting for the truck, officers went around the house to make sure no one would flee. Inside, officers saw empty alcohol containers. Police knocked on the front door for nearly an hour until T.T. came out after he saw the tow truck. J.K. also came outside at that point; both appeared intoxicated. The officers then went inside and did a sweep of the house and found additional evidence of underage drinking.

Court rejected State's argument that officers' warrantless entries onto J.K.'s curtilage and into his home were justified by exigent circumstances— to make sure suspects did not flee. The officers did not see anyone fleeing from the back of the house, which was not open to visitors. As such, the evidence obtained as a result of entry onto J.K.'s curtilage – the sight of empty alcohol containers – and any suspicion resulting from that evidence is tainted and subject to the exclusionary rule.

Following Florida v. Jardines, 133 S. Ct. 1409 (2013), Court then concluded that the officers' repeated knocking and yelling into J.K.'s house devolved into an unlicensed physical intrusion and was likewise unconstitutional. The officers' actions in this case extended well beyond the implied invitation to approach a citizen's front door. They had no reason to believe someone inside was injured or in danger. Underage drinking is not a circumstance that as a general matter creates a threat of imminent injury.

Court also rejected the State's "misguided" claim the officers' conduct was justified because they believed the shopping cart in the truck was stolen. The decision to impound T.T.'s vehicle was unreasonable and cannot justify the officers' trespass. Even assuming search and arrest were legal, the act of detaining juveniles outside the home would not provide a legal basis for subsequent warrantless entry into the home. Held, delinquency adjudication reversed. Shepard, Sr.J., dissenting, believes it was reasonable for officers to wait for tow truck to arrive and to arrest J.K. and T.T. once they stepped outside and appeared to be under the influence.

RELATED CASES: Corbett - 179 N.E.3d 475 (Ind. Ct. App. 2021) (detective's knock and talk did not violate 4th Amendment, as the officer intended to speak to the occupants and determine who lived at the home).

TITLE: Litchfield v. State
INDEX NO.: Z.1.a.
CITE: (03-24-05), Ind., 824 N.E.2d 356
SUBJECT: Warrantless seizure of trash bags - reasonable suspicion required under Indiana Constitution

HOLDING: Warrantless search of trash recovered from place where it is left for collection is permissible under Indiana Constitution, but only if investigating officials have an articulable basis justifying reasonable suspicion that subjects of search have engaged in violations of law that might reasonably lead to evidence in the trash. Legality of governmental search under Indiana Constitution turns on evaluation of reasonableness of police conduct under "totality of circumstances," which requires consideration of both degree of intrusion into subject's ordinary activities & basis upon which officer selected subject of search or seizure. One important factor that may render a search unreasonable is an arbitrary selection of the subject. Ct. has explained reasonableness of a search or seizure as turning on a balance of: 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 citizen's ordinary activities, & 3) the extent of law enforcement needs.

Regarding searches of trash, Ct. held that reasonableness of officer conduct in searching a person's trash does not turn on whether or not the police entered onto the citizen's property, thus rejecting bright-line test applied in State v. Stamper, 788 N.E.2d 862 (Ind. Ct. App. 2003). However, Ct. agreed with conclusion of Stamper Ct. that police should not be permitted to enter a person's property & search his or her garbage "without reason." Concern for reasonable searches of trash is best addressed by requirement that, in order for a search or seizure to be reasonable, there should be articulable individualized suspicion (essentially same as "Terry stop" of an automobile), & trash must be retrieved in substantially the same manner as the trash collector would take it. Held, transfer granted, Ct. App. opinion at 808 N.E.2d 713 vacated, remanded for determination as to whether or not officers possessed reasonable suspicion sufficient to obtain & search D's garbage.

RELATED CASES: Hoop, 909 N.E.2d 463 (Ind. Ct. App. 2009) (as Litchfield placed overriding weight on the need to restrict arbitrary selection of persons to be searched, and that same concern is present with dog sniffs of private residences, reasonable suspicion is needed to conduct a dog sniff of a private residence under the Indiana Constitution); Rotz, App., 894 N.E.2d 989 (although a shipment of products from known supplier of equipment used to grow marijuana to D's house alone may not have constituted reasonable suspicion, D's prior arrests for drug offenses and fact that D's windows were covered corroborated the shipment and established reasonable suspicion for trash search); Membres, 889 N.E.2d 265 (Litchfield only applies to searches after it was decided; searches prior to Litchfield are to be analyzed under Moran); Turner, App., 878 N.E.2d 286 (heavy traffic in and out of D's home, a car belonging to a person with a prior cocaine conviction & towels covering the door & windows of home was reasonable suspicion supporting trash search); Washburn, App., 868 N.E.2d 594 (although Ct. shared detective's concern about citizen's criminal history & motive to come forward with information (i.e., revenge or jealousy), totality of circumstances established citizen as a reliable source. Even though citizen had seen cocaine in D's residence two months before his meeting with detective, additional information established that cocaine would probably still be present in the residence); Eshelman, App., 859 N.E.2d 744 (search of D's trash was reasonable under either pre- or post-Litchfield principles); Cook, App., 853 N.E.2d 483; Litchfield, App., 849 N.E.2d 170 (receiving growing supplies from growing supply

company, alone, is not reasonable suspicion to search trash); Turner, App., 843 N.E.2d 937 (Tr. Ct. should have granted D's motion to withdraw guilty plea to give him a fair opportunity to vindicate his Art. I, Sect. 11 constitutional right against unreasonable search & seizure as enunciated in Litchfield); Love, App., 842 N.E.2d 420 (specificity of Crime Stoppers tip, plus independent identifications of a person matching D's description, provided police with an articulable suspicion to justify search of D's trash); Edwards, App., 832 N.E.2d 1072 (because confidential informant's tip was lacking in indicia of reliability & credibility of informant was not established, tip was inadequate to support reasonable suspicion necessary under Litchfield to search D's trash); Crook, App., 827 N.E.2d 643 (because an anonymous tip alone is not enough to constitute reasonable suspicion necessary for a valid "Terry stop," an anonymous tip concerning illegal drug activity alone is not enough to constitute the reasonable suspicion necessary to search through D's garbage).

TITLE: Minnesota v. Carter

INDEX NO.: Z.1.a.

CITE: 525 U.S. 83; 119 S. Ct. 469; 142 L.Ed.2d 373 (1998)

SUBJECT: Reasonable Expectation of Privacy -- Standing; Persons Briefly in Home of Another for Business Purpose

HOLDING: Individuals who were in apartment of third-party packaging cocaine, who had no previous connection with lessee, & who were there for relatively short period of time, were not entitled to 4th Amend. protection against officer's observation of their activity through gap in closed blinds. While overnight guests may have reasonable expectation of privacy, Minnesota v. Olsen, 110 S. Ct. 1684 (1990), those who are merely present with consent of householder may not. Jones v. U.S., 80 S. Ct. 725 (1960). Expectation of privacy on commercial premises is generally less than similar expectation in residential premises. New York v. Burger, 107 S. Ct. 2636 (1987). Respondents were more than merely consensually present, but in light of the relatively short period of time they were on premises & their lack of previous connection with lessee, they did not have the sort of expectation of privacy that an overnight guest would have. Further, although apartment was residence, respondents were present for "commercial" purpose of packaging cocaine & had no significant connection to apartment. Majority holds respondents lacked sufficient privacy interest to warrant 4th Amend. protection. Scalia & Thomas, JJ., CONCUR, writing that 4th Amend. protects people only in their own homes (or temporary homes, in case of overnight guests). Kennedy, J., CONCURS, writing that because respondents have established no meaningful connection to lessee, lessee's apartment, or lessee's expectation of privacy, they are not entitled to 4th Amend. protection. Breyer, J., CONCURS, writing that respondents ARE entitled to 4th Amend. protection, but that officer's observation through gap in closed blinds was not search. Ginsburg, Stevens, & Souter, JJ., DISSENT, writing that respondents are entitled to 4th Amend. protection which was violated by officer's observation.

TITLE: Moran v. State

INDEX NO.: Z.1.a.

CITE: (12-12-94), Ind., 644 N.E.2d 536

SUBJECT: No expectation of privacy in trash

HOLDING: Warrantless search & seizure of trash bags placed at end of driveway for disposal reasonable under Ind. Const., Art. 1 § 11. After observing suspicious behavior & Ds' participation in sting operation, officers went to Ds' home, removed & sifted through contents of closed garbage containers set out at curb for pickup. On finding marijuana clippings, officers obtained warrant to search Ds' home & found marijuana. Tr. Ct. denied Ds' motion to suppress evidence. S. Ct. granted transfer to resolve conflict between Moran decision & Bell, App., 626 N.E.2d 570.

Ct. discussed issuance of search warrants under federal standards of 4th & 14th Amend. & state standards interpreting Art. 1, § 11 of Ind. Const. Ind. provision prohibits unreasonable search or seizure & conditions issuance of warrants upon specificity & probable cause. Analyzing searches/seizures or issuance of search warrants under Ind. provision involves broad standard of reasonableness. Ct. expressly rejected application of two-pronged reasonable expectation-of-privacy test derived from Katz v. U.S., 389 U.S. 347; Smith v. Maryland, 442 U.S. 735; & Blalock, Ind., 483 N.E.2d 439 for issuance of warrants & will not use Federal standard as Ind.'s test for reasonableness under Art. 1, § 11.

In this case, Ds' federal constitutional claim properly rejected. 4th Amend. affords no protection against police taking & inspecting trash set out at curb for pickup, California v. Greenwood, 486 U.S. 35. State constitutional claim likewise properly rejected, as police searched trash early in morning when actions unlikely to be seen, & police did not trespass upon Ds' premises to gain access to trash. Held, transfer granted, decision of Ct. App. vacated, denial of motion to suppress affirmed, & case remanded. Dickson, J., dissenting.

RELATED CASES: Litchfield, 824 N.E.2d 356 (police should not be permitted to enter a person's property & search trash "without reason"; see full review this section)) Bowles, App., 820 N.E.2d 739 (search & seizure of trash was reasonable under totality of circumstances because detective did not disturb D's neighbors & he seized trash in manner consistent with trash collection service).

TITLE: Morton v. United States
INDEX NO.: Z.1.a.
CITE: 734 A.2d 178 (D.C. 1999)
SUBJECT: Social Guest Who Does Not Sleep Over-- Privacy Interest
HOLDING: D who was visiting home of long-time friend had expectation of privacy protected by 4th Amendment. While guest did not stay overnight, there was sufficient evidence in the record to show that he was more than simply permitted on the premises.

TITLE: Mundy v. State
INDEX NO.: Z.1.a.
CITE: (11/19/2014), 21 N.E.3d 114 (Ind. Ct. App. 2014)
SUBJECT: Evidence suppressed due to unlawful police entry onto private property
HOLDING: Detectives' intrusion onto private property while looking for another person despite clear signs of "no trespassing" was unreasonable under balancing of factors set forth in Litchfield v. State, 824 N.E.2d 356 (Ind. 2005), and ran afoul of Article 1, Section 11 of Indiana Constitution.

Detectives were looking for a man they thought might have been involved with a handgun theft. They went to an address they thought correct and got no answer, so decided to "try another home" located at the end of a long driveway. Police drove up a long private drive, removed a cable stretched across the drive, drove past a "No Trespassing" sign and a security camera. As they walked toward the home, they detected an odor of marijuana coming from the garage and from D, who came from the garage. D and the homeowner told police they didn't know the man police were looking for, and the homeowner refused to consent to search. The two were then handcuffed for "officer safety." Police entered the home without a warrant and brought out two other occupants who also told them they were at the wrong address. Police then obtained a search warrant for the premises and found 100 marijuana plants.

Applying Litchfield factors, Court held the degree of concern, suspicion, or knowledge that police had "was not terribly strong." The degree of intrusion was the "most troubling" about the actions of the police, who disregarded clear signs that strangers were not welcome. *Distinguishing Baxter v. State*, 891 N.E.2d 110 (Ind. Ct. App. 2008), Court noted that police did not simply walk to the front door of residence along paths that normal visitors would take. Considering the extent of law enforcement needs, police were investigating serious crimes, but there were no circumstances such as hot pursuit that would justify their intrusion. Considering totality of circumstances and distinguishing Trimble v. State, 842 N.E.2d 798 (Ind. 2006), Court could not say that State met its burden of establishing that the actions of the detectives in this case were reasonable. Thus, the search warrant that was subsequently issued based on information gathered unconstitutionally should not have been issued pursuant to "fruit of poisonous tree" doctrine. Held, denial of motion to suppress reversed and remanded.

TITLE: Myers v. State

INDEX NO.: Z.1.a.

CITE: (10/19/83), Ind., 454 N.E.2d 861

SUBJECT: Protected areas & interests - warrantless search of motel room

HOLDING: Tr. Ct. did not err in admitting items seized from D's hotel room during warrantless search made after checkout time. Here, a store was robbed on 7/29. On 7/29, D, driving a pickup truck with Kansas plates, checked into motel giving out-of-state address as home & paid for 2 days. Store clerk identified D's picture. Police entered D's motel room on 7/30 but left without searching it. D was arrested 7/30 in a pool hall. On 7/31, after 10 a.m. checkout time, police entered motel room (with manager's consent but without a search warrant) & removed items stolen from store. Ct. finds first entry proper because of exigent circumstances (D might leave state). Even if first entry was not lawful, second search was sufficiently independent to remove taint. See Wong Sun v. US, (1963), 371 U.S. 471, 83 S. Ct. 407, 9 L. Ed.2d 441. Second search was logical continuation of investigatory procedure following arrest. Fair, 364 N.E.2d 1007; Whitten, 333 N.E.2d 86. Also, D's rental period had expired, thus he had no expectation of privacy in motel room. US v. Akin, (CA7 1977), 562 F.2d 459. Held, no error. CONCURRING IN RESULT, DeBruler contends police should not have entered room (first search) but should have been stationed at motel to arrest D when he arrived/left his room. "Inconvenience to police ... is one of the prices of maintaining a free society." Because no fruits of first entry support conviction, reversal is not required. Prentice CONCURS IN RESULT.

RELATED CASES: Armour, App., 762 N.E.2d 208 (officer's search of hotel room & D's subsequent arrest was justified under plain view doctrine); Foreman, 662 N.E.2d 929 (D had reasonable legitimate subjective expectation of privacy in area searched, at least during times that door was closed, locked & general public access denied. Moreover, expectation of privacy in this case was one that society would recognize as reasonable).

TITLE: New York v. Class
INDEX NO.: Z.1.a.
CITE: 475 U.S. 106, 106 S. Ct. 960, 89 L.Ed.2d 81 (1986)
SUBJECT: Protected areas & interests - vehicle identification number (VIN)
HOLDING: Driver has no reasonable expectation of privacy in VIN because VIN plays important role in pervasive governmental regulation of automobile & efforts by federal government to ensure that VIN is placed in plain view. Here, officer seized gun which he observed when he entered interior of car to move papers obscuring VIN. Fact that officer here had to move papers which obscured VIN is irrelevant; efforts to restrict access to an area do not generate a reasonable expectation of privacy where none would otherwise exist. Oliver v. U.S., (1984), 466 U.S. 170, 104 S. Ct. 1735, 80 L.Ed.2d 214. This search was sufficiently un-intrusive to be constitutionally permissible in light of D's lack of reasonable expectation of privacy in VIN, fact that officers observed D commit 2 traffic violations & concerns for officers' safety. Powell, joined by Burger, CONCURS; Brennan, joined by Marshall, Stevens, & White, DISSENTS.

TITLE: Norwood v. State

INDEX NO.: Z.1.a.

CITE: (2nd Dist., 8-8-96), Ind. App., 670 N.E.2d 32

SUBJECT: Warrantless search of hotel room upheld

HOLDING: Trial counsel was not ineffective for failing to object to evidence obtained from warrantless search of hotel room. D paid for one day's stay & knew that checkout time was 11:00 a.m. next day. After checkout time, hotel was in sole possession & control of room, & consented to search. Police did not enter & search room until after rental period officially expired. D's expectation of privacy & Fourth Amendment protection ended at conclusion of rental period. Myers v. State, 454 N.E.2d 861 (Ind. 1983). Although D's property had been left in room on prior occasions, & D was previously allowed to extend rental period by paying additional fee, this does not alter fact that between expiration of rental period & payment of additional fee, D was denied access to room & hotel rightfully reassumed exclusive control of room. Ct. concluded that society would not recognize D's expectation of privacy as reasonable after rental period had lapsed & he no longer had legal right to occupy or even enter room. Held, judgment affirmed; Kirsch, J., concurring.

TITLE: Pavey v. State
INDEX NO.: Z.1.a.
CITE: (2nd Dist., 5-23-85), Ind. App., 477 N.E.2d 957
SUBJECT: Protected areas and interests - Observation through gap in door
HOLDING: Simple observations by police officer standing in place where he has right to be are not searches in constitutional sense. Bruce, Ind., 375 N.E.2d 1042. Here, police officers did not search bedroom D was in when they looked through gap in door frame from position they were legally invited to take by resident of home, and thus, trial Ct. properly admitted observation testimony of police officers in D's prosecution for child molesting. Held, judgment affirmed.

TITLE: People v. Deutsch
INDEX NO.: Z.1.a.
CITE: 44 Cal.App.4th 1224; 52 Cal.Rptr. 366 (Cal. Ct. App. 1996)
SUBJECT: Thermal Imager Scanning -- California Court Requires Warrant
HOLDING: California Court of Appeals holds that scanning residence with thermal imager requires search warrant. Court disagrees with other jurisdictions, including 7th Circuit, which have held that thermal imagers merely measure "waste heat" emanating from house, and therefore do not constitute search. See U.S. v. Penny-Feeney, (D. Hawaii 1991), 773 F. Supp. 220; U.S. v. Ford, (11th Cir. 1994), 34 F.3d 992; U.S. v. Myers, (7th Cir. 1995), 46 F.3d 668. Instead, majority reasons, thermal imager paints picture of heat sources which permits inferences about heat generating activities occurring within residence. Thermal imager is no more directed to measuring waste heat than wiretap is directed to measuring waste sound waves.

TITLE: People v. Camacho

INDEX NO.: Z.1.a.

CITE: 23 Cal. 4th 824; 3 P.3d 878 (Cal. 2000)

SUBJECT: Expectation of Privacy -- Side Window of Home

HOLDING: California Supreme Court holds that officers who entered side yard of D's home and looked through uncovered window at 11 p.m. violated 4th amendment. D's house was set back 20 feet from sidewalk, and window was 20 feet back on side of house and not visible from sidewalk. High fence on side made it difficult to see into window from neighboring house. Low brick wall kept public out of back yard, but nothing in front either invited or excluded public from access to side yard. Court holds that D had reasonable expectation that no one would be in side yard peering in windows at 11 p.m. Further, police had no right to be in side yard, since they were simply responding to excessive noise complaint, and when they arrived heard only non-excessive noise from D's stereo. Rather than knocking on door, they went into side yard, looked in window, saw D packaging drugs, called for backup, and entered through window.

TITLE: Shultz v. State

INDEX NO.: Z.1.a.

CITE: (3rd Dist.; 1-11-01), Ind. App. 742 N.E.2d 961

SUBJECT: Touring private land & wiping off mud to read VIN are unreasonable searches

HOLDING: Tr. Ct. erred, in part, by denying D's motion to suppress. When determining whether search is unconstitutional under Indiana Constitution, Ct's. must consider each case on its own facts to decide whether police behavior was reasonable. Brown v. State, 653 N.E.2d 77 (Ind. 1995). Search implies prying into hidden places for that which is concealed. Peterson v. State, 674 N.E.2d 528 (Ind. 1996). Here, police entered D's land in order to determine if vehicle on his property was stolen. After police used flashlight to read part of vehicle's identification number (VIN), police also used rag to clean off dirt so more of VIN could be read. Finding that VIN matched stolen VIN, police knocked on back door, but no one answered. In car port by back door, police saw gold vehicle, which did not have license plate & had sticker concealing VIN. Police then toured property to look for owner, but never called out loud to ask if anyone was there. As they toured, they found more incriminating evidence. Because VIN was concealed, police wiping off dirt in order to read it was unreasonable under Indiana Constitution. However, it was reasonable for police to knock on door to see if anyone was home. Because gold vehicle with concealed VIN on dashboard was in open view, police reasonably observed concealed VIN. Lastly, it was unreasonable for police to tour property in order to see if anyone was home after no one had responded to their knocking on door. Thus, under Indiana Constitution, evidence resulting from search of first vehicle & tour of property should have been suppressed, while evidence resulting from open view of second vehicle was properly admitted into trial. Held, judgment reversed in part & affirmed in part.

NOTE: This case implicitly holds that there is no inevitable discovery doctrine under Indiana Constitution. Relying on Arizona v. Hicks, 480 U.S. 321 (1987), Ct. also held that wiping dirt to reveal VIN was search under U.S. Constitution. However, because police could have secured warrant without VIN, & VIN & all remaining evidence would have been inevitably & lawfully discovered in execution of search warrant, Tr. Ct. was not required to suppress evidence based on doctrine of inevitable discovery.

TITLE: State v. Bailey
INDEX NO.: Z.1.a.
CITE: (3/4/2010), Me. S. Ct., 09-152,
SUBJECT: Privacy Interest in Files Shared on Network, but Obtained from Personal Computer
HOLDING: Where officer obtained files by logging onto D's personal computer and searching for them, 4th Amendment was implicated, Maine Supreme Court holds. Although D shared these files, which contained child pornography, with others on a P2P network, the officer did not access them via the network. He accessed them by searching D's personal computer, in which he had a reasonable expectation of privacy.

TITLE: State v. Foreman

INDEX NO.: Z.1.a.

CITE: (3-11-96), Ind., 662 N.E.2d 929

SUBJECT: Warrantless search invalid - no third party consent

HOLDING: Tr. Ct. properly granted motion to suppress evidence obtained from warrantless search of illegal gambling operation, because valid consent to search locked room was not obtained & D had reasonable expectation of privacy in room. After stopping unauthorized bingo game in progress, lessor of building gave police unqualified written consent to search premises. During search, police found locked door, removed door from its hinges & entered room behind door without questioning or obtaining permission from lessor. Room was leased to D from lessor & contained several video gambling machines owned by D & generally accessible to patrons of bingo center. Relying on Illinois v. Rodriguez, 497 U.S. 177, 110 S. Ct. 2793 (1990), Ct. App. concluded that warrantless search was valid because police officers reasonably believed that lessor had common authority over leased room. S. Ct. rejected this analysis, noting that there was no evidence that lessor consented to search of locked room. Fact that officers reasonably believed lessor had common authority over leased room is irrelevant if it is not first clear that lessor actually consented to search of room. Id. There was sufficient evidence that lessor did not validly consent to search locked room in this case, in light of fact that police officers removed door off its hinges to gain access to room instead of merely asking lessor to unlock door. Ct. also found that D had reasonable legitimate subjective expectation of privacy in area searched, at least during times that door was closed, locked & general public access denied. Moreover, D's expectation of privacy in this case was one that society would recognize as reasonable. Held, transfer granted, Tr. Ct. affirmed, Ct. App. decision at 649 N.E.2d 120 vacated.

TITLE: State v. Hardy

INDEX NO.: Z.1.a.

CITE: 577 N.W.2d 212 (Minn. 1998)

SUBJECT: Search -- Police Request to Open Mouth

HOLDING: Police officer's request for suspect to open mouth, coupled with officer grabbing him and hitting him with flashlight, constituted search under 4th amendment. Individuals have a legitimate privacy interest protecting searches involving intrusions beyond the body's surface. Officers here did not have probable cause to search inside suspect's mouth, so crack cocaine packets found there should have been suppressed.

TITLE: State v. McGrane
INDEX NO.: Z.1.a.
CITE: 733 N.W.2d 671 (Iowa 2007)
SUBJECT: Search of upstairs unconstitutional after D called down for arrest
HOLDING: Iowa Supreme Court held police officers who called a suspect downstairs from the second story of a residence to arrest him pursuant to a warrant had no basis under either the search-incident-to-arrest doctrine or the protective sweep exception to the Fourth Amendment's warrant requirement to then go upstairs and look around. A legitimate search incident to the arrest could not extend that far, and a sweep was unjustified because nothing about the situation would have indicated to reasonably prudent officers that someone who might pose a danger to them was lurking above. Court held that the search-incident-to-arrest exception established in Chimel v. California, 395 U.S. 752 (1969) did not apply. The search-incident exception applies only to searches that are substantially contemporaneous with and confined to the immediate vicinity of an arrest. Court also found that the search did not conform to the limitations imposed on the scope of a search in Maryland v. Buie, 494 U.S. 325 (1990).

TITLE: State v. Reed
INDEX NO.: Z.1.a.
CITE: 182 N.C. App. 109, 641 S.E.2d 320 (N.C. App. 2007)
SUBJECT: Discarded cigarette on one's own curtilage
HOLDING: The North Carolina Court of Appeals held that DNA evidence harvested from a cigarette butt police retrieved after D carelessly flicked it toward a pile of trash on the patio of his apartment while talking with the officers should have been suppressed as the fruit of an unlawful warrantless seizure. Police visited D at his home to question him about a sex offense. He refused to give them a requested DNA sample for comparison with a sample taken from the victim. Saying he was a viewer of the television police forensics drama *CSI*, D took the butt of a cigarette he had been smoking, shredded it, and placed the remains in his pocket, saying the officers would not get his DNA that way. However, the officers subsequently retrieved the butt of a second cigarette that D, forgetting his *CSI* training, had carelessly cast in the direction of a pile of trash sitting on his patio. Court ruled that the warrantless seizure of the butt that enabled the officers to get the DNA evidence was unreasonable under the Fourth Amendment. Because the trash on the patio was within the curtilage of D's home, he retained a reasonable expectation of privacy in it. Court explained that police may lawfully search an individual's garbage without a warrant only when it is apparent that he has forfeited his expectation of privacy in it - such as when it has been placed in a public area for collection and pickup. Here, Court noted the garbage was not placed in public view or in a place for pick up in the usual manner. Court added that the cigarette butt was not abandoned, saying "one simply cannot abandon property within the curtilage of one's own home."

TITLE: State v. Stamper

INDEX NO.: Z.1.a.

CITE: (4th Dist., 5-16-03), Ind. App., 788 N.E.2d 862

SUBJECT: Unreasonable seizure of trash bag from D's property

HOLDING: D had reasonable expectation of privacy under Article I, Section 11 of Indiana

Constitution in trash bag located on his property such that police had to enter his property to retrieve bag. Thus, Tr. Ct. properly granted D's motion to suppress evidence seized as result of warrantless trash search & subsequent search of D's property pursuant to search warrant. While conducting surveillance of D's property, detective observed D exit his home & place garbage bag at bottom of garbage pile some feet on his property near end of his driveway. A "no trespassing" sign was posted on D's property near garbage pile. Approximately two hours later, detective stepped onto D's property, retrieved garbage bag, & obtained search warrant based on discovery of burned marijuana cigarette inside bag.

In Moran v. State, 644 N.E.2d 536 (Ind. 1994), Ct. upheld search & seizure of garbage left at curb in front of D's house, because police did not trespass onto D's property. Similarly, in Bell v. State, 626 N.E.2d 570 (Ind. Ct. App. 1993), Ct. upheld police search of D's garbage where D placed his garbage outside of fenced-in area of his property & police seized it without stepping onto his property.

Here, however, detective's trespass onto D's property & fact that garbage would not have been collected by public trash collection service made this an unreasonable search. As long as police did not have to enter property, trash search was considered reasonable under holdings in Moran & Bell. Fact that D had no reasonable expectation of privacy in garbage bag was not sufficient to hold warrantless search reasonable, as issue does not begin & end with expectation of privacy. Middleton v. State, 714 N.E.2d 1099 (Ind. 1999). Held, judgment affirmed.

RELATED CASES: Litchfield, 824 N.E.2d 356 (rejecting bright-line test applied in Stamper, Ct. held that reasonableness of officer conduct in searching a person's trash does not turn on whether or not the police entered onto the citizen's property; however, police should not be permitted to enter a person's property & search trash "without reason"); Neanover, App., 812 N.E.2d 127 (Police officers' warrantless search & seizure of garbage from an open landing on top floor of an apartment building violated both federal & state constitutions; trash had not been abandoned for collection & was not readily accessible to public when police seized it, & D's expectation of privacy on landing area was objectively reasonable); Lovell, App., 813 N.E.2d 393 (there was no indication that officers trespassed on D's property or disturbed D's neighbors when seizing her trash bags); Mast, App., 809 N.E.2d 415 (Tr. Ct. properly denied motion to suppress where police contacted private trash collecting service & took part in collection of trash from dumpster about 20 feet onto private property).

TITLE: State v. Titus
INDEX NO.: Z.1.a.
CITE: 707 S.W.2d 706 (Fla. 1998)
SUBJECT: Rooming House -- Tenants Have Legitimate Privacy Expectation in Common Areas
HOLDING: Tenants of rooming houses have constitutionally protected privacy expectation in shared living areas, such as kitchen and hallways. Ruling does not apply to rooming houses that are "obviously open to public," nor to hallways and other common areas in apartment buildings.

TITLE: Taylor v. State

INDEX NO.: Z.1.a.

CITE: (3/22/2019), 120 N.E.3d 661 (Ind. Ct. App. 2019)

SUBJECT: Officer's repositioning of his body to peer into house through crack in blinds covering window was not illegal search

HOLDING: Officer's actions of peering through Defendant's front door window after receiving tips about drug activity at his apartment did not violate the Fourth Amendment or Indiana Constitution. When officers approached the door during their "knock and talk" investigation, one officer "adjusted his body" to look through an inches-wide gap in the blinds at the bottom of D's front door window. He saw D and a woman with a glass pipe. The officers relied on seeing the pipe to get a search warrant (as well as other evidence). Court held that officers' conduct does not constitute an illegal search under Indiana or Federal Constitution. In so holding, Court distinguished Florida v. Jardines, 569 U.S. 1 (2013), which held that the use of a drug-sniffing dog in the curtilage of a private residence constituted a search under the Fourth Amendment. Court noted that approaching the front door and looking through the window was no different than what anyone approaching the front door to sell girl scout cookies or trick or treat or ask for a political opinion might do. Fact that officer repositioned his body was not sufficient to make actions illegal search because blinds did not cover entire window and occupants of home should have closed them all the way if they did not want people approaching their front door to be able to view them inside. The search likewise did not violate Indiana Constitution under Litchfield v. State, despite fact that law enforcement needs were low. Police conduct was not unreasonable and minimally intrusive, therefore, police conduct was not an impermissible search. Thus Tr. Ct. did not err in admitting evidence obtained from search warrant obtained. Held, possession of methamphetamine and marijuana convictions affirmed.

TITLE: Tobias v. State

INDEX NO.: Z.1.a.

CITE: (6/18/85), Ind., 479 N.E.2d 508

SUBJECT: Protected areas & interests - D's workspace

HOLDING: Tr. Ct. did not err in denying D's motion to suppress evidence obtained by police by pushing up ceiling tile in customer's restroom of pharmacy where D worked. Here, Ct. rejects D's contention that he had expectation of privacy in area, finding lack of nexus between area searched & D's workspace. Compare US v. Britt, (CA5 1975), 508 F.2d 1052 (documents seized without warrant were normal corporate records not personally prepared by D (president) & found in storage area); with Henzel v. US, (CA5 1961), 296 F.2d 650 (seized items, prepared largely by D, were taken from his personal office when he was temporarily absent). Only time D visited area was when making drug transactions. Held, no error.

TITLE: Trimble v. State

INDEX NO.: Z.1.a.

CITE: (02-21-06), Ind., 842 N.E.2d 798

SUBJECT: Warrantless entry & search - curtilage

HOLDING: A police officer receiving a credible report of a violation from an identified concerned citizen may properly enter onto private property through normal route of access to investigate. Once there, publicly viewable evidence of a crime may properly be seized without a warrant, particularly when there is a need to act promptly to protect health or safety of another, whether human or animal. Here, police officer went to D's farmhouse to investigate report of neglected, emaciated dog, & saw doghouse about five feet from D's driveway & thirty feet from back door. Most of traffic to D's house goes to the back door, & driveway wraps around back of house & adjoins an open yard. Officer knocked on D's back door & after receiving no response, he then went to doghouse. When dog did not respond, officer coaxed him out by pulling on his chain.

D argued that doghouse was within curtilage of his home & therefore not subject to warrantless intrusion. However, there is no Fourth Amendment protection for activities or items that, even if within curtilage, are knowingly exposed to the public. California v. Ciraolo, 476 U.S. 207 (1986). Whether dog is inside doghouse or exposed to public view is irrelevant; there is no legitimate privacy interest in appearance of dog that has been tied up outside in an area readily observable by public. Further, police entry onto private property & their observations do not violate Fourth Amendment when police have a legitimate investigatory purpose for being on property & limit their entry to places visitors would be expected to go, such as walkways, driveways, & porches. Divello v. State, 782 N.E.2d 433 (Ind. Ct. App. 2003). Tr. Ct. could reasonably find that officer's short walk from his car past doghouse to D's back door, although within curtilage of D's house, was one that any visitor was invited to take. Once dog was examined, officer had ample reason based on both probable cause (apparent animal abuse) & exigent circumstances (dog's health) to seize dog.

Court also concluded that officer's visit to D's house & his subsequent actions were reasonable under Article 1, Section 11 of Indiana Constitution under factors set forth in Litchfield v. State, 824 N.E.2d 356 (Ind. 2005). Held, transfer granted, Ct. App. opinion at 816 N.E.2d 83 vacated, judgment affirmed.

RELATED CASES: Carpenter, 18 N.E.3d 998 (Ind. 2014) (evidence of injured dogs fighting in backyard did not justify warrantless entry and search of D's home for injured people); Baxter, App., 891 N.E.2d 110 (fact that it was practicable to obtain a warrant, D posted a "no trespassing" sign by open field, & seizure of horses required officers to go past a fence where they were corralled is not enough to cause a different result from Trimble); Rush, App., 881 N.E.2d 46 (juveniles running into and out of D's house provided exigent circumstances justifying officers' warrantless entry onto her back yard; officers' subsequent observation of beer and liquor containers through basement window was a lawful plain view observation from an area officer was lawfully entitled to be.)

TITLE: U.S. v. Banks
INDEX NO.: Z.1.a.
CITE: 60 F. 4th 386 (7th Cir. 2023)
SUBJECT: Police officer's warrantless entry onto Defendant's front porch violated Fourth Amendment
HOLDING: Police officers' warrantless entry onto Defendant's porch to arrest him for unlawful gun possession immediately after they observed Snapchat post of him barbecuing on his front porch with a pistol sitting on the grill's side shelf—absent consent or exigent circumstances—violated the Fourth Amendment, thus warranting suppression of evidence they seized. Relying on language in United States v. Richmond, 924 F.3d 404 (7th Cir. 2019), the District Court denied Defendant's motion to suppress on the theory that the photo raised a reasonable suspicion of criminal activity justifying a Terry stop and frisk. But the Defendant in Richmond, who was searched on his porch, had consented to the officers stepping on his porch in the first place. The U.S. Supreme Court has held that a front porch—part of a home's curtilage—receives the same protection as the home itself. Florida v. Jardines, 569 U.S. 1, 6 (2013). And no exception to the warrant requirement saves the officers' actions here.

"The police reacted to Bank's social media post by immediately heading to his home to arrest him for unlawful gun possession. But they never paused to request a warrant. And that omission matters because the Fourth Amendment very much concerns itself with place, and the location of the planned arrest—Bank's front porch—is not one the police could enter without consent or exigent circumstances. Everyone agrees that neither existed before the police walked onto the porch, as Banks presented no imminent threat or flight risk in the circumstances. Nor did the police even attempt to conduct their encounter with Banks as a consensual knock-and-talk scenario. The officers needed a warrant to enter Banks's porch, and their failure to obtain one resulted in a clear Fourth Amendment violation." Held, district court's denial of motion to suppress reversed.

TITLE: U.S. v. Bautista

INDEX NO.: Z.1.a.

CITE: 362 F.3d 584 (9th Cir. 2004)

SUBJECT: "Stolen" Motel Room - Expectation of Privacy

HOLDING: Registered occupant of motel room retains legitimate expectation of privacy in room despite unconfirmed report that stolen credit card number was used to reserve room. Unless guest's possession has been lawfully terminated at time of search, guest retains expectation of privacy. Motel manager could have asked police to investigate report, in which case D would have provided satisfactory explanation or another form of payment, or would have been evicted. Here, however, police searched room while it was still in lawful possession of D.

TITLE: United States v. Esparza

INDEX NO.: Z.1.a.

CITE: 120 Idaho 578, 817 P.2d 1102 (Idaho 2007)

SUBJECT: Canine sniff of parked car unconstitutional without reasonable suspicion

HOLDING: U.S. District Court (Idaho) held that police violated the Fourth Amendment by having an explosives-detection canine sniff the exterior of a car parked on a public street in the absence of reasonable suspicion. Police with a warrant to arrest D approached him as he stood next to a Cadillac with its trunk and doors open. D fled and the officers subsequently had an explosives-detection dog sniff the car. The explosives sniff led to the officers' discovery of a bullet in a suitcase in the trunk. Court distinguished from Illinois v. Caballes, 543 U.S. 405 (2005) where it was held that officers conducting traffic stops do not need any independent suspicion before having a narcotics-detection dog sniff the exterior of the detained vehicle during the stop. In this case, Court found that use of the dog was more like the use of the thermal imaging device on a residence found to be a search in Kyllo v. United States, 533 U.S. 27 (2001). Like the thermal imager in Kyllo, and unlike a sniff by a narcotics-detection dog, a sniff by an explosives-detection dog is capable of detecting both contraband and non-contraband items, including chemicals used in fertilizer and printer cartridges.

Compare to: Myers v. State, 839 N.E.2d 1154 (Ind. 2005)

TITLE: United States v. Freeman

INDEX NO.: Z.1.a.

CITE: 479 F.3d 743 (10th Cir. 2007)

SUBJECT: State law governs searches of parolees and probationers

HOLDING: Tenth Circuit held that police violated the Fourth Amendment when they conducted a search of a home of a parolee who was subject to a parole condition that authorized warrantless searches by parole officers. Recent decisions by the U.S. Supreme Court have emphasized that search conditions severely diminish reasonable privacy expectations, but Court here held that the diminution corresponds to the particular terms of the search condition. In Samson v. California, 126 S. Ct. 2193 (2006), the Supreme Court held that the Fourth Amendment was not violated when police conducted a warrantless, suspicionless search of a California parolee who was subject to a broadly worded search condition that authorized any peace officer to conduct a search at any time. Building on U.S. v. Knights, 534 U.S. 112 (2001) -- which involved a probationer -- the Samson court stressed that "parolees . . . have severely diminished expectations of privacy by virtue of their status alone." Parolees have even less reason to expect privacy than probationers, that Court explained, "because parole is more akin to imprisonment than probation is to imprisonment."

Relying on the expectation of privacy language in Knights and Samson, federal prosecutors argued in this case that, even if the suspicionless search of D's home by the municipal police did not comply with the parole agreement and Kansas DOC rules, the search did not violate the Fourth Amendment because D had such a diminished expectation of privacy by virtue of his parole agreement. The Samson opinion noted that "some States and the Federal Government require a level of individualized suspicion, and Court here said the Samson court "strongly implied that in such jurisdictions a suspicionless search would remain impermissible." "Parolee searches are therefore an example of the rare instance in which the contours of a federal constitutional right are determined, in part, by the content of state law."

Rejecting the government's expectation-of-privacy argument, Court said: "Samson does not represent a blanket approval for warrantless parolee or probationer searches by general law enforcement officers without reasonable suspicion; rather, the Court approved the constitutionality of such searches only when authorized under state law."

TITLE: U.S. v. Gamez-Orduno
INDEX NO.: Z.1.a.
CITE: 235 F.3d 453 (9th Cir. 2000)
SUBJECT: Overnight Commercial Visitors Have Privacy Interest
HOLDING: Drug dealers who were allowed to rest overnight in a home made available without charge by another drug dealer who identifiably lived there have a protected privacy interest in the premises. It does not matter that their purpose for being present is commercial rather than social. The focus of the inquiry is not on whether there is a social purpose or hospitality, but rather the nature of the activities for which one seeks overnight shelter. Intimate daily activities such as sleeping, and eating are generally regarded as private.

TITLE: United States v. Knights
INDEX NO.: Z.1.a.
CITE: 534 U.S. 112; 122 S. Ct. 587; 151 L. Ed. 2d 497 (2001)
SUBJECT: Warrantless searches, probation, reasonable suspicion
HOLDING: Only "reasonable suspicion," rather than probable cause, and no warrant is required for a law enforcement officer to search a probationer D's residence, where a court has conditioned probation on D's consent to search. D's expectation of privacy is diminished by being subject to search by law enforcement as a condition of probation.

D was subject to a search of his person or property by law enforcement without a warrant at any time as a condition of probation for a drug offense. A law enforcement officer, with reasonable suspicion that D was involved with acts of vandalism and arson, searched D's apartment without a warrant and found evidence connecting D with the crimes. Held, because D was on probation, and the Tr. Ct. had conditioned the probation on his acceptance of the search provision, D's expectation of privacy was "significantly diminished" and the search was reasonable under the 4th Amendment. The Court did not reach the question of whether D had effectively consented to the search.

RELATED CASES: Griffin v. Wisconsin, 483 U.S. 868, 107 S. Ct. 3164, 97 L.Ed.2d 709 (1987) (Probationer's home is protected by 4th Amend.'s requirement that searches be reasonable); Ohio v. Robinette, 519 U.S. 33, 117 S. Ct. 417, 136 L.Ed.2d 347 (1996) (Interpreting 4th Amendment, S. Ct. has generally rejected bright-line rules and focused on the totality of circumstances).

TITLE: U.S. v. Reilly

INDEX NO.: Z.1.a.

CITE: 76 F.3d 1271 (2d Cir. 1996)

SUBJECT: Search & Seizure - Curtilage

HOLDING: Cottage and wooded area some 125 feet away were both within curtilage of larger home situated on over 10 acres of fenced, screened off land. Both were several hundred feet away from road; owner had planted trees around perimeter of property to block visibility; owner did not allow uninvited guests onto property and invited only limited number of friends. Nothing about cottage and woods indicated that they were not used for private purposes. Where officers entered property and allegedly smelled marijuana emanating from cottage, then used this fact to obtain search warrant, Tr.Ct. did not incorrectly suppress evidence resulting from search. Good faith exception does not apply, because officers failed to accurately describe in their affidavit the property or their actions in initially going onto it.

TITLE: Watkins v. State
INDEX NO.: Z.1.a.
CITE: (10/18/2016), 85 N.E.3d 597 (Ind. 2017)
SUBJECT: Military-style assault to execute search warrant was not unreasonable under Indiana Constitution
HOLDING: Although Evansville police used highly intrusive, military-style tactics to execute a search warrant, their actions were reasonable under the totality of the circumstances because the degree of suspicion and law enforcement needs were high. See Ind. Const. Art 1, § 11; see also Litchfield v. State, 824 N.E.2d 356, 359–61 (Ind. 2005).

Confidential informant told police that he observed cocaine, marijuana, and a firearm in Defendant's Evansville home. Police obtained a search warrant. As they arrived at the scene, Defendant was outside his residence. Officers had a description of Defendant but did not detain him before he re-entered his home. At least a dozen officers surrounded the home; most were armed with assault weapons. Officers announced their presence at the front door, and then one second later, used a battering ram to bash through the front door. One second later, the officers tossed a "flash bang" device into a room where a nine-month old baby was in a play pen. Other officers smashed in the kitchen window and threw another flash bang grenade. Defendant surrendered without a struggle.

The search was reasonable under the totality of the circumstances. First, the degree of police suspicion was high. Not only did police have probable cause that Defendant's home contained evidence of a crime, they had reason to suspect that executing the search warrant would be dangerous. They learned about the gun and drugs in the house from a reliable confidential informant. Officers bolstered this suspicion by watching the house before executing the search warrant, which led them to notice activity consistent with drug dealing.

Second, the extent of law enforcement needs was also high. Defendant downplayed the officers' knowledge that the house harbored cocaine, marijuana, four adults, and a gun, "[b]ut guns and illegal drugs are a dangerous combination. See Polk v. State, 683 N.E.2d 567, 571 (Ind. 1997) While that combination is not enough to justify intrusive searches *per se*..... , it certainly increases law enforcement needs," especially since the informant saw Defendant carrying the gun. Further, Defendant's criminal history—including drug crimes, robbery, and burglary made law enforcement needs strong – accentuated the law enforcement's need to use the tactics they did.

Third, the search was admittedly intrusive. Indeed, "flash-bang grenades should be the exception in search warrant executions. Their extraordinary degree of intrusion will in many cases make a search constitutionally unreasonable." However, "our constitutional analysis balances that invasiveness with police safety and other law enforcement needs. Mitchell v. State, 745 N.E.2d 775, 786 (Ind. 2001). The significant intrusion here did not outweigh the more significant police interests. Police knew Watkins was in the house with a gun and that he had a violent criminal history. And police took the precaution of a "quick peek" and setting the flash-bang just inside the doorway instead of blindly lobbing it into the room." Held, transfer granted, Court of Appeals opinion vacated, and judgment affirmed.

TITLE: Zanders v. State
INDEX NO.: Z.1.a.
CITE: (3/8/2019), 118 N.E.3d 736 (Ind. 2019)
SUBJECT: Warrantless acquisition of historical cell phone location information - harmless error
HOLDING: On remand from U.S. Supreme Court for reconsideration in light of Carpenter v. U.S., 138 S. Ct. 2206 (2018), Court held that accessing D's cell phone location information (CSLI) was a Fourth Amendment search under Carpenter, but even if the CSLI evidence should have been excluded, the error did not warrant a new trial because any error was harmless beyond a reasonable doubt. The Court had previously held that police could obtain CSLI evidence without a warrant. However, Carpenter subsequently held that the third-party doctrine did not apply to seven days or more of CSLI, so law enforcement must get a search warrant to obtain those records.

After reconsideration, the Court declined to address the State's argument that exigent circumstances justified the warrantless search, finding instead that the admission of the CSLI evidence was harmless beyond a reasonable doubt. If the CSLI was illegally obtained, only records and testimony related to the location data would have been excluded, not evidence obtained via subsequent search warrants, which D argued relied on the CSLI and should be considered fruit of the poisonous tree. The good-faith exception to the exclusionary rule applied because officers had reasonable grounds for believing that the warrants were properly issued. When officers applied for and obtained search warrants for D's residence, they did not have the benefit of Carpenter or other precedent establishing that the Fourth Amendment generally requires a warrant before police may access CSLI. "This is true even if the warrants - without the CSLI information in the affidavits - were unsupported by probable cause. In that case, each warrant was still not so facially deficient that executing officers could not reasonably presume it to be valid."

Court then recounted other "weightier" evidence that pointed toward D's guilt, including the fact that the robberies occurred near his home; that a gun found at D's home was "indistinguishable" from the gun seen on surveillance footage during the robberies, and that photos and video of the stolen goods were posted to D's Facebook page the day after each robbery. That evidence, among other evidence and corroborating eyewitness testimony, showed that the CSLI evidence was only cumulative. "[T]he importance of the CSLI evidence was diminished by the non-CSLI evidence's strength," as well as cross-examination of the CSLI evidence's weaknesses. In a footnote, Court declined to revisit its original holding under Article 1, Section 11 of the Indiana Constitution. Held, convictions affirmed.

Z. SEARCH AND SEIZURE

Z.1. Protected Areas and Interests

Z.1.b. Plain view/smell (Coolidge v. New Hampshire; Texas v. Brown)

TITLE: Arizona v. Hicks

INDEX NO.: Z.1.b.

CITE: 480 U.S. 321, 107 S. Ct. 1149, 94 L.Ed.2d 347 (1987)

SUBJECT: Probable cause required to seize items in plain view

HOLDING: Under certain circumstances police may seize evidence in plain view without warrant. Coolidge v. NH (1971), 403 U.S. 443, 91 S. Ct. 2022, 29 L.Ed.2d 564. Those circumstances include situations where initial intrusion that brings police within plain view of such evidence is supported by one of recognized exceptions to warrant requirement. Mincey v. AZ (1978), 437 U.S. 385, 98 S. Ct. 2408, 57 L. Ed. 2d 290. Here, officers lawfully entered D's apartment following shooting incident to look for shooter, other victims, & weapons. During search officers noticed 2 sets of expensive stereo equipment. Suspecting they were stolen, officer moved some of equipment to record serial numbers. Officer called headquarters with serial numbers, was advised that turntable had been taken in armed robbery & immediately seized it. It was later determined that some of the other components were also taken in armed robbery & warrant obtained. No reason is apparent why an object should routinely be seizable on lesser grounds, during an unrelated search & seizure, than would have been needed to obtain warrant for same object, if officers knew it was on premises. Held, probable cause is required to either search or seize items found in plain view unless seizure is minimally intrusive & operational necessities render it only practicable means of detecting certain crimes. White, CONCURS. Powell, joined by Rehnquist & O'Connor, DISSENTS; O'Connor, joined by Rehnquist & Powell, DISSENTS.

RELATED CASES: Jones, 783 N.E.2d 1132 (police did not acquire any additional information or benefit that they could not see before they moved jewelry tray which was in plain view during initial search).

TITLE: Best v. State

INDEX NO.: Z.1.b.

CITE: (3d Dist. 9/29/82), Ind. App., 439 N.E.2d 1361

SUBJECT: Plain view - search of residence; inadvertent discovery

HOLDING: If police officers are justified in being in particular place of observation, they may seize evidence within plain view. May, App., 364 N.E.2d 172 & cases *cited* therein. Here, 2 undercover officers went to D's residence to investigate a teenage runaway & possible prostitution & narcotics involvement (no warrant). Runaway admitted officers to house & let them use phone; photograph album containing nude/semi-nude pictures of girls under 16 was observed in plain view. Runaway was placed in custody, album seized. Ct. rejects D's argument that police gained entry by ruse (Lewis v. US (1966), 385 U.S. 206, 87 S. Ct. 424, 17 L.Ed.2d 312) & holds photo album was not fruit of illegal search & seizure. Held, no error.

RELATED CASES: Smith, App., 505 N.E.2d 81 (police were lawfully in D's bedroom, having accompanied D into house after arresting him, when they inadvertently discovered marijuana in plain view); Conn, App., 496 N.E.2d 604 (S & S 149; because police expected to find some or all of 245 items not listed in search warrant, Ct. discounts state's reliance on plain view exception to warrant requirement; see card at Z.2.b.6).

TITLE: Bilida v. McCleod
INDEX NO.: Z.1.b.
CITE: 211 F.3d 166 (1st Cir. 2000)
SUBJECT: Plain View -- Exigent Circumstances; Re-entry of Premises
HOLDING: Exigent circumstances which justified warrantless entry do not, after exigency had dissipated, allow officers to make second warrantless entry to seize contraband that was in plain view during initial entry. While in suspect's home initially, officers saw raccoon, but did not seize it because they had to return to station to determine whether possession of raccoon was illegal. Warrant was required for re-entry after trip to station.

TITLE: Collins v. Virginia
INDEX NO.: Z.1.b.
CITE: (5/29/2018), 138 S. Ct. 1663 (U.S. Supreme Court 2018)
SUBJECT: Automobile exception does not allow warrantless entry into curtilage to investigate whether motorcycle in driveway was stolen
HOLDING: The automobile exception to the warrant requirement did not authorize a police officer's warrantless entry of D's curtilage to search D's motorcycle.

Officer David Rhodes investigated two traffic incidents involving an orange and black motorcycle; he learned D had likely stolen the motorcycle. Officer Rhodes discovered photographs on D's Facebook profile of an orange and black motorcycle that was parked in the driveway of a house; he drove to the house and parked on the street, where he saw what appeared to be the motorcycle under a white tarp parked in the same location as the motorcycle in the photograph. Without a search warrant, Officer Rhodes walked to the top of the driveway, removed the tarp, confirmed that the motorcycle was stolen, took a photograph of the uncovered motorcycle, replaced the tarp, and returned to his car to wait for D; when D appeared, Officer Rhodes arrested him. D filed a motion to suppress, arguing that Officer Rhodes violated the 4th Amendment when he trespassed on the house's curtilage to conduct a search. The Tr. Ct. denied the motion, and D was convicted of receiving stolen property. The Virginia Court of Appeals affirmed as did the State Supreme Court, which held the warrantless search was justified under the automobile exception.

The rationale for the automobile exception applies only to automobiles, not homes, and therefore, as a constitutional matter, a search of a home and its curtilage are treated differently. California v. Carney, 471 U.S. 386, 390, 392 (1985). Curtilage — the area immediately surrounding the home — is considered part of the home itself under the 4th Amendment. Florida v. Jardines, 569 U. S. 1, 6 (2013). Therefore, “[w]hen a law enforcement officer physically intrudes on the curtilage to gather evidence, a search within the meaning of the Fourth Amendment has occurred. Id., at 11. Such conduct thus is presumptively unreasonable absent a warrant.” Thus, the automobile exception does not authorize a search of a vehicle parked in a curtilage because it does not justify an intrusion on a person's separate and substantial 4th Amendment interest in his home and curtilage.

Here, the part of the driveway where D's motorcycle was parked and subsequently searched is curtilage. Because the automobile exception extends no further than the automobile itself, it did not justify Officer Rhodes' invasion of the curtilage. Allowing the automobile exception to allow a search of a vehicle parked in a curtilage would undermine the core 4th Amendment protection afforded to a home and its curtilage. Riley v. California, 134 S. Ct. 2473 (2014).

On remand, the Virginia courts shall determine whether Officer Rhodes' warrantless intrusion on the curtilage may have been reasonable for different reasons, such as exigent circumstances. Held, cert. granted, 292 Va. 486, 790 S.E.2d 611 reversed, and remanded. Sotomayor, joined by Roberts, C.J., and Kennedy, Thomas, Ginsburg, Breyer, Kagan, and Gorsuch, JJ; Thomas, J., concurring; Alito, J., dissenting.

NOTES:

A. Similar Indiana Case

Perez v. State, 27 N.E.3d 1144 (Ind. Ct. App 2015) held that a warrantless canine sniff of D's front door physically intruded onto curtilage of his home and was an unconstitutional search.

B. Cases Called into Question

1. Cases About Entry of Curtilage

Divello v. State, 782 N.E.2d 433 (Ind. Ct. App 2003) (When police enter onto private property to conduct investigation or for another legitimate purpose and restrict their entry to places that other visitors would be expected to go, such as walkways, driveways, or porches, any observation made from these areas is permissible).

Hardister v. State, 849 N.E.2d 563 (Ind. 2006) (Fact that officers entered D's curtilage to conduct an otherwise lawful Terry stop did not ipso facto render physical invasion of curtilage an unlawful search).

2. Knock & Talk Cases (where police enter curtilage without a warrant to seek consent to investigate). See, e.g., Redden v. State, 850 N.E.2d 451 (Ind. Ct. App 2006)

TITLE: Combs v. State

INDEX NO.: Z.1.b.

CITE: (06/30/2021), 168 N.E.3d 985 (Ind.)

SUBJECT: Lawful warrantless seizure and search of arrestee's vehicle in driveway under plain view and inventory search exceptions

HOLDING: Police did not violate Defendant's Fourth Amendment rights when they conducted a warrantless seizure and inventory search of his van following an accident. After driving his van into an electrical box to avoid hitting another vehicle, Defendant took photos of the damage to the van, rummaged around under the driver's seat, and then left the scene. A police officer who arrived shortly after followed a fluid trail that eventually led to Defendant's home at a nearby neighborhood, where he had parked the damaged van. Defendant, whom the officer suspected was under the influence of medication or drugs, then failed two field sobriety tests and s agreed to submit to a chemical test and being handcuffed for transport. Before Defendant was taken to the hospital, he told officers they could look under the seat of his van but not open the black bag they had found. But the officers searched the van in Defendant's driveway without a warrant after calling for the vehicle to be towed, finding three different controlled substances. Court of Appeals found that the warrantless search of Defendant's van was impermissible under the open view and plain view doctrines, as well as the Fourth Amendment. On transfer, the Indiana Supreme Court disagreed, holding that police properly seized and inventoried the van as an instrumentality of Defendant's class-B misdemeanor leaving the scene of an accident. At the time of seizure, officer reasonably believed the van would be useful in prosecuting Defendant and its incriminating character was immediately apparent. Additionally, once seized, police lawfully impounded the van for towing and conducted an inventory search at the scene pursuant to police department's "thorough and reasonable" written tow policy. Held, transfer granted, Court of Appeals opinion at 150 N.E.3d 266 vacated, judgment affirmed; Slaughter, J., concurring in result, would hold that Defendant waived his Fourth Amendment claim on appeal for lack of cogent reasoning. Goff, J., dissenting because the State failed to show that officers needed the van itself to solve the OWI or leaving accident scene investigation and evidence obtained during the inventory search should have been excluded as fruit of the poisonous tree. Dissent believes the Court's decision "will unnecessarily extend the government's reach into our private lives."

TITLE: Ex Parte Warren

INDEX NO.: Z.1.b.

CITE: 783 So.2d 86 (Ala. 2000)

SUBJECT: Plain-Feel -- Seizure of Tic-Tac Container

HOLDING: Plain feel doctrine does not justify seizure of closed plastic Tic-Tac container felt in D's pocket during Terry pat-down. Despite officer's testimony that he had found Tic-Tac boxes in 4-5 of 60 pat downs he had conducted, and that none had contained Tic-Tac, Alabama Supreme Court finds that incriminating nature of Tic-Tac box was not immediately apparent to officer so as to give him probable cause to believe before he seized it that it contained contraband.

TITLE: Grandison v. Commonwealth

INDEX NO.: Z.1.b.

CITE: 274 Va. 316, 645 S.E.2d 298 (2007)

SUBJECT: 'Apothecary fold' not immediately apparent to show drug possession

HOLDING: Virginia Supreme Court held that a dollar bill folded in a manner known to a police officer to be a way of hiding drugs was not so plainly an indication of unlawful behavior as to permit its seizure under the plain-view exception to the Fourth Amendment warrant requirement. During a lawful pat-down search, the officer felt a hard object in the front watch pocket of the suspect's jeans. As the officer looked down at the object, which turned out to be a lighter, he observed a one-dollar bill protruding from the pocket. The dollar bill was folded in what the officer recognized as an "apothecary fold," which he immediately recognized as a way of packaging cocaine. He pulled out the bill and discovered cocaine in it. State argued drugs were obtained pursuant to a plain-view seizure, under which an item may be lawfully seized if it is "immediately apparent" to the officer that the item is evidence of a crime. Court rejected that was immediately apparent and noted earlier cases rejecting plain-view doctrine to seizures of a film canister and a hand-rolled cigarette. As in those cases, Court noted the folded dollar bill was a lawful item with a legitimate purpose, regardless of the officer's experience that it could be used to conceal drugs.

TITLE: Harris v. State

INDEX NO.: Z.1.b.

CITE: (1st Dist., 12-31-07), Ind. App., 878 N.E.2d 534

SUBJECT: Unlawful search of pill bottle incident to Terry stop

HOLDING: Although removal of pill bottle from D's pocket was permissible under Terry v. Ohio, 392 U.S. 1 (1968) for officer's safety, police officer's warrantless search inside the pill bottle went beyond the scope permitted by Terry. D was handcuffed, frisked, & all unknown items were taken from him. Once all unknown items were removed from D's pocket, officer's safety fears should have diminished, especially in light of fact D was cooperating with the officer. Officer never testified he thought the bottle might contain a weapon & could not have immediately identified the contents of the bottle as contraband by touch or sight because it was inside a blue pill bottle. Reasonable suspicion that gives authority to a Terry stop does not, without more, authorize the examination of the contents of items carried by the suspicious person. Berry v. State, 704 N.E.2d 462 (Ind. 1998). The opening of the pill bottle, & thus the testing of the substance inside, was impermissible & the evidence should have been suppressed.

Rejecting State's argument that methamphetamine was properly seized pursuant to a search incident to D's arrest, Court could not say a person of reasonable caution would believe D had committed a crime simply because he was hiding behind water heater & basement contained evidence suggesting drugs had been used there in the past. Held, conviction reversed.

RELATED CASES: Miller, 991 N.E.2d 1025 (Ind. Ct. App 2013) (paraphernalia found in D's backpack should have been suppressed because officer cited no articulable facts that supported probable cause); Clanton, 977 N.E. 2d 1018 (Ind. Ct. App 2012) (officer exceeded scope of a reasonable search under the Fourth Amendment at point when he saw that the pen cap was not a weapon, but removed the baggie and searched it; officer admitted he had to make a closer examination of the bag before he realized it contained drugs); Corwin, 962 N.E.2d 118 (Ind. Ct. App 2011) (when officer determined that pill bottle was not a weapon, he should not have opened the bottle; the illicit nature of the bottle was not immediately apparent from the fact that the part of the label with the prescription written on it was torn off).

TITLE: Hoop v. State

INDEX NO.: Z.1.b.

CITE: (2nd Dist., 07-14-09), 909 N.E.2d 463 (Ind. Ct. App 2009)

SUBJECT: Plain smell - reasonable suspicion required for dog sniff of home; good faith

HOLDING: Although under Article I, Section 11 of Indiana Constitution, a police officer needs reasonable suspicion to conduct a dog sniff of a private residence, the police in this case relied in good faith on the warrant. As long as an officer is lawfully on the premises, the officer may have a dog sniff the residence without implicating the Fourth Amendment. However, under Article I, Section 11, police should not be permitted to enter a person's property and search his or her garbage without reason. Litchfield v. State, 824 N.E.2d 356, 363 (Ind. 2005). As Litchfield placed overriding weight on the need to restrict arbitrary selection of persons to be searched, and that same concern is present with dog sniffs of private residences, reasonable suspicion is needed to conduct a dog sniff of a private residence.

Here, a CI told police that he smelled marijuana being cultivated while in D's home. Also, D used more electricity than the previous occupants of the home. Based on this information, the police conducted a dog sniff of the outside of D's home and the dog alerted. The police then obtained a warrant based on the dog sniff, the electricity usage and the CI who had been used successfully in the past. Even if police did not have reasonable suspicion to conduct the dog sniff, they relied in good faith on the warrant. At the time of the search, the officer had no reason to think the sniff was unlawful. The sniff was permissible under the great weight of authority under the Fourth Amendment. Although Court finds support for a reasonable suspicion requirement in Litchfield, neither Litchfield nor previous opinions assessing the reasonableness of dog sniffs under Article I, Section 11 clearly foreshadow the result in this case. Thus, the officers reasonably relied on the magistrate's conclusion that the dog sniff was in accordance with the law, and Tr. Ct. properly denied D's motion to suppress. Held, judgment affirmed.

RELATED CASES: Crabtree, 199 N.E.3d 410 (Ind. Ct. App. 2022) (distinguishing Hoop; although the inside of a hotel room is akin to the home for purposes of Article 1, Section 11, that rationale does not apply to a hotel's exterior walkway, thus reasonable suspicion is not an absolute necessity for a dog sniff of a hotel room door; instead, the degree of suspicion is just one factor to be considered under the general Litchfield balancing test; here, degree of suspicion and extent of law enforcement needs were not the highest possible, but they were sufficient to conclude the dog sniff was reasonable, especially considering the low degree of intrusion); Blankenship, 5 N.E.3d 779 (Ind. Ct. App 2014) (Hoop did not foreshadow finding that random free-air dog sniff of dwelling requires reasonable suspicion; even if dog sniff-search of hotel hallway violated D's rights under Ind. Constitution, police officers acted in good faith when they executed search warrant for her hotel room; see full review at Z.9.c).

TITLE: Johnson v. State

INDEX NO.: Z.1.b.

CITE: (2nd Dist.; 5-18-99), Ind. App., 710 N.E.2d 925

SUBJECT: Plain feel doctrine - contraband not immediately apparent

HOLDING: Tr. Ct. erred in denying D's motion to suppress cocaine found in D's pocket. In reviewing admissibility of contraband seized without warrant under "plain feel" doctrine, two issues are dispositive: (1) whether contraband was detected during initial pat down for weapons rather than during further search; & (2) whether identity of contraband was immediately apparent to officer. Burkett v. State, 691 N.E.2d 1241 (Ind. Ct. App 1998). Here, officer properly stopped D in order to investigate call about shots fired in proximate area. Officer also properly conducted pat down search of D for weapons. However, during search, officer felt rock-like object in D's pocket. Officer only "believed" what he felt in D's pocket could "possibly" have been narcotic. He admitted that it "could have been something else" besides narcotic, & his determination that it was narcotic was based largely on location of contraband & neighborhood where search took place. Although cocaine was detected during initial pat down for weapons, cocaine was not immediately apparent to officer. Held, conviction reversed.

RELATED CASES: Aslinger, 2 N.E.3d 84 (Ind. Ct. App 2014) (officer's observation of hand-rolled cigarette behind D's ear did not justify seizure & incidental search; see full review at Z.7.b); Burkett, App., 785 N.E.2d 276 (officer's removal of pill bottle containing Alprazolam from D's pants pocket & subsequent testing of it during a Terry search for weapons exceeded permissible bounds of legitimate pat-down search; identity of pills as contraband was not immediately apparent to officer); Barfield, App., 776 N.E.2d 404 (State argued that unusual weighting & movement of contents of cigarette box justified its removal from D's pocket because it could legitimately have contained weapon. However, officer never testified that he thought that cigarette box contained weapon or that box itself was weapon. Moreover, when officer felt box, there was no immediate perception on his part that it was contraband).

TITLE: Justice v. State

INDEX NO.: Z.1.b.

CITE: (5th Dist., 3-19-02), Ind. App., 765 N.E.2d 161

SUBJECT: Search & seizure - open view; exigent circumstances

HOLDING: Tr. Ct. did not err in admitting evidence of items seized as result of warrantless search of D's car. Police officer had been dispatched to apartment complex to investigate burglary in progress. Officer spoke with two maintenance workers who informed him that they had observed D as she left apartment building carrying large, plastic container, & that there were scuff marks & a broken door jamb on door to one of apartments in building. As D was trying to leave apartment complex in her car, officer stopped her at public entrance/exit to complex, which Ct. concluded was public thoroughfare rather than residential parking lot. Looking through window of D's car, officer observed plastic container & compact disks in back seat of car & questioned D about them. Because items were in "open view," officer's act of looking through window of D's car did not constitute search. D told officer that compact disks belonged to her; however, she was unable to name even one of compact disks. Ct. concluded that warrantless seizure of items from car was proper because: 1) based on above information, officer had probable cause to believe that compact discs would be useful as evidence of burglary he was there to investigate; & 2) exigent circumstances were presumed from inherent mobility of D's car, which was stopped in public thoroughfare. Addressing D's claim under Indiana Constitution, Ct. held that given totality of circumstances & facts known to officer, seizure of evidence from car was not unreasonable. Held, judgment affirmed.

Note: See rehearing opinion at 767 N.E.2d 995 (at Z.4.b) where Ct. noted that exigent circumstances are not needed to justify seizure of evidence from car.

RELATED CASES: Matson, App., 844 N.E.2d 566 (observation of handgun in tote bag was not a search because it was within "open view").

TITLE: Matter of C.D.T.

INDEX NO.: Z.1.b.

CITE: (4th Dist., 7-26-95), Ind. App., 653 N.E.2d 1041

SUBJECT: Warrantless seizure - plain touch exception inapplicable

HOLDING: Police officer's seizure & removal of crumbled plastic bag from pants pocket of juvenile suspect was not justified under any exception to 4th Amend. Initial investigatory stop & protective "pat down" frisk of D's outer garments for weapons was reasonable under Terry v. Ohio (1968), 392 U.S. 1. However, after ascertaining that D possessed no weapons, officer's continued exploration of pocket exceeded scope of lawful Terry search. Police officers may seize non-threatening contraband detected during pat down search so long as search stays within confines of valid Terry search. Minnesota v. Dickerson (1983), 113 S. Ct. 2130. Here, "plain touch" doctrine was inapplicable, & officer lacked probable cause for full custodial arrest & search incident thereto, because incriminating character of plastic bag & contents was not immediately apparent at the time, he patted bag & felt crumbled plastic. Fact that bag contained contraband was not known until after seizure & further examination of inner bags' contents. Held, reversed & remanded to vacate delinquency adjudication.

RELATED CASES: Granados, App., 749 N.E.2d 1210 (police officer's removal of folded \$5 bill from D's sock & subsequent search of folded bill, exceeded protective scope of Terry search); Jackson, App., 669 N.E.2d 744 (although officer lawfully removed partially transparent container from D's pocket, D's 4th Amend. rights were violated when officer opened & seized contents of container; at point officer removed container, he determined that it did not contain weapon & identity of contents was not immediately apparent); D.D., App., 668 N.E.2d 1250 (State failed to prove that identity of cocaine in D's pocket was immediately apparent to officer, or that he had probable cause; officer's general declaration that bulge felt like "contraband" was insufficient to satisfy plain feel doctrine); Drake, App., 655 N.E.2d 574 (seizure of cocaine was completed during course of weapons search within scope of Terry).

TITLE: Harris v. United States

INDEX NO.: Z.1.b.

CITE: 390 U.S. 234, 88 S. Ct. 992 (1968)

SUBJECT: Evidence in plain view found while protecting impounded car

HOLDING: Objects falling in plain view of officer who has right to be in position to have that view are subject to seizure & may be introduced into evidence. Here, robbery victim's car registration card found by officer while removing valuables from D's impounded vehicle in which card was plainly visible was not obtained by illegal search, although officer had no search warrant. Officer was not required to obtain search warrant before removing valuables in plain sight from D's impounded car as measure to protect car while it was in police custody. Held, judgment affirmed. Douglas, J., concurred.

RELATED CASES: Clanton, 977 N.E. 2d 1018 (Ind. Ct. App 2012) (officer exceeded scope of a reasonable search under the Fourth Amendment at point when he saw that the pen cap was not a weapon but removed the baggie and searched it; officer admitted he had to make a closer examination of the bag before he realized it contained drugs).

TITLE: Hester v. State

INDEX NO.: Z.1.b.

CITE: (1st Dist. 3/29/90), Ind. App., 551 N.E.2d 1187

SUBJECT: Plain view - portable TV in impounded car

HOLDING: Portable TV which was properly viewed through window of D's car was illegally seized & improperly admitted into evidence. Evidence showed that police were on lookout for blue "Camaro type" car that had been seen around several recent burglaries. Officer saw D & friend in car matching that description & pulled them over. Officer noticed portable TV in back seat, & upon determining that car was improperly registered, ordered it impounded. Police then seized TV & other items during execution of search warrant determined by Ct. App. to be invalid. On appeal, state argues that TV was in plain view, & thus was not subject of illegal search or seizure. When police officer properly stops vehicle, no "search" occurs when officer merely looks in vehicle to see what is inside. Avant 528 N.E.2d 74; Cheeks 361 N.E.2d 906. Here, officer's view of TV was lawful & did not constitute search. However, while view may have been lawful, Ct. must still determine whether subsequent seizure of TV was lawful as well. Officer must have probable cause to believe that property to be seized is connected to criminal activity. Cochran, App., 429 N.E.2d 672. There was nothing about TV here to indicate that it was fruit of criminal activity, & officer did not have probable cause to seize TV at that time. Further, even if probable cause existed, warrantless search was not justified absent exigent circumstances, & impounding of car extinguished any exigency. [Citations omitted.] Held, TV improperly admitted; conviction reversed.

RELATED CASES: Lewis, 949 N.E.2d 1243 (Ind. 2011) (when officer lowered his head to tell car passenger to exit car and happened to see handgun in plain view, officer did not conduct a search).

TITLE: Manning v. State

INDEX NO.: Z.1.b.

CITE: (3d Dist. 2/20/84), Ind. App., 459 N.E.2d 1207

SUBJECT: Plain view - scope of search warrant; "readily apparent"

HOLDING: Where search extended to places object of warrant (maroon Oldsmobile) could not have been found, search was illegal because it exceeded scope of warrant. Second warrant was thus based on illegally obtained information; evidence seized pursuant to second warrant should have been excluded. Here, officers checked VINs & license numbers of all vehicles in shed at salvage yard. Criminality of these vehicles was not "readily apparent." Officers opened doors & lifted hoods to search for VINs. State argues vehicles were in plain view. "Plain view doctrine may not be used to extend general exploratory search from one object to another until something incriminating at last emerges." Coolidge v. NH (1971), 403 U.S. 443, 91 S. Ct. 2022, 29 L.Ed.2d 564. An item's criminality is "readily apparent" if contraband is clearly connected to a crime. Lance 425 N.E.2d 77; Cochran, App., 429 N.E.2d 672. Held, conviction for receiving stolen property reversed. [Three other counts affirmed because of failure to object or lack of standing.] DISSENT by Hoffman contends shed readily appeared to be a "chop shop," in which true identity of stolen automobiles is transformed for purpose of resale. VINs & license numbers were in plain view.

RELATED CASES: Hewell, App., 471 N.E.2d 1235 (discovery of silver was not inadvertent, police expected to recover silver during search, but did not include it in search warrant; held, conviction for corrupt business influence reversed).

TITLE: McReynolds v. State

INDEX NO.: Z.1.b.

CITE: (3/20/84), Ind., 460 N.E.2d 960

SUBJECT: Plain view - evidence of unrelated crime

HOLDING: Tr. Ct. did not err in admitting evidence seized in search of D's home because evidence, although unrelated to crime for which search warrant was issued, was in plain view. Officer must be immediately aware of its connection to crime & other Coolidge v. NH (1971), 403 U.S. 443, 91 S. Ct. 2022, 29 L.Ed.2d 564 requirements (lawful initial intrusion; inadvertent discovery) must be satisfied. Here, D was charged with murder & attempted murder. Subject matter of warrant was barrel of sawed-off shotgun. Officer looked in bedroom cabinet large enough to conceal barrel & found clear plastic bag containing marijuana seeds. Held, no error.

RELATED CASES: Hollins, App., 672 N.E.2d 427 (discovery & warrantless seizure of bag containing cocaine was admissible under plain view doctrine, because: 1) officer was in place he was entitled to be as he approached passenger side of D's car; 2) bag was in plain view, & incriminating character of bag's contents was immediately apparent; & 3) officer had lawful right of access to bag, because inherent mobility of vehicle provided officer with exigent circumstance justifying entry into vehicle & seizure of bag); Avant 528 N.E.2d 74 (Crim L 394.4(12); S & S 16; evidence discovered by shining flashlight into car pulled over in valid Terry-stop was in plain view, *citing* Checks 361 N.E.2d 906); Garrett 466 N.E.2d 8 (evidence discovered by shining flashlight into van parked on private property was in plain view, *citing* Alcorn 265 N.E.2d 413).

TITLE: Mears v. State

INDEX NO.: Z.1.b.

CITE: (1/31/89), Ind., 532 N.E.2d 140

SUBJECT: Search & seizure; consent & plain view

HOLDING: Since entry into D's house allowed by D's 14-year-old daughter was consensual, & jewelry on table in front of D subsequently seized was in plain view, suppression of jewels was not required under 4th Amend. D's daughter opened door when police knocked & pointed out D when police asked if D were home. D & his wife were in room that police officer entered. Jewelry later identified as stolen jewelry was on table in front of D. Purporting not to reach issue whether 14-year-old had authority to consent to search, see Brooks 497 N.E.2d 210, Ct. still finds "consensual entry" into home, & presence of jewelry in plain view made those objects not the product of search or seizure. Gann 521 N.E.2d 330 [channel locks on floorboard of car are in plain view]. No discussion of whether illegality of the jewelry was clear so that plain view exception applies, or whether seizure was legal. Held, no error in denying motion to suppress. Affirmed.

RELATED CASES: But see Thomas App., 642 N.E.2d 240 at Z.10.c.3 and Z.3.d.3 (consent invalid, reliance on plain view doctrine misplaced).

TITLE: Middleton v. State

INDEX NO.: Z.1.b.

CITE: (6-29-99), Ind., 714 N.E.2d 1099

SUBJECT: Plain view doctrine did not justify second entry into home

HOLDING: Tr. Ct. erred in denying D's motion to suppress. Three conditions must exist to justify warrantless seizure of evidence under plain view doctrine: (1) officer must not have violated Fourth Amendment in arriving at place from which evidence could be plainly viewed; (2) incriminating character of evidence must be immediately apparent; & (3) officer must have lawful right of access to object itself. Horton v. California, 496 U.S. 128, 110 S. Ct. 2301, 110 L.Ed.2d 112 (1990). If, while lawfully engaged in activity in particular place, police officers perceive suspicious object, they may seize it immediately. Here, relator was showing home to officer & his fiancée. In upstairs bedroom, officer saw marijuana & paraphernalia. Officer left home without seizing marijuana. Instead, officer radioed for backup & then reentered locked home to seize marijuana & paraphernalia.

Although plain view doctrine would have justified officer seizing evidence at time he initially saw marijuana, doctrine did not permit officer to reenter home without warrant & seize marijuana. Thus, S. Ct. established bright line rule that police officers lawfully in residence may immediately seize items found in plain view that satisfy conditions of Horton. But if officers leave residence, reentry is not justified in absence of warrant, consent of owner, or some other exception to warrant requirement. Held, judgement reversed; Shepard, J., concurring, noted that State can still use officer's testimony that he saw marijuana while being shown house.

Note: No exigent circumstance existed to justify search without warrant because officers were in position to secure house while another officer went to get warrant.

RELATED CASES: Smock, App., 766 N.E.2d 401 (because officers exited apartment to wait for arrival of detectives & coroner, their subsequent seizure of evidence upon re-entry was unlawful).

TITLE: Minnesota v. Dickerson

INDEX NO.: Z.1.b.

CITE: 508 U.S. 366, 113 S. Ct. 2130, 124 L.Ed.2d 334 (1993)

SUBJECT: Plain touch exception

HOLDING: Warrantless seizure of non-threatening contraband discovered during valid Terry frisk is reasonable provided that officer's sense of touch makes it immediately apparent that object is contraband. This "plain touch" exception is analogous to plain view exception and is subject to similar limitations. Like plain view, plain touch derives its legitimacy from fact that initial touch, like initial view, is legally valid. However, as with plain view, touching cannot exceed scope of initial, legitimate, frisk. Thus, if simple Terry frisk reveals contraband, seizure would be proper. However, if further manipulation or probing is required to determine whether object is contraband, that is search which requires warrant. Here, officer squeezed, slid, and manipulated small lump in D's pocket to determine that it was crack cocaine, and majority accepts lower court's finding that contraband nature of lump was not immediately apparent. Rehnquist, Blackmun, and Thomas, JJ., would remand to lower court for determination whether officer's actions exceeded scope of Terry frisk.

TITLE: Moore v. State

INDEX NO.: Z.1.b.

CITE: (2nd Dist., 05-23-05), Ind. App., 827 N.E.2d 631

SUBJECT: Erroneous admission of ballistics evidence under plain view doctrine

HOLDING: In murder prosecution, Tr. Ct. erred in admitting ballistics evidence derived from warrantless seizure of D's handgun over a year before crimes. Absent probable cause, exigent circumstances alone are insufficient to justify a warrantless seizure. Harless v. State, 577 N.E.2d 245 (Ind. Ct. App 1991). Here, officer testified he confiscated D's handgun found in another person's vehicle even though D had a valid permit for it. Officer testified he believed that crime of criminal gang activity had or may have taken place & "things were in a dangerous state at that time." Officer wasn't sure of elements of criminal gang activity & handgun was not seized as evidence of any crime, including gang activity. Thus, since officer did not have probable cause to seize handgun, the warrantless seizure violated Fourth Amendment. However, error was harmless because ballistics evidence was not inconsistent with D's claim of innocence, nor did it establish ipso facto that D used the handgun to kill victims. Jury chose to believe that D possessed handgun at time of murders, & thus ballistics evidence was merely cumulative of evidence establishing that D committed murders. Held, judgment affirmed.

TITLE: Murphy v. Commonwealth

INDEX NO.: Z.1.b.

CITE: 264 Va. 568, 570 S.E.2d 836 (Va. 2002)

SUBJECT: Detection of Baggie Not Sufficient for Plain Feel

HOLDING: An officer's detection of a plastic baggie during a lawful pat-down for weapons was not sufficient to justify a seizure, where it is officer's training and experience, rather than the feel of the bag, that led him to believe it contained contraband. Under plain feel doctrine, the character of an object as contraband must be readily apparent.

TITLE: Peel v. State

INDEX NO.: Z.1.b.

CITE: (08/15/2019), Ind. Ct. App., 130 N.E.3d 1195

SUBJECT: Drugs found in sock exceeded scope of lawful Terry search

HOLDING: Warrantless search of a sock that fell from Defendant's pants exceeded the limits of a Terry search in violation of the Fourth Amendment. During traffic stop for turn signal violation, officer testified that Defendant exhibited behaviors that indicated he might be armed, including patting his pockets and raising his entire body to look in the area around the vehicle's center armrest. During a subsequent pat-down search, officer felt a non-anatomical object in Defendant's waistband which he suspected was "contraband" and "possibly a weapon." A sock then rolled out of the leg of Defendant's pants, and inside the sock officers found baggies containing methamphetamine marijuana and pills. Court held that the State did not justify the search of the sock on the basis of the plain feel doctrine, noting that "the testimony of possibility is insufficient." Further, when the sock rolled out of Peele's pants, he was handcuffed and was no longer in possession or control of the sock, thus he could not have abandoned it. Rather than pushing the sock aside and obtaining a warrant, officer conducted a general search, "possibly for a weapon or perhaps for other contraband. In doing so, he broadened the scope of the Terry search beyond its protective purpose." Thus, evidence obtained in the search should not have been admitted at trial. Held, judgment reversed.

TITLE: Perez v. State
INDEX NO.: Z.1.b.
CITE: (3/11/2015), 27 N.E.3d 1144 (Ind. Ct. App 2015)
SUBJECT: Canine sniff unconstitutional, but warrant based on other evidence
HOLDING: In light of Florida v. Jardines, 133 S. Ct. 1409 (2012), warrantless canine sniff of D's front door physically intruded onto the curtilage of his home and was an unconstitutional search in violation of the Fourth Amendment. However, probable cause affidavit contained sufficient facts, independent of those discovered by the unconstitutional canine sniff, to supply probable cause for the warrant to search D's home. Thus, Tr. Ct. did not abuse its discretion in admitting evidence of narcotics and paraphernalia discovered inside of D's home during execution of that warrant. Held, judgment affirmed.

RELATED CASES: Collins, (5/29/2018) (U.S. Supreme Court 2018) (automobile exception to warrant requirement did not authorize officer's warrantless entry into D's curtilage to search D's motorcycle)

TITLE: Rook v. State
INDEX NO.: Z.1.b.
CITE: (1st Dist., 5-16-97), Ind. App., 679 N.E.2d 997
SUBJECT: Plain view - use of binoculars to view area behind D's residence
HOLDING: Police officer's use of binoculars to view illegal activity of D in area behind his residence did not constitute impermissible warrantless search under Fourth Amendment or under Indiana Constitution, Art. 1, § 11. In response to anonymous tips that D was growing marijuana on his property & that he would be harvesting marijuana that evening, officer proceeded to wooded area one hundred yards away from D's residence to conduct surveillance. Officer observed D emerge from woods behind his house carrying plant, in area not linked to intimacy of his home. With aid of binoculars, officer identified plant D was carrying as marijuana. Record revealed that area behind home was open, unfenced & illuminated.

Ct. noted that mere fact that observed activity occurred within curtilage of individual's home does not in itself bar police observation. California v. Ciraolo, 476 U.S. 207 (1986). Objects observed in plain view by police officer who is lawfully in position to have such view are not products of search. Smith, App., 505 N.E.2d 81. Here, D openly carried marijuana at all times, making it visible to anyone in area. Given D's behavior & nature of land surrounding his home, Ct. found no subjective or reasonable expectation of privacy in this area. Similarly, officer's use of binoculars was not overly intrusive & did not transform his observations into unreasonable search. Use of visual aids & other sense-enhancing techniques do not change police officer's observations into search. Marsh, 477 N.E.2d 877; Watkins, App., 515 N.E.2d 1152. Officer did not use his binoculars to pry into hidden places or observe item that he could not have seen through his naked eye; rather, binoculars merely allowed him to see more clearly object that was already in open view. Officer's actions & observations did not constitute impermissible search & were not unreasonable under Indiana Constitution. Held, denial of motion to suppress affirmed.

TITLE: Sayre v. State
INDEX NO.: Z.1.b.
CITE: (3d Dist. 12/5/84), Ind. App., 471 N.E.2d 708
SUBJECT: Exceptions to search warrant - plain view through window of residence
HOLDING: Tr. Ct. did not err in admitting evidence seized without warrant from D's home. Here, D contends officer had no right to be standing on her lawn looking into her window. Ct. finds D did not display reasonable expectation of privacy where occupants of illuminated kitchen were easily seen through open curtains. Issue is not whether officer has technically trespassed, but whether officer's actions were reasonable under circumstances. US v. Conner (CA7 1973), 478 F.2d 1320. Technical trespass does not give rise to 4th Amend violation. US v. Hanahan (CA7 1971), 442 F.2d 649. Ct. finds officer was taking reasonable path from car to door, thus his view through window was lawful & provided probable cause to obtain search warrant. When second officer knocked on door & announced police, first officer observed occupants run from kitchen with drug paraphernalia. Warrantless police entry into home at that point was proper to prevent destruction of evidence. Johnson v. US (1948), 333 U.S. 10, 68 S. Ct. 367, 92 L.Ed.2d 436. Held, no error.

RELATED CASES: Danner, 931 N.E.2d 421 (Ind. Ct. App 2010) (impoundment and warrantless search of parked car was valid after officer observed what appeared to be marijuana through window of car).

TITLE: Sloane v. State

INDEX NO.: Z.1.b.

CITE: (4th Dist., 10-7-97), Ind. App., 686 N.E.2d 1287

SUBJECT: Warrantless search - nonconsensual entry onto fire-damaged premises

HOLDING: Search of D's garage & seizure of items therein was proper when fireman, who upon extinguishing fires in garage noticed near origins of fires gasoline container & rubber gloves, seized gasoline container & rubber gloves & took samples of charred material from each of two points of origin. Firemen are not required to secure warrant before entering burning structure to extinguish blaze, & once inside, firemen may seize any evidence of arson that is in plain view. Michigan v. Tyler, 436 U.S. 499. In addition, officials need no warrant to remain in structure for reasonable time to investigate Id. Here, fireman was in process of extinguishing fire when he seized container & gloves, & samples taken were later tested to determine cause of fires, evidence was in plain view & seized in process of fireman performing his duties. Thus, there was no 4th Amend. violation.

RELATED CASES: Null, App., 690 N.E.2d 758 (when extensive fire damage occurs to home, D loses reasonable expectation of privacy in burned-out portions such that warrantless search is not unconstitutional).

TITLE: State v. Barnes

INDEX NO.: Z.1.b.

CITE: 159 P.3d 589 (Az. Ct. App. 2007)

SUBJECT: Rectum search violated Fourth Amendment

HOLDING: The Arizona Court of Appeals held a police officer violated the Fourth Amendment when she seized a plastic bag she saw protruding from D's rectum during a strip search incident to arrest. Court said that the touching of the bag turned the lawful strip search into a body cavity search, which requires a warrant. During the strip search, officer asked D to bend over and spread her buttocks. Officer saw something and when D refused to remove the object herself, the officer grabbed it and it fell out. Court said that the instant the officer touched the bag the search escalated into a body cavity search, which the U.S. Supreme Court has stated generally requires a warrant. Court rejected State's argument that there was no body cavity search because the officer did not touch even the outside of D's body when she touched the bag, noting the line is crossed "once an officer's actions have the effect of exerting force within an arrestee's body." Court also stated that removal of the bag did not qualify as a plain view seizure, because the act of grabbing the plastic to remove unexposed portions of the bag from D's rectum constituted a separate intrusion from the observance of the bag. A dissent was entered to the majority opinion.

TITLE: State v. Fisher
INDEX NO.: Z.1.b.
CITE: 283 Kan. 272, 154 P.3d 455 (Kan. 2007)
SUBJECT: "Knock and talk" inappropriate where police already have probable cause
HOLDING: The Kansas Supreme Court held that an otherwise constitutional "knock and talk" cannot be used by law enforcement officers to justify their intrusion onto premises to seize evidence in plain view that they already had probable cause to seize before they conducted the knock-and-talk. Court decided such use of the knock-and-talk tactic runs afoul of Fourth Amendment limits on the plain-view doctrine.

Conducting surveillance of a farmhouse set back 25 yards from a highway with binoculars, a detective saw a white translucent, white garbage bag that contained yellow plastic bottles that were consistent with those of a popular fuel additive used in manufacturing methamphetamine. The detective also smelled ether. After consulting a prosecutor, the detective was told that he could seize the bag without a warrant but decided instead to conduct a knock-and-talk at the farmhouse. Nobody answered when the detective conducted the knock-and-talk and he drove further up the driveway where he could see the garbage bag as well as blister packs containing pseudoephedrine. The officer seized the garbage bag and used his observations and the contents of the bag to obtain a search warrant, which yielded evidence used to convict D of drug crimes.

Court rejected State's contention that the detective's lawful observation of the suspicious yellow bottles in the bag was enough, by itself, to justify the officer's seizure of the bag pursuant to the plain-view doctrine. Court noted in Horton v. California, 496 U.S. 128 (1990) the U.S. Supreme Court distinguished between the plain-view doctrine, which governs warrantless seizures, and the "open-view" or open fields doctrine, which governs observations from nonintrusive vantage points, such as the long-range surveillance in this case. State's if-you-can-see-it-you-can-seize-it approach conflates these two doctrines. "Absent a justifiable intrusion onto [D's] curtilage, the mere observation of the bag from the highway does not itself allow the bag's seizure."

Nor could the State rely on the detective's knock-and-talk to provide the requisite "justifiable intrusion." Court acknowledged that the Fourth Amendment permitted the detective to drive up to D's house to conduct a knock-and-talk and agreed with other courts that have held the Fourth Amendment permits officers conducting a knock-and-talk to walk around a house to knock on more doors once initial knocks have gone unanswered, but "specifically disapproved of any State attempt to 'piggy-back,' *i.e.* observe an object in open view from off the premises, to use knock and -- in these cases, unsuccessful -- talk for justified entry onto the premises, and then assert plain view while on the premises as a legal basis to seize the identical object that had been observed earlier." Such a tactic would smear the careful distinctions drawn by the *Horton* court.

As an alternative holding, Court held the detective exceeded the scope of the knock-and-talk when he proceeded further down the driveway directly to where the garbage bag was located. However, Court held the independent information collected prior to illegal seizure of the garbage bag still provided probable cause for the warrant. A concurrence was entered disputing that the detective already had independent evidence of probable cause but finding that the officer did not exceed the scope of a lawful knock-and-talk and a dissent was entered finding that the independent information was insufficient to provide probable cause.

TITLE: State v. James
INDEX NO.: Z.1.b.
CITE: 795 So.2d 1146 (La. 2000)
SUBJECT: Sight & Feel of Film Canister Do Not Provide Grounds for Search
HOLDING: Police officer who detected a film canister in the pocket of a drug suspect during a frisk violated the 4th Amendment by taking the canister out, shaking it, and then opening it. At a suppression hearing, the officer testified that he had made approximately 100 drug arrests, and that film canisters were often used to conceal drugs. He testified further that he had determined that the suspect did not have a camera with him. The Louisiana Supreme Court held that film canisters have myriad legal uses and are not so peculiarly associated with drug trafficking that the plain feel or view of their exterior is the functional equivalent of the plain view of their contents. The officer could not "particularize the association of film canisters with narcotics trafficking to the circumstances as he knew them at the time he reached into [the suspect's] pocket."

TITLE: State v. Porter

INDEX NO.: Z.1.b.

CITE: (1st Dist., 3-27-75), Ind. App., 324 N.E.2d 857

SUBJECT: Protected areas and interests - Plain view/smell

HOLDING: Police were informed by lessor of rural premises that he observed what he thought to be processing of marijuana. With aid of binoculars, police maintained lookout from residence some 200 yards away and observed Ds' activities for over 3 hours. Ct. held that officers' observations did not fall within "plain view" doctrine. Thus, seizure of marijuana by officers, who entered premises pursuant to invalid search warrant, was not within plain view exception to warrant requirement. Neither initial observation made with aid of binoculars nor observation made after entry onto premises fell within plain view exception. Held, judgment affirmed.

TITLE: Taylor v. State

INDEX NO.: Z.1.b.

CITE: (12-28-95), Ind., 659 N.E.2d 535

SUBJECT: Plain view - items outside scope of search warrant

HOLDING: Seizure of blood-stained paper & two-page letter during warranted search of car was justified under plain view doctrine. As part of homicide investigation, police secured search warrant for car D drove on night of shooting. Warrant specified search for large caliber handgun & ammunition. Upon opening car door, officer who conducted search saw blood-stained yellow lined paper next to driver's seat & retained it as evidence. Officer also opened center console & seized two folded sheets of yellow lined paper, which turned out to be letter from D to murder victim's mother. Although seizures were beyond scope of search warrant, Ct. held that incriminating nature of items was immediately apparent to police officer. "Immediately apparent" prong of plain view doctrine requires that law enforcement officials have probable cause to believe evidence will prove useful in solving crime. White v. State (1987), Ind., 517 N.E.2d 83. Here, apparent blood stains on sheet of paper in door justified its seizure. When officer stumbled across letter, he naturally connected it with similar paper found in door. Person of reasonable caution could have concluded that pages from console were related to page found in door, & that together they would aid in murder investigation. Officer's subsequent discovery that contents of letter were relevant to murder was also reasonable. Held, convictions affirmed; DeBruler, J., dissenting on other issue.

RELATED CASES: Matson, App., 844 N.E.2d 566 (D presented no evidence that he had exclusive control or ownership over common area under trailer to which ex-wife consented to search). Crabtree, App., 762 N.E.2d 217 (officer's testimony that he observed baggie of marijuana hanging from front pouch of D's sweatshirt before he conducted weapons search is of sufficient probative value to support Tr. Ct.'s ruling on admissibility); Edwards, App., 762 N.E.2d 128, aff'd on rehearing, 768 N.E.2d 506 (fact that garbage bag in back of D's truck was filled with cartons of cigarettes was immediately apparent to officer).

TITLE: Tuggle v. State

INDEX NO.: Z.1.b.

CITE: (5/22/2014), 9 N.E.3d 726 (Ind. Ct. App 2014)

SUBJECT: Seizure of D's clothing from hospital not unconstitutional

HOLDING: Detective's seizure of a bag of clothing worn by D who was shot--and later considered a suspect in a murder--did not violate his rights under federal or state constitutions. D was admitted to the hospital as the victim of an armed robbery and shooting. Pursuant to Ind. Code § 35-47-7-1, the police arrived to investigate. The detective took D's clothing as evidence in accordance with police procedure. D was later suspected of involvement in a homicide. Another detective obtained a warrant for DNA testing. The tests revealed the clothing contained the victim's DNA and D was charged with Murder. At trial, D admitted he lied about being a victim.

On appeal of his conviction, D argued the seizure of his clothing was "meaningful interference" with his possessory interest in his clothes, as he neither surrendered nor abandoned them.

Relying upon United States v. Davis, 690 F.3d 226, 230 (4th Cir. 2012), Court found the clothing was properly seized under the plain view doctrine per the Fourth Amendment. The seizure was likewise reasonable under Art. I, § 14 of the Indiana Constitution. Securing the clothing that the detective believed could be evidence in finding D's alleged assailant imposed no intrusion on his three-week recovery in the hospital. Moreover, the need of law enforcement to investigate what was an obvious crime was high. Held, judgment affirmed.

TITLE: U.S. v. Gwinn

INDEX NO.: Z.1.b.

CITE: 191 F.3d 874 (8th Cir. 1999)

SUBJECT: Manipulation of Bag Constitutes Search

HOLDING: Drug interdiction detective who lifted, felt, and squeezed bag in overhead luggage rack of train during routine stop conducted a search which required probable cause. Detective lifted bag to feel sides and felt what he thought were bundles of narcotics. He then squeezed the bag to expel and detected what he thought was the odor of marijuana. When passengers reboarded train, detective made as if to walk off with bag in hope of prompting owner to speak up. D did so, but when detective identified himself, D "looked frightened and made eye movements the detective interpreted as a search for an escape route." Detective had D handcuffed and asked him about the bag, which D twice denied was his. Both D and the bag were removed from train and drug detection dog alerted to the bag. Officers opened it and searched it, finding drugs. Government argued that D abandoned bag, but Court rejected this argument because denials of ownership came while D was handcuffed and cannot be deemed voluntary. Government also argued that detectives conduct was not a search, but Court rejected this, finding that while passengers may reasonably expect other passengers to move their bags around to make room in storage bins, they would not expect their bags to be subjected to "calculated and thorough squeezing and manipulation of their interiors." Court also noted that train passengers are not required to submit to inspections of their luggage as condition of traveling. Cf. U.S. v. McDonald, 100 F.3d 1320, (7th Cir. 1996).

TITLE: U.S. v. Carey
INDEX NO.: Z.1.b.
CITE: 72 F.3d 1268 (8th Cir. 1999)
SUBJECT: Warrant to Search Computer for Drug Files Didn't Justify Opening Child-Porn Image Files
HOLDING: Warrant authorizing police to Search computer for files related to drug trafficking did not authorize officer's opening of more than 100 JPG image files labeled with sexually suggestive names. Government made two arguments: first, that illegal pornographic nature of child-porn image files was readily apparent so that their seizure was proper under plain view exception to warrant requirement; and second, that computer was analogous to filing cabinet, so that warrant authorizing Search for drug transaction information authorized Search of all files because any file might have contained evidence of drug trafficking. Court rejects plain view argument because it was contents of files, not files themselves, that were seized. Court rejects file cabinet analogy because, by officer's own admission, after he opened first JPG file and found it to be child pornography image, he expected to find evidence of child pornography, rather than drug trafficking, when he accessed each of the additional JPG files.

TITLE: Vanzo v. State

INDEX NO.: Z.1.b.

CITE: (5th Dist.; 11-21-00), Ind. App., 738 N.E.2d 1061

SUBJECT: Plain view – officer did not have legal right to perform search

HOLDING: Tr. Ct. erred in denying D's Motion to Suppress marijuana found in plain view during second search of crime scene. In order for officer's seizure of evidence to be justified by plain view, officer must have legal right to be at place from which evidence was plainly viewed. *Houser*, 678 N.E.2d 95 (Ind. 1997). Officers may make cursory inspection of those spaces where person may be found to secure crime scene & ensure their safety. *Maryland v. Buie*, 494 U.S. 325 (1990). When determining whether search is to secure crime scene, Ct. should consider number of officers on scene & their actions before victim-or-suspect search is performed, nature of search (such as whether it is investigative), & timing of search. Here, first officer who arrived at apartment where victim had been shot searched apartment to make sure that there were no other victims or persons who might launch attack. Although officer did not look in closets in each room, first officer testified that he was satisfied no one else was in apartment. When other officers arrived, first officer did not indicate to them that there was need for another search of apartment. However, thirty minutes later, second officer searched closets & found marijuana. Although second officer claimed she was searching for safety, fact that first officer already searched apartment, victim had been removed from scene, & another officer had been guarding door to apartment illustrated that scene was already secured. Because second officer could not justify search based on safety for those still in apartment, she did not have legal right to be at place from which marijuana was viewed. Held, Tr. Ct.'s denial of motion to suppress reversed.

TITLE: Walker v. State

INDEX NO.: Z.1.b.

CITE: (2nd Dist., 2-21-96), Ind. App., 661 N.E.2d 869

SUBJECT: Warrantless seizure upheld under "plain feel" doctrine

HOLDING: Police officer's warrantless seizure of marijuana was justified under Terry v. Ohio, because officer determined that item was marijuana contemporaneous with lawful weapons search. During lawful execution of Terry search, seizure of contraband detected through officer's sense of touch is permissible as long as contraband's identity is immediately apparent. Michigan v. Long, 463 U.S. 1032 (1983); Minnesota v. Dickerson, 113 S. Ct. 2130 (1993). Here, officer testified that during search for weapons, he felt article in D's right hip pants pocket which he "instantaneously" believed to be marijuana. Officer also indicated that he squeezed object in pocket with his fingers but did not manipulate it in any way. Accordingly, Tr. Ct. did not abuse discretion in denying D's motion to suppress marijuana evidence. Held, judgment affirmed.

RELATED CASES: Johnson, 157 N.E.3d 1199 (Ind. 2020) (officer could seize baggie when he immediately identified the lump as contraband the moment he touched it through D's pocket, based on his training and knowledge of the situation); Smith, App., 780 N.E.2d 1214 (officer determined that item in D's coat pocket was drugs contemporaneous with lawful weapons search; officer's testimony did not suggest that he had to actually manipulate object in any way before he was able to determine it was contraband); Williams, App., 754 N.E.2d 584 (identity of cocaine was immediately apparent to arresting officer, whose extensive training & experience led him to believe that rock-like substance seized from D's coat pocket was crack cocaine); Shinault, App., 668 N.E.2d 274 (although incriminating character of object protruding from D's jacket was not immediately apparent to officer, seizure of marijuana was permissible because officer had not dispelled fear that object was not weapon until he pulled it out of D's pocket); Parker, App., 662 N.E.2d 994 (seizure of cocaine did not exceed permissible scope of Terry, because officer was still in process of conducting pat down search when he reached object in D's pocket, & had not yet concluded that D did not have weapon), But see: C.D.T. card, this section; Bratcher, App., 661 N.E.2d 828 (seizure of marijuana upheld where officer discovered it during lawful weapons search & State met burden of proving that incriminating character of plastic bag was immediately apparent to officer).

TITLE: White v. State

INDEX NO.: Z.1.b.

CITE: (12/30/87), Ind., 517 N.E.2d 83

SUBJECT: Warrantless search - plain view

HOLDING: Tr. Ct. did not err in denying D's motion to suppress tennis shoes seized during warrantless search of D's home. Investigating burglary, police officer found shoeprint resembling tennis shoe on table under broken window. Matching shoeprints were found in snow outside broken window. Officer followed prints to D's home, where D's brother consented to search for D. While in D's home, officer saw pair of damp tennis shoes with shoestrings removed. Officer picked up shoes, inspected tread, & carried them outside to compare shoeprints. They were identical. D moved to suppress tennis shoes as product of warrantless search & seizure. State argues that plain view exception applies. Plain view doctrine has 3 requirements: (1), Initial intrusion is lawful; (2), Incriminating evidence is discovered inadvertently; & (3), It is immediately apparent that items may be evidence of crime, or contraband. Coolidge v. NH (1971), 403 U.S. 443, 91 S. Ct. 2022, 29 L.Ed.2d 564. Probable cause is test in determining whether evidentiary value is immediately apparent. AZ v. Hicks (1987), ___ U.S. ___, 107 S. Ct. 1149, 94 L.Ed.2d 347 (see card at Z.1.a). Picking up tennis shoes to look at tread constituted search separate & apart from lawful objective of entry. Id. Therefore, probable cause must have existed before shoes were picked up. Officer followed apparent tennis shoeprints from scene of burglary to D's home, where he found wet tennis shoes set out to dry. Held, officer had probable cause to suspect that shoes were evidence of burglary. Pivarnik CONCURS IN RESULT.

RELATED CASES: Peterson, 674 N.E.2d 528 (evidence supported Tr. Ct.'s finding that shotgun was properly seized as contraband in plain view).

TITLE: Wilson v. State

INDEX NO.: Z.1.b.

CITE: (2nd Dist., 02-02-93), Ind. App., 606 N.E.2d 1314

SUBJECT: Evidence properly admitted under "plain view" doctrine

HOLDING: Although D waived issue by raising different grounds for suppression on appeal than raised at trial; utility bills that tended to show residence was D's were properly seized during search with warrant to search for cocaine, as bills fit warrant exception for items in "plain view." During execution of search warrant for cocaine based on confidential informant's information about buying cocaine from residence, utility bills bearing D's name & address of searched residence were found. During suppression hearing, D argued that warrant was invalid because State could not produce informant, & thus defense could not examine his reliability & credibility. On appeal he argued that seizure of bills was improper because it was outside scope of permissible limits of warrant to search for cocaine. Despite waiver, Ct. found argument unavailing, noting that items not described in warrant may still be seized if they fall under "plain view" doctrine, or could have been found & seized in search incident to lawful arrest. To use in "plain view" exception, officer must lawfully be in place where he can view items, items must be in plain view, & fact items are evidence of crime must be immediately apparent upon discovery. Ct. found warrant allowed officers to be in residence, & Ct. also determined that because cocaine could be found almost anywhere in house, it was reasonable to infer that bills were found in plain view during search for cocaine. Because bills were evidence of D's proprietary right to residence, they also satisfied third requirement of "plain view" exception.

RELATED CASES: Neville, App., 663 N.E.2d 169 (evidence supported Tr. Ct.'s conclusion that cocaine was unexpectedly recovered during lawful search pursuant to warrant).

TITLE: Wood v. State

INDEX NO.: Z.1.b.

CITE: (2d Dist. 06/03/92), Ind. App., 592 N.E.2d 740

SUBJECT: Search & seizure - "open view"

HOLDING: Warrantless observance of marijuana growing in D's backyard was permissible under "open view" doctrine, despite fact that officer had been informed of likelihood of finding marijuana there. Officer testified that while he had been informed about possible marijuana, he went to D's home primarily to investigate battery, & this status remained when he went to rear of house. "Open view" doctrine applies to discoveries made when officer is not conducting search but is in place where he has right to be. Fact that officer went to house primarily to investigate battery, meant he was legitimately at location. Possibility that he may not have been totally surprised at finding marijuana, did not render its discovery improper.

RELATED CASES: Thomas, App., 642 N.E.2d 240 (open view doctrine inapplicable in case involving grossly intrusive video surveillance); Thurman, App., 602 N.E.2d 548 (also finding evidence admissible because in "open view". Discusses difference between "plain view" & open view. For additional discussion of case see Thurman cards at Z.3.d.2 & Z.7.a).

Z. SEARCH AND SEIZURE

Z.1. Protected Areas and Interests

Z.1.c. Open fields (Oliver v. U.S.) / aerial surveillance (California v. Ciraolo)

TITLE: Blalock v. State

INDEX NO.: Z.1.c.

CITE: (10/3/85), Ind., 483 N.E.2d 439

SUBJECT: Aerial surveillance (AS)

HOLDING: On transfer. AS of D's greenhouse located on heavily wooded, isolated rural property at altitude of 800-1,000 feet AGL (above ground level) did not constitute a search. Pivarnik quotes Justice Powell's footnote in Oliver v. US, (1984), 466 U.S. 170, 104 S. Ct. 1735, 1742, n.11, 80 L.Ed.2d 211 that an open field need be neither open nor a field. Because greenhouse had no nexus to curtilage of D's home, there is no 4th Amend protection (no reasonable expectation of privacy). Ct. finds no difference between aerial search & search from ground as it applies to plain view. Ct. relies heavily on "casual observer" logic. Interestingly, such low altitude would be appropriate only in airport traffic area (ascent/descent/landing preparation) or for purpose of observation/picture taking. Ct. cites AS cases from other jurisdictions on p. 443. Ct. also finds affidavit constitutes probable cause despite fact officers could not actually identify dark green plants of varying heights arranged in rows as marijuana, but simply opined it was marijuana (Drugs 188). Held, Ct. App. decision at 476 N.E.2d 901 vacated; conviction (marijuana grower) affirmed.

TITLE: California v. Ciralto
INDEX NO.: Z.1.c.
CITE: 476 U.S. 207, 106 S. Ct. 1809, 90 L.Ed.2d 210 (1986)
SUBJECT: Aerial observation of D's backyard
HOLDING: 4th Amend. protects persons where they have a "constitutionally protected reasonable expectation of privacy." Katz v. U.S. (1967), 389 U.S. 347, 360, 88 S. Ct. 507, 516, 19 L.Ed.2d 576. Katz posits 2-part inquiry: (1) has individual manifested subjective expectation of privacy in object of challenged search; & (2) is society willing to recognize that expectation as reasonable? Here, object of search was D's backyard around which he had placed 10-foot fence. Court finds this sufficient manifestation of subjective intent to maintain privacy as to agricultural pursuits. In analyzing second prong, test is "not whether the individual chooses to conceal assertedly private activity, but instead, whether the government's intrusion infringes upon the personal & societal values protected by the 4th Amend." Oliver v. U.S. (1984), 466 U.S. 170, 104 S. Ct. 1735, 80 L.Ed.2d 214. Here, search was within curtilage, an area traditionally accorded heightened 4th Amend. protection. However, "[w]hat a person knowingly exposes to the public, even in his home or office, is not a subject of 4th Amend. protection." Katz. Officers had observed D's backyard with naked eye from aircraft lawfully operating at altitude of 1000 feet. Any member of the public flying in this airspace who glanced down could have seen everything officers observed. Held, D's expectation that garden was protected from observation is unreasonable & is not expectation that society is prepared to honor. Therefore, warrantless aerial surveillance is lawful. Powell, joined by Brennan, Marshall, & Blackmun, DISSENTS.

TITLE: Cornman v. State

INDEX NO.: Z.1.c.

CITE: (1st Dist., 4-19-73), Ind. App., 294 N.E.2d 812

SUBJECT: Protected areas & interests - Wooded areas

HOLDING: Police surveillance in and around stone quarry and wooded and cleared area of D's property did not violate D's constitutional rights as afforded by Fourth Amendment, since Fourth Amendment does not apply to open fields or wooded areas. Hester v. U.S., 265 U.S. 57, (1924). Here, after break-in at car dealership, D was identified by witness as driving truck towing stolen car. Police found truck matching witness' description in D's driveway. Police talked to D while near stone quarry used as public dump. Police stayed at quarry and watched 3 persons fleeing to D's home. Police obtained warrant and found pieces of stripped cars. Ct. held Fourth Amendment does not apply to open fields or wooded areas. Area around stone quarry was wooded area. Held, denial of motion to suppress affirmed.

TITLE: Dow Chemical v. U.S.

INDEX NO.: Z.1.c.

CITE: 476 U.S. 227, 106 S. Ct. 1819, 90 L.Ed.2d 226 (1986)

SUBJECT: Aerial surveillance - "industrial curtilage"

HOLDING: Business establishments & industrial or commercial facilities enjoy certain protection under 4th Amend. Curtilage area immediately surrounding home has long been given 4th Amend. protection as place where occupants have reasonable & legitimate expectation of privacy that society is prepared to accept. In contrast, an individual may not legitimately demand privacy for activities out of doors in fields, except in area immediately surrounding home. Oliver v. U.S. (1984), 466 U.S. 104 S. Ct. 1735, 1741, 80 L.Ed.2d 214. Intimate activities associated with family privacy & home & its curtilage do not reach outdoor areas or spaces between structures & buildings of manufacturing plants. Here, EPA conducted aerial overflights using high-powered cameras to take photographs of outside structures of chemical company's industrial complex. This area falls somewhere between "open fields" & curtilage. Held, open areas of industrial plant complex are more comparable to open field & as such are open to view & observation of persons in aircraft lawfully in public airspace immediately above or sufficiently near area for reach of cameras. Although photographs taken gave EPA more detailed information than naked-eye views, they did not reveal such intimate details as to raise constitutional concerns. Powell, joined by Brennan, Marshall, & Blackmun, CONCURS & DISSENTS.

TITLE: Troyer v. State

INDEX NO.: Z.1.c.

CITE: (3rd. Dist., 01-13-93), Ind. App., 605 N.E.2d 1183

SUBJECT: Warrantless search & seizure in open field is lawful

HOLDING: In interlocutory appeal, Ct. held that warrantless seizure of contraband from open field was proper. D attempted to hide growing marijuana by planting it in middle of cornfield. Police were contacted by confidential informant, who told them that it was growing there, & they subsequently found marijuana through aerial surveillance. After spotting marijuana, officer entered field where he encountered D. Police also seized number of marijuana plants at that time & did not obtain warrant prior to search or seizure.

Ct. rejected argument that Ind. Code 35-33-5-1 creates more restrictive approach to searches than required by Fourth Amend. Troyer relied on language in statute that "place," for purposes of requiring warrant, includes "any location where property might be secreted or hidden, including buildings, persons, or vehicles." Ind. Code 35-33-5-1(b). He then argued that because he attempted to "hide" marijuana, he had created legitimate expectation of privacy in otherwise open field. Although Ct. rejected argument, it also noted that because police had unobstructed view of marijuana from sky, argument would be inapplicable to D's situation.

Ct. also rejected contention that even if search were lawful, officers should have obtained a warrant before seizing marijuana. Ct. distinguished Sayre, App. 471 N.E.2d 708, noting that unlike house, automobile, or body, open field is not a constitutionally protected area.

RELATED CASES: Rook, App., 679 N.E.2d 997 (police officer's use of binoculars to view illegal activity of D in area behind his residence did not constitute impermissible warrantless search under Fourth Amendment or under Ind. Constitution, Art. 1, §11.)

TITLE: State v. Bryant

INDEX NO.: Z.1.c.

CITE: 950 A.2d 467 (Ver. 2008)

SUBJECT: Warrant needed for helicopter fly over searching for marijuana

HOLDING: Vermont Supreme Court held law enforcement officers needed to obtain a warrant before having a helicopter fly over residential property in search of marijuana. Relying on its state constitution, Court distanced itself from other courts that have emphasized surveillance aircrafts' operation in compliance with aviation regulations. Vermont's constitutional search and seizure provision is similar to the Fourth Amendment in that an individual's expectation of privacy is dependent on whether it is one society would consider "reasonable" in the circumstances. The U.S. Supreme Court in California v. Ciraolo, 476 U.S. 207 (1986) upheld an observation from an airplane at 1,000 feet as reasonable as well as a 400-feet observation by helicopter in the plurality opinion of Florida v. Riley, 488 U.S. 445 (1989). Here, Court found a significant difference in a helicopter "hovering over D's property at altitudes as low as 100 feet" and an airplane passing by a home on public thoroughfares. Court also questioned the Ciraolo court's failure to give any consideration to the heightened privacy expectations of a home and its curtilage. Decision looks at different approaches taken by several other state courts. Court "disagree[d] with those courts that would use the legality of an aircraft's position alone to evaluate the constitutionality of the surveillance conducted aboard it. . . Because FAA regulations allow helicopters to fly at any altitude 'if the operation is conducted *without hazard to persons or property on the surface*,' 14 C.F.R. ' 91.119 (emphasis added), the inevitable result of this reasoning - in the absence of more restrictive state aviation laws - is that the *dangerousness* of police surveillance may become the yardstick by which constitutional privacy protection is measured." Court concluded that a rule that turns on "whether a member of the public is abiding by the law in occupying a particular spot in the public airspace" is an adequate test of whether government surveillance from the same spot is constitutional. A Vermont statute requires aircraft to maintain an altitude of 500 feet over buildings. Court noted many factors relied on by other states and in Riley are relevant, but noted its past precedent has "recognized that Vermonters normally have high expectations of privacy in and around their homes."

TITLE: U.S. v. Dunn

INDEX NO.: Z.1.c.

CITE: 480 U.S. 294, 107 S. Ct. 1134, 94 L.Ed.2d 326 (1987)

SUBJECT: Open fields / curtilage

HOLDING: 4th Amend.'s protection accorded "persons, houses, papers, & effects" does not extend to open fields. Hester v. U.S. (1924), 265 U.S. 57, 59, 44 S. Ct. 445, 68 L.Ed. 898. 4th Amend. protects curtilage of house. Extent of curtilage is determined by factors that bear upon whether individual reasonably may expect area should be treated as home. Oliver v. U.S. (1984), 466 U.S. 170, 104 S. Ct. 1735, 80 L.Ed.2d 214. Central component of inquiry is whether area harbors intimate activity associated with sanctity of person's home/privacies of life. Curtilage questions should be resolved with particular reference to 4 factors: proximity of area claimed to be curtilage, whether area is included within enclosure surrounding home, nature of uses to which area is put, & steps taken to protect area from observations by passersby. Central inquiry is always whether area is so intimately tied to home that it should be placed under home's "umbrella" of 4th Amend. protection. Here, officers obtained warrant based upon information obtained when they trespassed on D's land & peered into barn. Court applies 4 factors noted above. First, Court finds barn was 50 yards from fence surrounding house, & 60 yards from house itself. Second, D's barn did not lie within area surrounding house that was enclosed by fence, & front part of barn was enclosed by its own fence. Third, "it is especially significant that law enforcement officials possessed objective data indicating barn was not being used for intimate activities of home." Fourth, D did little to protect barn area from observation by those standing in open fields. Held, barn was not within curtilage of home; officers could lawfully peer into barn from area outside barn which was open fields. Scalia CONCURS; Brennan, joined by Marshall, DISSENTS.

TITLE: U.S. v. Dunn

INDEX NO.: Z.1.c.

CITE: 480 U.S. 294, 107 S. Ct. 1134, 94 L.Ed.2d 326 (1987)

SUBJECT: Reasonable expectation of privacy in business premises / open fields

HOLDING: An open field is neither "house" nor "effect" under 4th Amend. "Government's intrusion upon the open fields is not one of those unreasonable searches proscribed by text of 4th Amend." Oliver v. U.S. (1984), 466 U.S. 170, 104 S. Ct. 1735, 80 L.Ed.2d 214. Erection of fences on open field does not create constitutionally protected privacy interest. "The term 'open fields' may include any unoccupied or undeveloped area outside the curtilage." Id. at 180, n.11. Here, officers obtained information used to procure warrant by crossing over D's ranch-style perimeter fence & over several similarly constructed interior fences, prior to stopping at locked front gate of barn where they observed drug laboratory. Officers never entered barn, nor did they enter any other structure on D's premises. Court rejects D's argument that even if barn was located outside home's curtilage, he possessed expectation of privacy in barn & its contents because barn is essential part of his business. There is no constitutional difference between police observations conducted while in public place & while standing in open fields. Oliver, Hester. Court assumes, but does not decide, that objects observed by officers lay within area protected by 4th Amend. Court finds this fact irrelevant. 4th Amend. has never been extended to require law enforcement officers to shield their eyes when passing by a home on public thoroughfares." CA v. Ciralo (1986), 476 U.S. ___, 106 S. Ct. 1809, 90 L.Ed.2d 210. Held, officers lawfully viewed interior of D's barn from "open fields," & their observations were properly considered by magistrate in issuing warrant. Scalia, CONCURS; Brennan, joined by Marshall, DISSENTS.

Z. SEARCH AND SEIZURE

Z.1. Protected Areas and Interests

Z.1.d. Abandoned property

TITLE: Berry v. State

INDEX NO.: Z.1.d.

CITE: (1st Dist. 07/18/91), Ind. App., 574 N.E.2d 960

SUBJECT: Search & seizure - abandoned property

HOLDING: It was not error to deny D's motion to suppress drugs retrieved from outside police car because they were not tainted by original unlawful pat-down search & were not product of "forced abandonment." D drove down wrong side of street, & officers stopped him due to traffic infraction, asked to see license which D couldn't produce, & had D exit his car to go to patrol car. Prior to placing D in patrol car, officer conducted pat-down search revealing bulge in pocket, & evidence of pat-down search was suppressed by Tr. Ct. because search was unlawful. D was then placed in patrol car's rear seat, gave one officer permission to search his car for registration, & told other officer his license was suspended. During search of D's car, apparent marijuana cigarette was found in ashtray, & as officer returned to patrol car, he saw D drop something outside rear window. Eventually, officers found bag of white powder by car underneath rear passenger door, another bag of white powder few inches under car, & clear plastic bag with 2 bags filled with orange pills. After this, bulge in D's pocket was gone, & officers arrested D & inventoried his car, finding several bags full of smaller bags & lots of twist ties. All parties agreed D was rightfully detained, Ct. also found officers justified in asking him to come to patrol car. Ct. additionally found that D consented to search of his car, thus making it lawful. D's case was distinguished from improper "forced abandonment" found in Pease, App., 531 N.E.2d 1207 in number of ways. D was unable to produce driver's license, thus warranting further investigation; he was arrested in high crime area with onlookers congregating; police were justified in removing D to patrol car; D gave permission for initial search of car; after officer found marijuana cigarette & D was arrested for driving with suspended license, search of trunk was warranted; & although Ct. granted motion to suppress frisk evidence, D did not renew objection at trial when State admitted such evidence. Ct. found improper frisk did not force D to abandon evidence found on ground outside police car. Although pat-down frisk was illegal; stop, search, & recovery of evidence from ground & D's car were proper. Held, convictions affirmed.

TITLE: Bryan v. State
INDEX NO.: Z.1.d.
CITE: 760 So.2d 246 (Fla. Ct. App. 2000)
SUBJECT: Abandonment -- Dropping Object When Approached by Armed Officers
HOLDING: A Florida Court of Appeals has held that a suspect does "abandon" an object, and thereby give up his privacy interest in it, by dropping it from his hand when approached by armed officers and told to "freeze." The majority found it reasonable for a person so approached to throw down an object, lest it be confused with some kind of a weapon and provoke a dangerous response from police.

TITLE: California v. Hodari
INDEX NO.: Z.1.d.
CITE: 499 U.S. 621, 111 S. Ct. 1547, 113 L.Ed.2d 690 (1991)
SUBJECT: Property abandoned while fleeing
HOLDING: Seizure of person does not occur for purposes of 4th Amend. when officer orders suspect to stop if suspect does not comply with order. Any contraband discarded during suspect's flight is abandoned property, thus, not subject to 4th Amend. constraints. Arrest requires either physical force, or, where that is absent, submission to assertion of authority. "A person has been seized within the meaning of the 4th Amend. only if, in view of all circumstances surrounding the incident, a reasonable person would have believed that he was not free to leave." U.S. v. Mendenhall (1980), 446 U.S. 544, 554, 100 S. Ct. 1870, 64 L.Ed.2d 497. Mendenhall states necessary condition establishing seizure, but not sufficient condition. Here, police saw 4-5 youths huddled near car parked at curb. When they saw police, youths took off running & car sped off. D turned around while running, saw officer nearly upon him & tossed away small rock which turned out to be crack cocaine. Officer tackled him & discovered \$130 cash & pager. Held, assuming officer's pursuit was "show of authority" enjoining D to halt since D did not comply, he was not seized until tackled. Cocaine discarded while D was running was abandoned & not fruit of seizure. Motion to suppress properly denied. Stevens & Marshall DISSENTING.

RELATED CASES: Torres v. Madrid, 141 S. Ct. 989 (U.S. 2021) (the application of physical force to the body of a person with intent to restrain is a seizure, even if the force does not succeed in subduing the person; see full review at Z.7.a).

TITLE: Commonwealth v. Straw
INDEX NO.: Z.1.d.
CITE: 422 Mass. 756; 665 N.E.2d 80 (Mass. 1996)
SUBJECT: Abandoned Evidence -- Tossing into Own Yard
HOLDING: Suspect did not abandon briefcase by tossing it into his own backyard as police arrived to serve warrant for his arrest. Fenced yard was part of home's curtilage, and suspect retained expectation of privacy. Officer who observed briefcase's flight from window could legally seize it pursuant to suspect's valid arrest. However, search warrant was required to open briefcase. Contents of briefcase, as well as statements to police which were direct result of unlawful search of briefcase, must be suppressed.

TITLE: Joseph v. State

INDEX NO.:

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CITE: 145 P.3d 595 (Alaska Ct. App. 2006)

SUBJECT: Alaska rejects Hodari D. on seizure

HOLDING: The Alaska Court of Appeals joined the many state courts that have rejected, as a matter of state constitutional law, the rule from California v. Hodari D., 499 U.S. 621 (1991), that a suspect is not "seized" for purposes of the Fourth Amendment until he submits to an officer's show of authority or is physically restrained. The Court held in Castle v. State, 999 P.2d 169 (Alas. Ct. App. 2000), that the Fourth Amendment exclusionary rule requires the suppression of evidence obtained by police as the result of a crime committed by a suspect while fleeing from an unlawful stop. The Court acknowledged that its failure to mention Hodari D. in that case was a mistake, but it stood by its earlier decision to apply the exclusionary rule to fruits of unlawful police attempts to detain citizens. It noted that more than a dozen state courts have similarly rejected Hodari D. as a matter of state constitutional law. "We agree with these other states that the United States Supreme Court has adopted an interpretation of the Fourth Amendment and the exclusionary rule that fails to adequately safeguard our citizens' right to privacy, that fails to adequately protect citizens from unwarranted government intrusion, and that unjustifiably reduces the incentive of police officers to honor citizens' constitutional rights."

TITLE: Miller v. State
INDEX NO.: Z.1.d.
CITE: (2d Dist. 10/6/86), Ind. App., 498 N.E.2d 53
SUBJECT: Abandoned property

HOLDING: Sawed-off shotgun found in gym bag was properly admitted where D abandoned bag. Here, D was carrying gym bag when stopped by school counselors. D & friend were walking away from school following disturbance in building. When police officers approached D, D walked 6 feet & set gym bag in front of companion. When officer asked if gym bag belonged to D, D said it was his friend's. Ct. finds D purposefully disassociated himself from bag & contents, which supports finding of abandonment. Abandoned property is subject to lawful seizure by police. Gipson 459 N.E.2d 366. Abandonment requires voluntary relinquishment of possession or control of property under circumstances that indicate D retained no justified expectation of privacy in it. [Citations omitted.] Abandonment can be found from disclaimer of ownership in response to police questioning. [Citations omitted.] Test applied is an objective one, considering words used, conduct exhibited & other objective facts such as where & for what length of time property is relinquished & condition of property. [Citation omitted.] Held, conviction for possession affirmed.

RELATED CASES: Campbell, App., 841 N.E.2d 1165 (handgun was abandoned when, after police shined spotlight on D, he threw it underneath car he was standing behind); Gooch, App., 834 N.E.2d 1052 (only after D tossed bag did officer use force to restrain & handcuff D; thus, bag was subject to lawful seizure by police when he tossed it to ground. Moreover, D had not been "seized" at time he tossed bag of cocaine, so drugs were not product of illegal seizure); Wilson, App., 825 N.E.2d 49 (Where D had not been "seized" at time he dropped black cloth bag containing cocaine, the bag was not the product of a seizure & was properly admitted into evidence over D's Fourth Amendment objection. Abandoned property is not subject to Fourth Amendment protection); Machlah, App., 505 N.E.2d 873 (police searched suitcase in which D had privacy interest; after marijuana was found, D said "that's not my suitcase;" Ct. distinguishes Miller, App., 498 N.E.2d 53, in which D placed gym bag at companion's feet & walked away before police searched bag; held, suppression upheld; case contains excellent discussion of case law); McDonald, 100 F.3d 1320 (7th Cir.) (D's denial that bags were hers constituted abandonment).

TITLE: State v. Dunn
INDEX NO.: Z.1.d.
CITE: 653 N.W.2d 688 (N.D. 2002)
SUBJECT: Abandoned Property -- Jacket Found Outside Scene of Party Not Abandoned
HOLDING: Jacket found on ground outside home where large, loud party was going on was not abandoned for 4th Amendment purposes. Officers were called to home due to loud party, found jacket on ground outside, and searched jacket without asking whether it belonged to anyone inside home.

TITLE: State v. Reed

INDEX NO.: Z.1.d.

CITE: 182 N.C. App. 109, 641 S.E.2d 320 (N.C. App. 2007)

SUBJECT: Discarded cigarette on one's own curtilage

HOLDING: The North Carolina Court of Appeals held that DNA evidence harvested from a cigarette butt police retrieved after D carelessly flicked it toward a pile of trash on the patio of his apartment while talking with the officers should have been suppressed as the fruit of an unlawful warrantless seizure. Police visited D at his home to question him about a sex offense. He refused to give them a requested DNA sample for comparison with a sample taken from the victim. Saying he was a viewer of the television police forensics drama *CSI*, D took the butt of a cigarette he had been smoking, shredded it, and placed the remains in his pocket, saying the officers would not get his DNA that way. However, the officers subsequently retrieved the butt of a second cigarette that D, forgetting his *CSI* training, had carelessly cast in the direction of a pile of trash sitting on his patio. Court ruled that the warrantless seizure of the butt that enabled the officers to get the DNA evidence was unreasonable under the Fourth Amendment. Because the trash on the patio was within the curtilage of D's home, he retained a reasonable expectation of privacy in it. Court explained that police may lawfully search an individual's garbage without a warrant only when it is apparent that he has forfeited his expectation of privacy in it - such as when it has been placed in a public area for collection and pickup. Here, Court noted the garbage was not placed in public view or in a place for pick up in the usual manner. Court added that the cigarette butt was not abandoned, saying "one simply cannot abandon property within the curtilage of one's own home."

TITLE: U.S. v. Garzon

INDEX NO.: Z.1.d.

CITE: 119 F.3d 1446 (10th Cir. 1997)

SUBJECT: Search -- Abandoned Property

HOLDING: As matter of law, D did not abandon pair of backpacks by leaving them on bus after narcotics officer boarded bus during scheduled stopover and ordered all passengers to exit bus with their luggage and pass it in front of drug-sniffing dog. Officer had no legal authority to order passengers off bus with their luggage, so that D's decision to ignore unlawful order cannot be relied upon as basis for finding abandonment. D relied on driver's prior announcement that passengers could leave their luggage on bus during stopover. Officer did not ask D whether bags were his, so D did not even have opportunity to deny ownership. Held, backpacks and their contents should have been suppressed.

TITLE: U.S. v. Stephens

INDEX NO.: Z.1.d.

CITE: 206 F.3d 914 (9th Cir. 2000)

SUBJECT: Bus Search -- Involuntary Abandonment

HOLDING: In circumstances surrounding officers' encounter with D on inter-city bus, particularly their failure to announce that passengers were free to remain on bus and still not answer questions, turned encounter into "seizure" of D for 4th Amendment purposes. Seizure was unconstitutional and rendered D's abandonment of gym bag involuntary. In context of bus encounter, seizure inquiry is not whether individual would feel free to leave, but rather whether she would feel free to decline officers' requests or otherwise terminate encounter. Florida v. Bostick, 501 U.S. 429 (1991). Officers were positioned at three places in bus aisle, nearly blocking exit, and told passengers they were free to leave bus but not that they were free to otherwise refuse to answer officers' questions. Particularly in light of U.S. Supreme Court's recent decision in Illinois v. Wardlow, 66 CrL 306 (2000), holding that unprovoked flight from police in high crime area created grounds for Terry stop, choice between staying and participating in search or leaving bus was no choice at all.

TITLE: Wilson v. State
INDEX NO: Z.1.d.
CITE: (05-09-12), 966 N.E.2d 1259 (Ind. Ct. App 2012)
SUBJECT: Warrantless vehicle search – abandonment
HOLDING: Tr. Ct. did not err by admitting evidence of items discovered during a warrantless search of D's vehicle that occurred after a police officer stopped the vehicle and D fled from it. Abandoned property is not subject to Fourth Amendment protection. Wilson v. State, 825 N.E.2d 49 (Ind. Ct. App 2005).

Here, evidence showed that D abandoned his vehicle after a traffic stop and before police officer searched it. He attempted to refute this evidence of abandonment by noting that he locked the vehicle and took the keys with him. Court found this argument unpersuasive because officer did not know where the keys were and fact that vehicle was locked does not necessarily negate a reasonable inference that D abandoned it. Thus, D relinquished any reasonable expectation of privacy in the vehicle. Held, judgment affirmed.

RELATED CASES: Hines, 981 N.E. 2d 150 (Ind. Ct. App 2013) (seizure of firearm was not protected by the Fourth Amendment because D abandoned it when he tossed it as he fled from officers, who had reasonable suspicion of criminal activity to detain D based on information from witnesses of a shooting they were investigating, the observation that D left a drug house, and fact that he fled when officers approached him to speak); Hall, 975 N.E.2d 401 (Ind. Ct. App 2012) (ample evidence of abandonment in D's case is even stronger than in Wilson, where D not only was trying to disassociate himself with car he left in middle of field after high-speed chase, but also did not reasonably expect the car to remain intact, as he left it with active methamphetamine lab inside).

Z. SEARCH AND SEIZURE

Z.1. Protected Areas and Interests

Z.1.e. Jail/prison

TITLE: Bell v. Wolfish
INDEX NO.: Z.1.e.
CITE: 441 U.S. 520, 99 S. Ct. 1861, 60 L.Ed.2d 447 (1979)
SUBJECT: Protected areas & interests - Jail / prison
HOLDING: Requirement that pretrial detainees remain outside their rooms during routine "shake-down" inspections by prison officials did not violate Fourth Amendment, but simply facilitated safe & effective performance of searches. Balancing significant & legitimate security interests of institution against inmate's privacy interests, Ct. also held that practice of visual body-cavity searches of pretrial detainees did not violate Fourth Amendment. Such searches could be conducted on less than probable cause & were not unreasonable. Simply because prison inmates retain certain constitutional rights does not mean that those rights are not subject to restrictions & limitations, but there must be mutual accommodations between institutional needs & objectives & provisions of Constitution that are of general application. This principle applies equally to pretrial detainees & convicted prisoners. Held, judgment reversed & remanded; Powell, Marshall, Stevens, & Brennan, JJ., dissenting.

TITLE: Cleary v. State

INDEX NO.: Z.1.e.

CITE: (5th Dist., 4-9-96), Ind. App., 663 N.E.2d 779

SUBJECT: No expectation of privacy in jail cell

HOLDING: Tr. Ct. did not err in admitting belt seized without warrant from D's jail cell. Belt was alleged to have been stolen from victims' house & was admitted as rebuttal evidence. D compared jail cell to motel room & argued that he had reasonable expectation of privacy in his cell because it was transitory place of residence. However, in Perkins v. State, 483 N.E.2d 1379 (Ind. 1985), Ct. held that prison inmate does not have reasonable expectation of privacy in his cell entitling him to Fourth Amendment protection against unreasonable searches & seizures. Following reasons set forth in Perkins, Ct. held that right to privacy is incompatible with need to maintain security within jail. Held, no error.

TITLE: Perry v. State
INDEX NO.: Z.1.e.
CITE: (1st Dist. 3/31/87), Ind. App., 505 N.E.2d 846
SUBJECT: Jail authorities may read correspondence between inmates
HOLDING: Tr. Ct. did not err in admitting into evidence letter written by Perry to co-D, also incarcerated in county jail. Here, D secreted letter in pages of magazine. Deputy had right to search contents of envelope for contraband. Ind. Code 11-11-3-4 prohibits correspondence between fellow inmates unless prior approval is obtained. If not obtained, letters may be read by jail authorities. Case contains good discussion of 4th Amend. implications surrounding reading of inmate mail, *citing* cases from IN & other states. Held, conviction affirmed.

TITLE: United States v. Oakley

INDEX NO.: Z.1.e.

CITE: 731 F. Supp. 1363 (S.D. Ind. 1990)

SUBJECT: Protected areas and interests - Jail / prison

HOLDING: Government may base decision to conduct warrantless search of prisoner's body on legitimate concerns about that prisoner's health. Here, D was inmate at federal penitentiary when he received visit from his girlfriend. FBI had tip that D would be getting drugs from his girlfriend during visit. D was seen reaching into his girlfriend's pocket and placing something from the pocket into his mouth. After visit, D was placed in "dry cell" until contraband passed through his system. After four days, contraband had not passed through D's system, D became ill and was taken to hospital where he consented to X-ray. D then spent another ten days in "dry cell". One week later, non-consensual rectal exam resulted from two balloons full of drugs being removed from D. U.S. magistrate later issued warrant authorizing laxatives, local anesthetic, or colonoscopy to remove remaining contraband from D. Laxatives were administered to D who passed remaining contraband one day later. Warrantless search of D's body was justifiable because there were legitimate concerns about D's health. Health concerns were regarding possible poisoning of D from contraband secreted on his person. Held, motion to suppress denied.

Z. SEARCH AND SEIZURE

Z.2. Search Warrant (Ind. Code 35-33-5)

TITLE: Brannon v. State

INDEX NO.: Z.2.

CITE: (1st Dist., 1-16-04), Ind. App., 801 N.E.2d 750

SUBJECT: Authority of judge from neighboring county to issue search warrant

HOLDING: Tr. Ct. did not err in concluding that Vermillion County judge had jurisdiction & authority to issue a Parke County search warrant docketed in Parke County. Ind. Code 35-33-5-7 specifically states that a search warrant issued by a Ct. of record may be executed "anywhere in the state." While charges against D were filed in Parke County, the warrant issued by judge as Vermillion Circuit judge was nonetheless valid. Clark v. State, 380 N.E.2d 550 (Ind. 1978). D did not argue that Vermillion County judge was not neutral or detached, or that he was incapable of making probable cause determination. Fact that judge failed to cross out "Parke County" & write in "Vermillion County" on warrant form was minor technical anomaly & did not invalidate an otherwise valid search warrant. When a circuit Ct. judge is unavailable, & no judge pro tempore has been appointed, there is no reason why judge of a neighboring county may not review probable cause affidavit & issue search warrant. Held, denial of motion to suppress affirmed; Robb, J., dissenting, argued that provisions of Trial Rule 63 regarding appointment of judge pro tempore should have been followed, or attempted to be followed in this case. Dissent believes that to overlook form of search warrant in this case presents too great an opportunity in future cases for "forum shopping" for a judge favorable to one's position.

RELATED CASES: Elvers, 22 N.E.3d 824 (Ind. Ct. App 2014) (search warrant was valid even though it had a subheading reading "AFFIDAVIT FOR SEARCH WARRANT," which Ct. concluded was a minor technical anomaly).

TITLE: Heuring v. Goble

INDEX NO.: Z.2.

CITE: (2-20-2020), 140 N.E.3d 270, (Ind. S. Ct.)

SUBJECT: Search warrant affidavits based on missing GPS tracking device were so lacking in indicia of probable cause that good-faith exception to exclusionary rule did not apply

HOLDING: Search warrants for Defendant's home and father's barn were invalid because the affidavits did not supply probable cause that a missing GPS device police had planted on Defendant's vehicle was stolen. The affidavits were so lacking in probable cause that the good-faith exception to the exclusionary rule did not apply; thus evidence seized from both the initial search and subsequent search must be suppressed as "fruit of the poisonous tree." Law enforcement obtained a warrant to place a GPS tracking device on Defendant's car. When the device stopped transmitting information and the officers could not determine why, they obtained a warrant to search Defendant's home and his father's barn for evidence of the device's theft. During those searches, officers discovered drug evidence and obtained additional warrants on that basis. The Indiana Supreme Court held that the initial search warrants were invalid because the affidavits did not supply probable cause that the GPS device was stolen. Specifically, the affidavits lacked information that any control over the device was knowingly unauthorized or that there was intent to deprive the sheriff's department of the tracker's value or use. The affidavits were so lacking in indicia of probable cause that the good-faith exception to the exclusionary rule does not apply. In so holding, the Court noted the exclusionary rule is also meant to deter "reckless" conduct by police and that the search here was based on nothing more than a hunch that a crime had been committed and was reckless.

TITLE: Ryder v. State

INDEX NO.: Z.2

CITE: (06/29/2020) 148 N.E.3d 306 (Ind.)

SUBJECT: Filing requirement for search warrant satisfied where signing judge certified that probable cause affidavit had been delivered to her at time of warrant's authorization

HOLDING: A blood-draw search warrant application satisfied the filing requirement of Ind. Code § 35-33-5-2(a) because the signing judge's uncontroverted certification that an affidavit had been delivered to her at the time of the warrant's authorization established that the filing requirement had been satisfied. Police arrived at an early morning crash to find that Defendant had been driving the wrong way on I-465. After refusing a breath test, Defendant was taken to the arrestee processing center, but no judge was available to sign a warrant for a blood draw. So, the state trooper called a local judge who met him at a gas station to review the probable cause affidavit and proposed warrant for blood draw. A warrant was obtained. Defendant was taken to the hospital for a blood draw. The probable cause affidavit and warrant were not file-stamped with the clerk until four hours later. Defendant moved to suppress the results of the blood draw, arguing the results were obtained in violation of Ind. Code § 35-33-5-2 (warrant requirement statute), the Fourth Amendment and Article one, section 11 of the Indiana Constitution. Defendant argued the search warrant was unauthorized because it was obtained prior to an affidavit being filed with the judge, in violation of Ind. Code 35-33-5-2. Trial court granted Defendant's motion to suppress, which was affirmed by a divided panel of the Indiana Court of Appeals. On transfer, the Indiana Supreme Court unanimously reversed and remanded, finding that the warrant-authorizing judge certified contemporaneously, and in writing, that the probable cause affidavit had been properly filed with her when the search warrant was issued. Second, the court held that even if the affidavit was filed a few hours after it was presented to the authorizing judge — as the trial court found — it was still valid under Indiana's substantial compliance filing doctrine and suppression of evidence obtained from the search warrant was not justified. The justices unanimously ruled that the filing requirement was actually met in Defendant's case, and four justices agreed that the filing requirement was substantially met. Justice Slaughter concurred as to the first finding and in the judgment without writing separately. The Court stated: "We hold that the blood-draw search warrant application satisfied the filing requirement under Indiana Code subsection 35-33-5-2(a) because the signing judge's uncontroverted certification that an affidavit had been delivered to her at the time of the warrant's authorization established that the filing requirement had been satisfied. Alternatively, even if the warrant application was 'filed' four hours late, the tardy submission still constitutes substantial compliance with the filing requirement."

TITLE: State v. Goble
INDEX NO.: Z.2
CITE: 945 P.2d 263; 88 Wash. App. 503 (Wash. App. 1997)
SUBJECT: Anticipatory Warrant -- Lack of Connection Between Drug Shipment, Home
HOLDING: Anticipatory warrant for search of D's home was invalid for lack of probable cause to believe that the item to be seized, a package containing drugs, would be taken from the D's post office box to his home. Future presence of drugs at D's home was not reasonably inferable from facts before the magistrate issuing the warrant.

TITLE: Sisk v. State

INDEX NO.: Z.2

CITE: (2nd Dist., 3-18-03), Ind. App., 785 N.E.2d 271

SUBJECT: Search pursuant to warrant upheld - wrong name of person in warrant

HOLDING: Tr. Ct. did not err in denying D's motion to suppress. Place to be searched was described by address & physical appearance, & items to be seized were clearly specified. However, D argued that detective's insertion of name "Antonio Hardin" without photographic verification by confidential informant tainted probable cause determination & invalidated warrant. In Snedegar v. State, 198 Ind. 182, 150 N.E. 367 (1926), Court held that search warrant was not invalid or ensuing search illegal because warrant wrongly named owner of premises as owner of distilling apparatus. Authorization to search person of "Antonio Hardin" granted by challenged warrant did not thereby grant officers unbridled discretion to conduct general exploratory search prohibited by Fourth Amendment. Warren v. State, 760 N.E.2d 608 (Ind. 2002). Officers were authorized to search premises & curtilage of specific address & to seize cocaine & related items. They conducted their search accordingly. D was arrested not due to misapprehension that he was Antonio Hardin. Held, judgment affirmed.

Z. SEARCH AND SEIZURE

Z.2. Search Warrant (Ind. Code 35-33-5)

Z.2.a. Nature of Search Warrant

TITLE: Newby v. State
INDEX NO.: Z.2.a.
CITE: (4th Dist., 10-30-98), Ind. App., 701 N.E.2d 593
SUBJECT: Anticipatory search warrant - occurrence of condition precedent alone cannot form basis for probable cause
HOLDING: Anticipatory search warrant is search warrant based upon probable cause to believe that at some future time, but not currently, items sought will be located at particular place. 79 C.J.S. Searches & Seizures ' 172, at 260. Article I, ' 11 of Indiana Constitution & Ind. Code 35-33-5-1 & -2 require that probable cause exist before warrant is issued. Although search warrant may contain conditions precedent which must occur prior to its execution, those conditions should appear within four corners of warrant & warrant must be supported by probable cause at time it is issued. Warrant which relies on occurrence of future event to supply requisite probable cause is deficient on its face. Ind. Code 35-33-5-2(a)(2)(A).

Here, affidavit for search warrant, which relied on hearsay statements, did not contain facts sufficient to establish informant's credibility. Nor did officers corroborate any information relayed to them by informant that connected D with alleged unlawful activity. Considering totality of circumstances, Ct. concluded that determination of probable cause in this case lacked substantial basis & that search of D's residence was unlawful. Further, good faith exception to exclusionary rule did not apply because: 1) affidavit contained critical & misleading representation that informant had provided reliable information in past & 2) affidavit did not contain all relevant information & circumstances necessary for independent, neutral & detached judicial determination of probable cause. Thus, Tr. Ct. erred in denying D's motion to suppress evidence obtained as result of illegal search. Held, reversed & remanded.

RELATED CASES: Wendt, App., 876 N.E.2d 788 (where officer provided correct, but incomplete information concerning reliability of informant, the officer was not acting with reckless disregard & good faith exception applied); Ware, App., 859 N.E.2d 708 (it is improper for police to mislead judge by failing to disclose evidence questioning informant's credibility); Rios, App., 762 N.E.2d 153 (anticipatory search warrant for delivery residence & persons present therein, was not deficient because affidavit plainly stated that law enforcement authorities believed that package contained cocaine, which had been examined pursuant to search warrant, & was being shipped to D, which permitted reasonable inference that D may have been trafficking controlled substances); Marchetti, App., 725 N.E.2d 934 (probable cause existed at time of issuance of warrant where package was addressed to D and contained narcotics; court declined to follow dicta of Newby suggesting anticipatory search warrants are invalid in Indiana).

Z. SEARCH AND SEIZURE

Z.2. Search Warrant (Ind. Code 35-33-5)

Z.2.b. Requirements for obtaining

TITLE: Abd v. State

INDEX NO.: Z.2.b.

CITE: (3/19/2019), (Ind. Ct. App. 2019)

SUBJECT: Failure to place electronic signature directly next to verification did not render probable cause affidavit deficient

HOLDING: Fact that detective did not place his electronic signature directly next to his verification did not render his probable cause affidavit deficient. D argued the search warrant was defective because it was based on an unsworn affidavit. The search warrant packet contained an unsigned, pre-printed verification on the electronic submission form. The detective's signature appeared at the end of the probable cause affidavit, but there was no oath or affirmation above or below the detective's signature, or anywhere else in the probable cause affidavit. Court held that the search warrant packet as a whole met the requirements of the search warrant statute, Ind. Code § 35-33-5-2, because there was both a verification and a signature somewhere in the packet. Nothing in the search warrant statute requires that an affiant's signature appear directly under the verification.

TITLE: Bradley v. State
INDEX NO.: Z.2.b.
CITE: (03-02-93), Ind., 609 N.E.2d 420
SUBJECT: Affidavit insufficient to obtain proper search warrant
HOLDING: Probable cause affidavit was insufficient to support search warrant because it did not contain reliable information establishing credibility of source & of each of hearsay declarants used to establish factual basis for information, nor information that totality of circumstances corroborated hearsay. Two victims were robbed in their motel room. Robber took women's purses, jewelry, & luggage, & broke one woman's finger in process. After assailant left, women notified police & described attacker. Subsequently, detective got anonymous call saying D had committed robbery. Officer obtained search warrant, went to D's home, & found several pieces of missing jewelry.

In affidavit, officer stated he had learned from reliable persons that certain property from robbery was located at D's house. He stated informant (CI) told him that he knew armed robbery had taken place at motel room previous Friday or Saturday; that black male displaying weapon forced his way into room of two older white women; that luggage, jewelry, cash & credit cards were taken & one lady was injured, & that D committed robbery. CI gave officer D's address & said D had prior history of robbery arrests. Officer stated information was reliable because it was consistent with facts of robbery, & there had been no publicity of incident prior to phone call. Additionally, officer checked criminal histories & found D with name given by CI, living at address given & having prior history of robbery arrests.

Ct. found affidavit deficient because it did not establish credibility of source, & although it twice stated CI was reliable, in fact, CI was anonymous. Issuing ct. had no reason to credit affiant's allegation of reliability, because there was no information to justify assertion & no information establishing factual basis for tip. There were no facts to support officer's conclusions that information was within CI's personal knowledge. Fact that person with D's name resided at address given in tip, & that crime fitting description of one related by CI had actually occurred, did not constitute probable cause to believe caller was telling truth. Corroboration only confirmed easily obtainable facts & conditions at time of tip. Although officer did not relate details of crime to anyone, he could not state that victims or other personnel did not do so. Information did not provide connection between crime & D or between stolen property & place to be searched, & therefore affidavit was insufficient to establish probable cause for search warrant. Ct. refused to apply good faith exception to warrant requirement, because officer could not have had reasonable belief in validity of warrant based on affidavit that misrepresented anonymous CI as reliable & was otherwise lacking in indicia of probable cause. Denial of motion to suppress was not harmless error because identification of D was questionable & other incriminatory statements were recanted at trial. Held, reversed & remanded for new trial, Givan, J., dissenting.

RELATED CASES: Hirshey, App., 852 N.E.2d 1008 (good faith did not apply because affidavit upon which probable cause rested was so lacking in probable cause as to render an official belief in the existence of the warrant unreasonable); Bryant, App., 655 N.E.2d 103 (Ct. found reversible error in admitting evidence seized pursuant to invalid search warrant; supporting affidavit contained entirely speculative & misleading assertions & was based on questionable conclusions made by investigating officers).

TITLE: Cutter v. State

INDEX NO.: Z.2.b.

CITE: (2nd Dist., 2-15-95), Ind. App., 646 N.E.2d 704

SUBJECT: Search warrant - telephonic probable cause hearing

HOLDING: Ct. rejected numerous challenges to validity of search warrant, holding that: 1) warrant was issued in "substantial compliance" with requirements for taping telephonic probable cause hearings pursuant to Ind. Code 35-33-5-8, despite fact that prosecutor rather than judge taped hearing; 2) search warrant was supported by probable cause, despite hearsay character of police officers' statements obtained in course of investigation; & 3) failure to complete attestation & certification requirements at or near time of issuance of warrant does not necessarily compromise purpose of those procedures. Here, relevant persons & officials present attested to accuracy of their representations, record of proceedings, & presence of probable cause. In so holding, Ct. rejected D's argument that signature & certification requirement must be completed within 10- day deadline for execution of search warrants under Ind. Code 35-33-5-7(b)(1). Held, judgment affirmed.

RELATED CASES: Timmons, App., 723 N.E.2d 916, *rev'd* on unrelated issue at 734 N.E.2d 1084 (where telephonic probable cause hearing did not comply with Ind. Code 35-33-5-8 in almost every aspect, resulting arrest warrant was considered non-existent).

TITLE: Green v. State

INDEX NO.: Z.2.b.

CITE: (3rd Dist., 1-30-97), Ind. App., 676 N.E.2d 755

SUBJECT: Search warrant - issued by neutral & detached magistrate

HOLDING: Trial judge did not err in failing to recuse himself where, prior to probable cause hearing, third party gave judge information related to issuance of search warrant. State must obtain search warrant from neutral, detached judge or magistrate except under narrowly defined exceptions. Jones v. State, 655 N.E.2d 49 (Ind. 1995), rehearing denied. Neutrality requires severance & disengagement from activities of law enforcement. Shadwick v. City of Tampa, 407 U.S. 345, 92 S. Ct. 2119 (1972), but requirement is not constitutional mandate that judge have no contact with or knowledge of case or D. Indiana law presumes that judge is unbiased in matters before Ct., & only personal prejudice for or against party will disqualify judge. Jones v. State, 416 N.E.2d 880 (Ind. Ct. App. 1981). Here, after receiving information that D was involved in sexual exploitation of child, State obtained search warrant to search D's photography studio & apartment. Prior to probable cause hearing, judge was approached in hallway by third party & shown photographs related to subject of search warrant. D argued that search warrant was invalid because judge was not sufficiently neutral & detached. However, D failed to allege specific instance where judge's rulings were based upon matters learned from contact with third party. Ct. found that mere allusion to potential areas of bias or prejudice is insufficient to warrant disqualification of judge, & D failed to show impairment of judge's neutrality. Held, judgment affirmed.

TITLE: Moseby v. State
INDEX NO.: Z.2.b.
CITE: 872 N.E.2d 189 (Ind. Ct. App. 2008)
SUBJECT: Filing of affidavit and search warrant before search is executed
HOLDING: Ind. Code 35-33-5-2(a) requires law enforcement officers to file with the judge a probable cause affidavit and warrant for search or arrest before the search is executed. On interlocutory appeal of denial of motion to suppress, D argued that search warrant was invalid because the affidavit was not filed with the county clerk until fifteen days after the warrant was issued. Court held that because officer left a copy of the affidavit with the issuing judge on the day the warrant was issued, he complied with Ind. Code 35-33-5-2(a). The statutory requirement to "file with the judge" is satisfied by leaving the affidavit with the judge's staff. See Wilson v. State, 263 Ind. 469, 333 N.E.2d 755 (1975).

Further, D was not prejudiced by officer's failure to file probable cause affidavit for search warrant with Clerk of Court until two weeks after search. When police executed warrant, they provided a copy to D informing him that a copy of the warrant and affidavit had been left with an officer of the court. If D desired a copy of the affidavit prior to initial hearing, he could have obtained one from judge's staff. Held, judgment affirmed.

TITLE: State v. Davis

INDEX NO.: Z.2.b.

CITE: (5th Dist., 5-15-02), Ind. App., 770 N.E.2d 338

SUBJECT: Telephonic search warrant invalid - no recorded conversation

HOLDING: Tr. Ct. properly granted D's motion to suppress evidence seized from his residence, because telephonic warrant conversation between police officer & judge was not recorded, resulting in near total failure to comply with procedures set out in Ind. Code 35-33-5-8. Because officer failed in his attempt to record telephone conversation with judge, State could not demonstrate whether: 1) officer recited & verified facts under penalty of perjury, 2) read to judge from warrant form, or 3) whether judge directed officer to modify warrant, all of which are explicitly required by Ind. Code 35-33-5-8(b). Further, because there was no tape recording, Ct. reporter could not transcribe conversation & judge could not certify audiotape & transcription for entry into record, all of which are required by Ind. Code 35-33-5-8(d). As a result, Ct. reporter could not notify officer when transcription was entered into record, thus officer could not fulfill his obligation to affix his signature to that transcription. Ind. Code 35-33-5-8(f). Given near total failure to comply with procedures set out in statute, warrant in this case is appropriately characterized as nonexistent. Timmons, App., 723 N.E.2d 916, *aff'd* in part, *rev'd* in part on rehearing by 734 N.E.2d 1084.

Ct. rejected State's argument that evidence obtained from D's residence should not be suppressed because officer's actions fell within "good-faith exception" to exclusionary rule. Search warrant was neither "properly issued," which is required by Ind. Code 35-37-4-5, nor was it "free from obvious defects." Although erroneous procedure followed in this case was not deliberate, search warrant failed to comply with virtually all requirements for telephonic search warrants. Without audiotape, which is centerpiece of statute, neither Tr. Ct. nor Ct. App. can verify whether warrant was properly issued or whether such search was executed in objective good faith reliance on warrant. Under circumstances, there was no legitimate factual basis to support good faith belief that warrant was valid. Held, judgment affirmed.

RELATED CASES: Creekmore, App., 800 N.E.2d 230 (good faith exception allowed police to rely on addendum to search warrant which was not recorded); Volz, App., 773 N.E.2d 894 (because of incomplete recording, neither validity of warrant nor officer's reasonable belief that warrant was valid is capable of independent verification through judicial review; thus, good faith exception did not apply).

TITLE: State v. Brown

INDEX NO.: Z.2.b.

CITE: (4th Dist., 01-17-06), Ind. App., 840 N.E.2d 411

SUBJECT: Search warrant invalid where unsupported by sworn testimony

HOLDING: Tr. Ct. properly suppressed evidence seized as a result of a warrant, where police officer was not sworn under oath when she testified at probable cause hearing. An oath or affirmation is a condition precedent to a properly issued search warrant under Indiana warrant statute. Ind. Code 35-33-5-1(a) states that a court may issue warrants only upon probable cause, supported by oath or affirmation. State argued that although warrant was defective, good faith exception to exclusionary rule rendered search of D's residence valid & evidence seized during that search admissible because officers who executed warrant reasonably believed it was valid. As in State v. Davis, 770 N.E.2d 338 (Ind. Ct. App 2002), Court held that good faith exception did not apply, because warrant unsupported by sworn testimony was not properly issued, as required by Ind. Code 35-33-5-1(a). Court cannot ignore plain meaning of words "oath or affirmation" & "sworn testimony" in the warrant statute. No Indiana judge, attorney, or qualified law enforcement officer could have a reasonable belief that a warrant issued without sworn testimony was valid. Held, judgment affirmed.

RELATED CASES: Abd, 120 N.E.3d 1126 (Ind. Ct. App. 2019) (fact that detective did not place his electronic signature directly next to his verification did not render his probable cause affidavit deficient because nothing in search warrant statute requires that an affiant's signature appear directly under the verification; see full review, this section).

TITLE: State v. Dills
INDEX NO.: Z.2.b.
CITE: 514 S.E.2d 917 (Ga. Ct. App. 1999)
SUBJECT: Search Warrant -- Particularized Description of Person and Place to Be Searched
HOLDING: Warrant authorizing search of D and his home, and which listed D only by name, did not authorize search of D's person at his place of employment. Warrant contained description of D's house and directions for locating it, but listed D only by name. To execute warrant, officers went to D's job-site, told him they had warrant to search his home, asked him to accompany them to his home, and asked him to empty his pockets. Noticing a bulge in one of D's pockets, an officer patted him down and determined that the bulge felt like a pill bottle, which he then seized. D moved to suppress contents of pill bottle, on grounds that the warrant did not authorize search of his person away from his home. Tr. Ct. denied, but Ga. Ct. App. reverses, holding that the search of the D at his workplace exceeded the scope of the warrant, which only authorized a search at his home.

TITLE: State v. Felker
INDEX NO.: Z.2.b.
CITE: (1st Dist., 12-29-04), Ind. App., 819 N.E.2d 870
SUBJECT: Invalid search warrant - based on facts obtained through illegal seizure
HOLDING: Tr. Ct. correctly determined the information on which State's request for search warrant was based was obtained illegally & therefore could not be basis for probable cause required for issuance of a search warrant. Facts obtained through an illegal procedure violating constitutional rights may not form the basis of probable cause required for the issuance of a warrant. Watt v. State, 412 N.E.2d 90 (Ind. Ct. App 1980). Here, trooper testified he located a marijuana plant from the air & started his investigation at D's residence because it was closest to plant. Fourth Amendment does not prohibit trooper from knocking on D's door to ask about plant under "knock & talk" procedure. Hayes v. State, 794 N.E.2d 492 (Ind. Ct. App 2003).

However, State failed to justify constitutionality of actions trooper took after knocking on D's door. After positioning another officer at front door, trooper walked around trailer looking for D & detained him. Trooper asked D's probation status, gave him Miranda warnings, asked to search his house, asked him to sit on a swing, & eventually asked him to remove contents of his pockets. In light of all circumstances surrounding trooper's encounter with D, Ct. could not say that Tr. Ct. erred in finding that trooper's conduct would have communicated to a reasonable person that the person was not free to decline officers' requests or otherwise terminate the encounter. This was not a consensual encounter, but a stop & "seizure" requiring reasonable suspicion implicating Fourth Amendment. State v. Stickle, 792 N.E.2d 51 (Ind. Ct. App 2003). Trooper's actions violated D's constitutional protections against unreasonable search & seizure & evidence thereby obtained could not serve as basis for search warrant. Held, grant of D's motion to suppress affirmed.

TITLE: State v. Rucker

INDEX NO.: Z.2.b.

CITE: (1st Dist., 02-28-07), Ind. App., 861 N.E.2d 1240

SUBJECT: Late filing of affidavit & search warrant before search is executed

HOLDING: Ind. Code 35-33-5-2(a) explicitly requires law enforcement officers to file with the judge a probable cause affidavit & warrant for search or arrest *before* the search is executed. Here, affidavit was presented & signed by the judge fifteen days after the search. In Bowles v. State, 820 N.E.2d 739 (Ind. Ct. App 2005), detective failed to file affidavit & warrant before performing the search, then filed the documents the next day. Ct. found that detective "substantially complied" with Ind. Code 35-33-5-2(a) but warned officers to "abandon" the practice of late filing & comply with requirements of statute. In State v. Mason, 829 N.E.2d 1010 (Ind. Ct. App 2005), Ct. in dicta stated that twenty-eight-day delay in filing affidavit after warrant was issued "was unnecessary, especially given the clarity the General Assembly employed in the statutory requirement to provide a copy of the search warrant & probable cause affidavit to the judge at the time these documents are presented for approval & signing." Following pronouncement of Mason & the intent of General Assembly, Ct. affirmed trial Ct.'s grant of D's motion to suppress. Due to officer's failure to file affidavit & warrant before conducting search, the warrant was not supported by 'oath or affirmation,' as required by the constitutional provision against unreasonable search & seizure & was illegal. Held, judgment affirmed.

RELATED CASES: Johnson, 952 N.E.2d 305 (Ind. Ct. App. 2011) (despite fact that probable cause affidavit was not properly filed, good faith exception allowed admission of evidence from D's computer; see full review at Z.9.c); Jefferson, App., 891 N.E.2d 77 (unlike in Rucker, search warrant signed by judge in this case stated that an affidavit had been filed with judge, which meets requirements of Ind. Code 35-33-5-2, even though affidavit was filed with Tr. Ct. fifteen days late); Scott, App., 883 N.E.2d 147; Moseby, App., 872 N.E.2d 189 (because officer left a copy of the affidavit with the issuing judge on the day the warrant was issued, he complied with Ind. Code 35-33-5-2(a); the statutory requirement to "file with the judge" is satisfied by leaving the affidavit with the judge's staff).

Z. SEARCH AND SEIZURE

Z.2. Search Warrant (Ind. Code 35-33-5)

Z.2.b.1. Probable cause/affidavit (Ind. Code 35-33-5-2) (Illinois v. Gates)

TITLE: Abbott v. State

INDEX NO.: Z.2.b.1.

CITE: (06-13-11), 950 N.E.2d 357 (Ind. Ct. App 2011), *sum. aff'd*, 961 N.E.2d 1016

SUBJECT: Search of D's person supported by probable cause

HOLDING: Tr. Ct. did not abuse its discretion in admitting into evidence cocaine and marijuana found during the search of D's person. Probable cause is a fluid concept incapable of precise definition, and the issuing magistrate's task is simply to make a practical, common-sense decision whether, given the totality of the circumstances, there is a fair probability that evidence of the crime will be found in a particular place. Casady v. State, 934 N.E.2d 1181 (Ind. Ct. App. 2010). Significant deference is given to the issuing magistrate's determination. Id.

Here, police officer stopped a vehicle due its excessive window tinting. Approaching the vehicle, officer smelled burnt marijuana, at which time D passenger admitted he was the one smoking the marijuana. Officer was justified in searching D due to his admission he was smoking marijuana, him clenching his buttocks, and a past experience between him and the officer where D was hiding cocaine in his buttocks. These factors combined strongly suggested that D was concealing drugs. Tr. Ct. did not err in admitting evidence obtained from a search warrant supported by probable cause. Held, judgment affirmed.

TITLE: Brooks v. State

INDEX NO.: Z.2.b.1.

CITE: (2d Dist. 8/10/88), Ind. App., 526 N.E.2d 1027

SUBJECT: Search warrant - probable cause/affidavit

HOLDING: Tr. Ct. did not err in admitting evidence seized pursuant to search warrant, despite D's argument that probable cause affidavit was deficient. D's girlfriend's ex-husband found marijuana in his daughter's possession. She said she had taken it from her mother's bedroom, & her father informed police, who drafted affidavit. Affidavit thus consisted of hearsay on hearsay & must contain either reliable information establishing either credibility of source & declarants & factual basis for information or totality of circumstances corroborating hearsay. Ind. Code 35-33-5-2. Affidavit here contains name & address of source & declarant, relationship between them, & facts upon which declarant based his conclusion. Cf. In re M.R.D., 482 N.E.2d 306. Credibility of declarant may be demonstrated by circumstances. [Citations omitted.] Here, it was reasonable for parent of minor child in possession of marijuana to inform police of its source. D argued his relationship to declarant's ex-wife raises implications of unreliability, but Ct. App. deferred to issuing judge's determination of credibility. Finally, D attacked factual basis for information furnished. Specific allegation based on personal knowledge that contraband is on premises is not necessary. Blalock, 483 N.E.2d 439. All that need be shown is probability of criminal conduct, as determined from facts in affidavits & inferences drawn therefrom. Here, declarant observed marijuana in daughter's possession, & observed her attempts to warn mother that police were being notified. Affiant/officer observed marijuana taken from daughter. These facts provided adequate basis for finding of probable cause to believe that marijuana would be found in home of girl's mother & D, her boyfriend.

RELATED CASES: Bradley, 4 N.E.3d 831 (Ind. Ct. App. 2014) (for search warrant based on affidavit largely relying on hearsay, trustworthiness of witness's statements were established by showing basis for their knowledge and independent police investigation); Hurst, 938 N.E.2d 814 (Ind. Ct. App. 2010) (although father is not automatically reliable as a concerned citizen, father showing police photograph of marijuana which was allegedly texted from his daughter who was living with mother and mother's boyfriend sufficiently corroborated the father's claim that his daughter told him that mother and boyfriend kept marijuana in home; children are likely to report suspicious activity to their parents who, in turn, will transmit that information to law enforcement); Johnson, App., 669 N.E.2d 411 (totality of circumstances corroborated informant's information, & officer's belief in validity of warrant was reasonable).

TITLE: Bunnell v. State
INDEX NO.: Z.2.b.1.
CITE: (9/2/21), Ind. 2021, 172 N.E.3d 1231
SUBJECT: Officers' assertion they detected smell of raw marijuana based on "training and experience" presents substantial basis for probable cause to support search warrant
HOLDING: Law enforcement officers who affirm that they detect the odor of raw marijuana based on their training and experience may establish probable cause without providing further details on their qualifications to recognize said odor. Here, officers conducting a welfare check climbed an external staircase to a third door into the home and detected the smell of raw marijuana. Their application for a search warrant affirmed that one deputy "observed through [his] training and experience the smell of raw marijuana emitting from the door" and that the other advised "through his training and experience he smelled marijuana as well," but did not detail what that training or experience was. The Supreme Court held that a trained officer seeking a search warrant on that basis "need not further detail their qualifications to recognize this odor beyond their basic 'training and experience'." A warrant-issuing judicial officer can reasonably infer that a law enforcement officer is qualified to recognize the odor of marijuana if that officer attests, without elaboration, that they possess the requisite training and experience to detect the smell.

Noting that this holding is in tension with some prior Court of Appeals decisions, the Court disapproved them to the extent they conflict. Justice Goff concurred in result and Justice Massa wrote a separate concurring opinion to caution and advise law enforcement to include the "six magic words" in their warrant applications of "based on my training and experience" so that they avoid the risk of suppression.

RELATED CASES: I.G., 177 N.E.3d 75 (Ind. Ct. App. 2021) (police did not have probable cause to arrest D for possession of marijuana based solely on the odor of raw and burnt marijuana in a car with three occupants).

TITLE: Carnes v. State

INDEX NO.: Z.2.b.1.

CITE: (2d Dist. 7/23/85), Ind. App., 480 N.E.2d 581

SUBJECT: Search warrant - probable cause

HOLDING: Tr. Ct. did not err in denying D's motion to suppress evidence seized pursuant to a search warrant. Here, D challenges warrant on 2 grounds: (1), Inadequate showing of criminal activity; & (2) factual information was too remote. Magistrate must have enough facts apart from conclusions of affiant to find probable cause (whether particular items sought to be seized are sufficiently connected with criminal activity & whether items are to be found in particular place). Layman, App., 407 N.E.2d 259. Informant told officer of personal observance of marijuana "kept, used & sold" in Ds' house. Ct. finds attestation is not conclusory, distinguishing Aguilar v. TX, (1964), 378 U.S. 108, 84 S. Ct. 1059, 12 L.Ed.2d 723 ("affiants have received reliable information from a credible person & do believe" that narcotics are stored in D's home is a conclusory statement). Statement in affidavit that informant had seen marijuana in D's home within 72 hours of affidavit is not remote factual information. Tinnin, 416 N.E.2d 116. Held, no error.

RELATED CASES: Probable cause found: Taylor, App., 614 N.E.2d 907 (Search warrant not defective because: credibility of informant does not have to be established in probable cause affidavit where warrant is based on officer's personal observations; as long as officers seeking warrant collectively have probable cause, individual knowledge can be imputed to officer signing warrant; calls from neighbors to police complaining about activities at D's home were corroborated by officer; & place to be searched was adequately identified even though warrant did not specifically state D lived there); Blalock, 483 N.E.2d 439 (Ct. finds probable cause in affidavit of officers stating aerial surveillance of greenhouse revealed dark green plants of varying heights which they opined marijuana; time period of 2-4 days between observation & application for search warrant held not excessive; probable cause to issue search warrant does not require prima facie showing of criminal conduct or demand that contraband would be found on premises to be searched; police need only show probability of criminal activity, citing US v. Freeman, (CA 7), 532 F.2d 1098 & Everroad 442 N.E.2d 994). Probable cause not found: Mers, App., 482 N.E.2d 778 (Ct. finds search warrant is based on inference upon inference & fails to establish probable cause; held, remanded for hearing on whether issuing magistrate performed as neutral/detached decision-maker & whether officers acted in objectively reasonable reliance upon warrant issued; Buchanan DISSENTS finding probable cause); Flaherty, App., 443 N.E.2d 340 (Ct. finds affidavit fails to satisfy second prong of Layman test in that only by speculation could neutral magistrate have singled out D's apartment as one where informant obtained drugs; held, possession convictions reversed, new trial granted).

TITLE: Cartwright v. State
INDEX NO.: Z.2.b.1.
CITE: (2/25/2015), 26 N.E.3d 663 (Ind. Ct. App. 2015)
SUBJECT: Insufficient probable cause to issue search warrant - uncorroborated hearsay
HOLDING: In manufacturing methamphetamine prosecution, Tr. Ct. abused its discretion in admitting evidence discovered as a result of search warrant that was based on insufficient probable cause. Uncorroborated hearsay from a source whose credibility is itself unknown, standing alone, cannot support a finding of probable cause. Jaggers v. State, 687 N.E.2d 180 (Ind. 1997).

Here, while incarcerated in Posey County Jail, confidential informant (C.I.) told detective that D was manufacturing methamphetamine at his home, but information was at least three to four months old. The probable cause affidavit failed to establish the C.I.'s credibility and did not include independent police investigation that adequately corroborated the C.I.'s statements. Officers corroborated only facts that were readily available to the general public, *i.e.*, observing an RV parked at the home. Detective erroneously relied on his stale, four-year-old prior observation of sights and odors consistent with methamphetamine manufacturing at D's home, which had been rebuffed by the prosecutor for lack of probable cause. As in Jaggers, good faith exception to exclusionary rule did not apply because detective's affidavit was so lacking in indicia of probable cause as to render an official belief in the existence of the warrant unreasonable. Held, judgment reversed and remanded; Baker, J., dissenting, believes warrant was executed in good faith reliance "on technically flawed hearsay... that in hindsight make[s] reliance on [it] objectively reasonable."

RELATED CASES: Gerth, 51 N.E.3d 368 (Ind. Ct. App. 2016) (bare bones pc affidavit did not adequately establish reliability of two CI's where affidavit merely said first CI "had provided accurate information in the past" and said nothing about the reliability of the second CI).

TITLE: Culver v. State

INDEX NO.: Z.2.b.1.

CITE: (4th Dist. 2/17/88), Ind. App., 519 N.E.2d 197

SUBJECT: Search warrant (SW) - probable cause (PC) affidavit

HOLDING: Tr. Ct. did not err in denying D's motion to suppress. Here, sufficiency of affidavit hinges on interplay of following factors: (1) affiant's (A) statement that informant (I) had supplied reliable information in past; (2) A's statement that D was convicted felon; (3) tip stating I saw D firsthand with Smith & Wesson revolver; (4) tip stating D was selling Percodan pills & had large supply in his apartment; (5) A's observations of people entering & leaving D's home. Bald assertion that I had provided reliable information in past provides "smidgen" of evidence as to credibility. Firsthand observation of D with particular kind of revolver indicates basis of knowledge & compensates for less than full demonstration of credibility. See IL v. Gates, (1983), 462 U.S. 213, 103 S. Ct. 2317, 76 L.Ed.2d 527. Statement that D is convicted felon heightens suspicion. D argues affidavit fails to show connection between alleged criminal activity or contraband & place to be searched. However, I says that D had drugs in his apartment. Although there is no evidence of basis of I's knowledge, this is compensated for by fact that he is reliable (which in turn was established by strength of his basis of knowledge re revolver, despite lack of any real evidence of reliability). Details re type & quantity of drugs further bolster credibility. Also, A's observation of D's dwelling corroborated I's story. D points out that A's statement referred only to persons entering & leaving "dwelling," although D lives in multiple dwelling. Magistrate could resolve this ambiguity in either direction. These bits & pieces, taken together, could reasonably support finding of PC. Held, conviction affirmed.

RELATED CASES: Rotz, App., 894 N.E.2d 989 (extrinsic evidence is inadmissible when affidavit in support of search warrant is attacked as not showing probable cause on its face; however, where D alleges that affidavit contained misstatements and omissions, State may offer evidence to rebut such allegations).

TITLE: Dolliver v. State

INDEX NO.: Z.2.b.1.

CITE: (09/09/92), Ind., 598 N.E.2d 525

SUBJECT: Search warrant defective - lack of probable cause (PC)

HOLDING: Tr. Ct. erred in denying D's motion to suppress evidence because search warrant was based on inadequate PC, & good faith exception did not apply. Anonymous caller said D was selling cocaine & gave description of D & approximate location of trailer where he lived. Caller also said D had been in prison on two occasions, that caller's sister was involved & D was "f___ing up" lot of people that D was selling drugs from his trailer, that he drove Cadillac & four-wheel drive truck, & that he didn't work. Caller stated his ex-girlfriend was into drugs & that D was same guy who had gotten his girlfriend in trouble & caused their break-up. Lastly, caller said his sister had been at D's trailer night before & that D had lot of drugs there, but he never said he had personally been in trailer or seen D either using or selling drugs. No identification of sister or information to establish her as credible or reliable informant was sought or supplied.

After call, officer ran license search on D & obtained identifying information. He confirmed fact D had been convicted of felony, but no surveillance of trailer was done. Officer prepared PC affidavit & obtained warrant. When it was executed, D was not at home, but he arrived during search & immediately left. Officer followed, & eventually stopped, D, who was arrested because of drugs found in search of trailer.

General rule is that affidavit to obtain warrant based on "second-hand hearsay" is insufficient to support warrant. Benefiel, 578 N.E.2d 338. Warrants can be based on hearsay only if supporting affidavits contain either: reliable information establishing credibility of source, each of declarants, & factual basis for information; or information showing that totality of circumstances corroborates hearsay. Everroad, 590 N.E.2d 567. Information from anonymous call, combined with information gathered by officer, did not amount to PC for warrant. Caller did not identify himself or establish his personal knowledge of any of claims, & facts that D did live in trailer, drove named cars, & had been previously convicted, did not constitute PC to believe caller was being truthful. It was possible that caller was just angry at D for perceived effect he may have had on caller's sister & ex-girlfriend. Additional investigation by officer, such as placing D's home under surveillance, might have led to sufficient PC for warrant, but evidence obtained was not sufficiently established as reliable.

Ct. also refused to find "good faith" exception to invalid warrant should apply, because warrant was obtained as result of affidavit that was either false or based on reckless disregard for truth. Because searches of D's car & person would not have occurred but for illegal search of trailer, evidence obtained from them was "fruit of the poisonous tree," & also inadmissible. Held, reversed & remanded for new trial, Givan, J., DISSENTING. But see, McGowan, App., 599 N.E.2d 589 (finding affidavit not conclusory or insufficient).

RELATED CASES: Hayworth, App., 904 N.E.2d 684 (totality of circumstances did not corroborate informant's statements because police did not corroborate any illegal activity by D and only confirmed information that was readily available to the general public; see full review at Z.9.c); Bryant, App., 655 N.E.2d 103 (Ct. found insufficient PC for warrant, where supporting affidavit contained assertions which were entirely speculative, misleading, & were based upon questionable conclusions made by investigating officers).

TITLE: Doss v. State

INDEX NO.: Z.2.b.1.

CITE: (3d Dist., 4-24-95), Ind. App., 649 N.E.2d 1045

SUBJECT: Search warrant invalid - lack of probable cause

HOLDING: Tr. Ct. erred in denying motion to suppress evidence seized from D's residence. Police officer received tip from confidential informant (CI) that D had various stolen items & contraband at his home. Based upon his conversation with CI, officer drafted affidavit to support search warrant, which was issued by judge two days later. Although warrant was technically defective, Tr. Ct. found that officer conducted search relying in good faith on judge's decision to issue warrant. "Good faith" exception to exclusionary rule does not apply where, as here, affidavit upon which probable cause rests is so lacking in indicia of probable cause as to render reliance upon it objectively unreasonable. Leon v. United States, 468 U.S. 897, 104 S. Ct 3405. Ct. found "absolutely no information within the affidavit to shed light on the credibility or reliability of the CI's allegations." Affidavit was based entirely on hearsay, & nothing on its face indicated any effort on part of officer to corroborate CI's statements, as required by Ind. Code 35-33-5-2(a)(2). Officer's personal belief as to credibility & reliability of informant is irrelevant. Although he potentially had relevant information beyond what was included in affidavit, officer failed to relay it to issuing judge at time when it was important to do so, i.e., when probable cause determination was made. Held, judgment reversed.

TITLE: Eaton v. State

INDEX NO.: Z.2.b.1.

CITE: (06-30-08), Ind., 889 N.E.2d 297

SUBJECT: Search warrant - officer's opinion that evidence of drug dealing will be discovered in home is sufficient nexus between home and dealing

HOLDING: Tr. Ct. properly denied D's motion to suppress evidence obtained pursuant to a search warrant. Tr. Ct.'s task is to determine whether there is a fair probability that contraband or evidence of a crime will be found in a particular place, while a reviewing court must ensure that the magistrate had a substantial basis for concluding that probable cause existed. Here, police had bugged a car of a man who was delivering a large quantity of cocaine to some men in Richmond. The man followed D's brother to a gas station and pulled his car into the service bay. Subsequently, D arrived and talked with the man and his brother, and then pulled his car into the service bay. After the police heard someone trying to retrieve the cocaine from the bugged car, they entered and searched the garage, finding the cocaine and cash, estimated to be \$60,000 to \$100,000. The police then obtained a warrant to search D's home alleging that drug traffickers commonly keep evidence of their trafficking at home. These facts showed D was involved in drug trafficking and established a basis from which to infer a fair probability that records, and equipment related to such trafficking were likely to be found in D's home. It is reasonable to believe that drug dealers keep evidence of their activities in their home. Held, transfer granted, Court of Appeals' opinion at 878 N.E.2d 481 vacated, judgment affirmed. Rucker, J., dissenting on basis that probable cause affidavit was devoid of any facts demonstrating a nexus between D's alleged drug activity at a commercial establishment and his home at a remote location, and that majority fails to explain why it has abandoned the long-established nexus requirement.

RELATED CASES: Casady, 934 N.E.2d 1181 (Ind. Ct. App. 2010) (after voyeuristic images were found in D's camera, warrant to search D's home was supported by probable cause based in part on officer's opinion that, based on his experience with voyeurism cases, voyeuristic people often collect and keep voyeuristic material, and that he therefore expected to find more evidence of criminal voyeurism in D's home).

TITLE: Edwards v. State
INDEX NO.: Z.2.b.1.
CITE: (2nd Dist., 08-17-05), Ind. App., 832 N.E.2d 1072
SUBJECT: Search warrant based on tip & illegal trash search - good faith exception; probable cause finding affirmed

HOLDING: Because confidential informant's tip was lacking in indicia of reliability & credibility of informant was not established, tip was inadequate to support reasonable suspicion necessary under Litchfield v. State, 824 N.E.2d 356 (Ind. 2005), to search D's trash. However, under state of law as it existed at time of search of D's trash, search was not unreasonable & marijuana was properly discovered evidence. Consequently, according to Indiana's good faith statute, Ind. Code 35-37-4-5, evidence could not have been properly excluded & could provide support for finding of probable cause to issue search warrant.

Ct. concluded that probable cause existed to support warrant in this case. Detectives who searched trash testified that they found marijuana stems & seeds in trash & were able to identify material as marijuana based upon their training & experience. Given testimony from detective that he found packaging material such as would be used to receive large quantities of marijuana & divide it for distribution, the presence of marijuana seeds, & fact that possession of marijuana seeds itself is a crime, warrant was based upon probable cause & evidence discovered during execution of warrant was admissible. Held, judgment affirmed. But see: Raulerson v. State, 714 So.2d 536 (Fla.4th Dist. Ct. App. 1998) (probable cause did not exist even though two cannabis cigarette butts, stems, seeds, & other cannabis particles were found in a single trash search; evidence did not suggest a pattern of continuous drug activity); Gesell v. State, 751 So.2d 104 (Fla. 4th Dist. Ct. App. 1999) (presence of residual amount of marijuana in plastic bag located during trash search did not provide probable cause to support issuance of search warrant).

RELATED CASES: Buford v. State, 40 N.E.3d 911 (Ind. Ct. App. 2015) (neither smell of burnt marijuana outside D's home nor observation of marijuana "shake" on table corroborated anonymous tipster's hearsay statement that there was drug dealing activity at the house); Richardson, App., 848 N.E.2d 1097 (Najam, J., dissenting on basis that statutory "good faith" exception cannot nullify a retroactive rule of constitutional law announced by Indiana S. Ct. in Litchfield); Love, App., 842 N.E.2d 420 (two burnt candles, powdery substance that field-tested positive for cocaine, & three used hypodermic needles found in trash were properly discovered evidence & established probable cause to justify issuance of search warrant authorizing search of D's home).

TITLE: Everroad v. State

INDEX NO.: Z.2.b.1.

CITE: (04/16/92), Ind., 590 N.E.2d 567

SUBJECT: Warrant invalid where probable cause based on uncorroborated hearsay

HOLDING: Where warrant did not contain reliable information establishing credibility of hearsay source & factual basis for information, & totality of circumstances did not corroborate hearsay, affidavit of probable cause for warrant was deficient, & warrant was invalid, reversing decision in Everroad, App., 570 N.E.2d 38. Good faith exception did not apply because warrant was so lacking in indicia of probable cause that it rendered "official belief in its existence entirely unreasonable." Ds were convicted of dealing in cocaine or narcotic drug, dealing in marijuana, dealing in hashish, & 2 counts of dealing in Schedule I controlled substance. Evidence of drugs was found after initial search with warrant for stolen TV. S. Ct. found that state's failure to make any challenge to standing at trial did not allow it to raise lack of standing on appeal. Ct. then looked at affidavit for warrant which stated that affiant had good cause to believe television stolen on 10/7/79 was in possession of one of Ds at a certain residence. Affidavit then stated that "[a]ffiant has received information from a credible source that the same television set was sold to Greg Everroad & is still in his possession at... Information was received from subject allegedly present during the theft of above television set & also present during the sale of said set to Greg Everroad. Information received on 10/25/79 indicates that the television is still at the above address & residence." Warrant was obtained & executed, using 8 officers entering from front & rear. TV was not found, but marijuana & hashish were found in open view, & led to second warrant for drugs. Ct. noted requirements for corroboration of hearsay in probable cause affidavits in Ind. Code 35-33-5-2(a-b), & interpretation of similar requirements in Madden, (1975), 263 Ind. 223, 328 N.E.2d 727, & found present affidavit to be lacking such corroboration. After discussing evidence presented at suppression hearing, Ct. found affiant was informed by one person, who had been informed by another person, who had been informed by another, who had been told by still another. There was no information permitting Ct. to determine who "credible source" was, or what credibility he or she might have, & totality of circumstances did not corroborate hearsay as required. Ct. further found "good faith" exception did not apply due to total lack of indicia of probable cause. Because warrant was defective, ensuing entry & searches were unlawful & evidence obtained was erroneously admitted. Ct. did find sufficient evidence to warrant retrial, however. Held, transfer granted, & cause remanded for retrial, Givan, J., dissenting.

RELATED CASES: Bradley, 4 N.E.3d 831 (Ind. Ct. App. 2014) (for search warrant based on affidavit largely relying on hearsay, trustworthiness of witness's statements were established by showing basis for their knowledge and independent police investigation); But see Wood, App., 592 N.E.2d 740 (finding that any misrepresentation, if present, was not so material as to render probable cause insufficient to support warrant).

TITLE: Flaherty v. State

INDEX NO.: Z.2.b.1.

CITE: (4th Dist. 12/27/82), Ind. App., 443 N.E.2d 340

SUBJECT: Search warrant - probable cause; controlled buy

HOLDING: Where police officer states in affidavit that he saw informant enter apartment building but does not state that he saw informant enter specific unit for which he sought a search warrant, affidavit does not allege sufficient facts upon which issuing authority could have made an independent determination of probable cause. Here, affidavit relied solely upon officer's personal observations (no attempt to establish informant's reliability). Where controls are adequate, affiant's personal observation of a controlled buy may suffice as grounds for a finding of probable cause. Mills, App., 379 N.E.2d 1023. see Haynes 431 N.E.2d 83 (officers observed informant leave residence but did not see him enter; controls over buy held adequate & sufficient to convict D of selling marijuana). Ct. finds controls inadequate in present situation. All evidence seized in search under invalid warrant should have been suppressed. Held, D's convictions for possession of LSD & marijuana reversed; new trial ordered.

NOTE: State's petition for *transfer denied*.

RELATED CASES: Heyen, 936 N.E.2d 294 (Ind. Ct. App. 2010); Ramsey, App., 853 N.E.2d 491 (controls were sufficient, where CI was searched before & after buys & police monitored residence & recorded transactions; both CI & detective testified & jury was able to determine for itself whether there were sufficient controls in place during the buys); Wright, App., 836 N.E.2d 283 (pat-down search of informant was sufficient in controlled buy; adequacy of controls in police buy goes to weight & credibility of evidence presented rather than State's burden of proof); Iddings, App., 772 N.E.2d 1006 (despite concerns regarding inadequate controlled buy & misleading portions of detective's testimony, there was substantial basis upon which to conclude there was probable cause to believe methamphetamine & evidence of methamphetamine dealing & manufacturing might be recovered at D's residence); Caudle, App., 749 N.E.2d 616, *reh'g* granted 754 N.E.2d 33 (detective's actions & observations while using CI to effectuate controlled buy, as outlined in affidavit, were sufficient to justify magistrate's finding of probable cause to issue warrant); Methene, App., 720 N.E.2d 384 (affidavit presented issuing magistrate with virtually no factual basis that controlled buy had occurred; affiant's failure to set forth any facts to establish that controls were adequate rendered affidavit alleging controlled buy insufficient to establish probable cause).

TITLE: Frasier v. State

INDEX NO.: Z.2.b.1.

CITE: (1st Dist., 8-26-03), Ind. App., 794 N.E.2d 449

SUBJECT: Search warrant - probable cause; good faith exception

HOLDING: Tr. Ct. did not err in denying D's motion to suppress evidence obtained pursuant to search warrant, which had authorized police to search D's home & garage for marijuana & items relating to sale of marijuana. Officer who executed warrant found on desktop of D's computer an icon labeled "Smoke." Officer opened file & discovered it contained a letter regarding to drug testing. The next file the officer opened had an image of a young, nude female. Officer opened two or three more files & sought & obtained a warrant to search for evidence of child pornography.

Ct. noted that there were legitimate questions regarding whether issuing magistrate had enough information to determine whether informants were truly anonymous or merely citizen informants. It was also difficult, if not impossible, to tell the age of much of the information in probable cause affidavit. Regardless, even assuming officer's affidavit was insufficient to establish probable cause, Ct. held that evidence which D sought to suppress was admissible under "good faith" exception to exclusionary rule. There was no indication that officer provided false or misleading information to magistrate. Moreover, information gathered from thermal imaging device, combined with otherwise relatively innocuous facts that D had plastic planting pots behind his garage & had covered up windows on his garage door, lent credence to information police had received that D was growing marijuana in his garage. The good faith of the police in relying on the search warrant satisfied the first requirement of the plain view doctrine, *i.e.*, that the initial intrusion was authorized under Fourth Amendment. Pornographic images inadvertently discovered after first warrant was issued but before second warrant were admissible under plain view doctrine. Held, denial of motion to suppress affirmed; Darden, J., dissenting, noting that probable cause affidavit was so lacking in indicia of reliability that it strains credulity & renders official belief in its existence unreasonable.

TITLE: Fuqua v. State

INDEX NO.: Z.2.b.1.

CITE: (3/27/2013), 984 N.E.2d 709 (Ind. Ct. App. 2013)

SUBJECT: Corroborated anonymous tip supported trash search and warrant

HOLDING: Anonymous informant's tips, accompanied by consistent information from two other informants who had been arrested for dealing cocaine, provided sufficient reasonable suspicion to search D's trash. Detectives shared and compiled the information received from the informants prior to searching D's trash. Given the totality of these circumstances, the trash search in this case was constitutionally permissible. Moreover, the anonymous and confidential informants' statements that D was dealing cocaine were corroborated by the evidence the detectives discovered during the trash pull and their personal observations while surveilling D's residence. Court concluded that the totality of the circumstances personally known to the detectives (as described in the affidavit) sufficiently corroborated the informants' hearsay statements. Thus, search warrant was supported by probable cause. Held, judgment affirmed.

TITLE: Hensley v. State

INDEX NO.: Z.2.b.1.

CITE: (1st Dist., 11-15-02), Ind. App., 778 N.E.2d 484

SUBJECT: Search warrant - no probable cause to search D's premises

HOLDING: Tr. Ct. erred in denying D's motion to suppress, where police officer's affidavit did not link drugs allegedly purchased by D with premises described in affidavit. Affidavit merely contained description of home & allegation that D had purchased methamphetamine the previous day. Affidavit did not indicate that D owned premises to be searched, that she lived there, or even that she had any connection with described premises. Furthermore, affidavit was completely devoid of any information describing why officer had good cause to believe that drugs would be found in premises. Without this information, nothing in affidavit linked D's alleged purchase of drugs to premises described in search warrant. Because there was no basis for reasonably prudent person to believe that search would uncover evidence of crime, there was no probable cause to support search warrant. Further, evidence was not admissible under good faith exception to exclusionary rule because affidavit on which search warrant was based was so facially lacking in indicia of probable cause that no reasonable officer could have relied on this search warrant in good faith. Held, judgment reversed.

RELATED CASES Walker, App., 829 N.E.2d 591 (probable cause affidavit provided no basis to permit a reasonable person to believe that a search of D's barbershop would uncover evidence of a crime because it failed to link the unidentified person mentioned in the affidavit to barbershop); Merritt, App., 803 N.E.2d 257 (police officer's affidavit failed to link unidentified black male with drugs to his residence; see full review, this section); Allen, App., 798 N.E.2d 490 (it was reasonable for detective to believe that weapons would be found at apartment belonging to one of suspects' cousins and where at least one suspect spent a significant amount of time).

TITLE: Herron v. State
INDEX NO.: Z.2.b.1.
CITE: (10/14/2015), 44 N.E.3d 833 (Ind. Ct. App. 2015)
SUBJECT: Incomplete boilerplate affidavit didn't establish probable cause
HOLDING: The Tr. Ct. should have granted D's motion to suppress blood alcohol results because the affidavit filed by the arresting officer failed to establish probable cause because it did not actually allege that D was driving.

Officer Carey stopped D to see if she was driving while drunk. She declined to submit to a chemical test, so Officer Carey began filling out a boilerplate probable cause affidavit for a blood draw. He left blank several key parts of the affidavit, most notably those describing what he actually observed about D's driving to arouse his suspicion that she was drunk. The affidavit did allege characteristics often attendant to drunk drivers: glassy, blood shot eyes; slurred speech; unsteady balance; and a preliminary breathalyzer test resulting in a .19 blood alcohol content. However, as completed, the affidavit did not allege that D drove. Nonetheless, the Tr. Ct. issued the warrant, allowing the State to draw D's blood, leading to charges of OWI and OWI with BAC greater than .15.

The affidavit did not establish probable cause as it failed to allege that D was driving. "The absence of facts giving the magistrate a substantial basis to believe Herron operated a motor vehicle would render the warrant affidavit insufficient to show probable cause of a crime." The State's arguments that the affidavit established probable cause fail because they either: 1) rely on boilerplate language in the affidavit or 2) stack inference upon inference, or presumption upon presumption. Finally, the good faith exception to the exclusionary rule does not apply because the deficiencies in the affidavit were caused by Officer Carey, not the Tr. Ct. See Davis v. U.S., 131 U.S. 2419, 2428 (2011); Ind. Code 35-37-4-5(b)(1)(a). Held, judgment reversed.

TITLE: Heyen v. State
INDEX NO.: Z.2.b.1.
CITE: (10-28-10), 936 N.E.2d 294 (Ind. Ct. App. 2010)
SUBJECT: Probable cause exists even though affidavit did not establish CI's identity
HOLDING: Tr. Ct. did not abuse its discretion in admitting methamphetamine at trial because affidavit established probable cause without establishing credibility of confidential informant ("CI"). Affidavit relied on observations of two officers who supervised the controlled buy to establish probable cause. If "controls are adequate, the affiant's personal observation of a controlled buy may be sufficient grounds for probable cause." Methene v. State, 720 N.E.2d 384, 390 (Ind. Ct. App. 1999). Even where an informant is not reliable, a court may accept observations of attesting officer as establishing probable cause. Flaherty v. State, 443 N.E.2d 340, 341 (Ind. Ct. App. 1982).

Here, officers sufficiently controlled the drug buy to establish probable cause. They searched the CI and his car before giving him photocopied money for drug buy. They also fitted him with an audio video recorder that recorded the drug buy. Officers followed CI to D's known residence and maintained audio video surveillance. After the buy, the CI had contact with no other person and returned to his car where the officers again searched him and his car. The CI possessed a baggie with a white substance in it. Held, judgment affirmed.

TITLE: Houser v. State

INDEX NO.: Z.2.b.1.

CITE: (2-26-97), Ind., 678 N.E.2d 95

SUBJECT: Validity of search warrant

HOLDING: Tr. Ct. properly determined that search warrant was issued with probable cause.

Informant reported to police that D had admitted robbing & killing victim, & that he had left victim's money & clothes worn during murder at D's business. Search warrant was issued based on informant's hearsay statements. Ind. Code 35-33-5-2 requires affidavit based on hearsay to contain reliable information establishing credibility of source & factual basis for information furnished. Ct. held that informant was credible source because his statements suggested conspiracy between informant & D to rob victim. Declarations against penal interest can furnish sufficient basis for establishing credibility of informant within meaning of Ind. Code 35-33-5-2. Nash, App., 433 N.E.2d 807. Further, informant's statements were corroborated by totality of circumstances. As set forth in probable cause affidavit, D's statements to informant about crime scene matched those personally observed by police officer who sought warrant. Magistrate made required independent determination that informant's statements were sufficiently corroborated to establish probable cause. Thus, substantial basis existed to support issuance of warrant. Ct. also held that although search warrant contained wrong street address, warrant sufficiently described property to be searched despite mistake. Held, no error.

RELATED CASES: Albrecht, 159 N.E.3d 1004, Ind. Ct. App. 2020 (in investigation of child molestation charges, totality of circumstances and sufficient particularity provided by police to Tr. Ct. created substantial basis for issuance of search warrant for seizure and review of hard drive found in bathroom of residence); Gray, 758 N.E.2d 519 (similar characteristics found between first handwriting sample & crime scene post-it note provided substantial basis to support issuance of warrant; manner in which D became connected to case was not important to affidavit).

TITLE: Jagers v. State

INDEX NO.: Z.2.b.1.

CITE: (11-3-97), Ind., 687 N.E.2d 180

SUBJECT: Search warrant - lack of probable cause

HOLDING: Because search warrant was issued on uncorroborated hearsay from informant whose credibility was entirely unknown, search warrant did not satisfy 4th Amend. or Ind. Code's requirement of probable cause. Trustworthiness of hearsay for purposes of proving probable cause can be established in number of ways, including where (1) informant has given correct information in past; (2) independent police investigation corroborates informant's statements; (3) some basis for informant's knowledge is shown; or (4) informant predicts conduct by suspect that is not ordinarily easily predicted. Illinois v. Gates, 462 U.S. 213 (1983). When based on hearsay, probable cause affidavit must either contain reliable information establishing credibility of source & of each of declarants & establishing that there is factual basis for information furnished or contain information that establishes that totality of circumstances corroborates hearsay. Ind. Code § 35-33-5-2(b).

Here, anonymous informant told police that D was growing marijuana at his home & on two plots near his home. Although police investigation corroborated informant's assertion that D lived where informant claimed he did & that marijuana was being grown on plots where informant said it was, investigation did not corroborate that D's house contained evidence of crime. In addition, anonymous informant failed to give police any information that would have enabled neutral & detached magistrate to assess credibility of informant's claim. Thus, Tr. Ct. erred in denying D's motion to suppress evidence obtained in search of D's home. Held, transfer granted, conviction reversed.

RELATED CASES: Brown, App., 905 N.E.2d 439 (search warrant was defective for lack of probable cause when detective, who both applied for & executed the warrant, relied on information from a concerned caller completely unknown to him & did not corroborate the information or caller's credibility); Mason, App., 829 N.E.2d 1010 (while police corroborated most of an anonymous informant's allegations, they failed to corroborate the "critical claim" that D was engaged in criminal activity; further, the search warrant & affidavit tell nothing about the anonymous informant to lend credibility to the tip); Methene, App., 720 N.E.2d 384 (Where affidavit for search warrant established neither credibility of confidential informant nor adequacy of controlled buy, warrant was unsupported by probable cause & search of D's residence was unlawful); Newby, App., 701 N.E.2d 593 (issuing magistrate could not have reasonably inferred from affidavit that informant had implicated himself in additional criminal activity or made statement against penal interest); Hughes, 823 F. Supp. 593 (viewing affidavit under "totality of circumstances" test led to conclusion that no probable cause existed for issuing search warrant; affidavit relied on five unidentified individuals who purportedly worked, or previously worked for, D's companies; no information contained in affidavit that those individuals had provided reliable information in part and there was no corroboration of cooperating witnesses' statements).

TITLE: Kail v. State

INDEX NO.: Z.2.b.1.

CITE: (1st Dist. 9/21/88), Ind. App., 528 N.E.2d 799

SUBJECT: Search warrant - probable cause (PC)

HOLDING: Tr. Ct. did not err in denying D's motion to suppress evidence seized pursuant to search warrant. D argues that only by speculation could his house have been linked to criminal activity. At PC hearing officer testified that aerial surveillance had revealed marijuana patch in Ripley County, that he had searched it pursuant to warrant, & that D & wife had been arrested "down there in Ripley County." Officer further testified that based on his 12-years-experience investigating marijuana cultivation operations, D would probably have receipts for watering system, trimmed marijuana leaves, seed bed, & grow light somewhere in his house. Another officer testified that D's car, which was at marijuana patch when D was arrested, had been at D's house less than 2 hours earlier. PC determination has 2 parts: (1) whether particular items to be seized are sufficiently connected with criminal activities, & (2) whether items are to be found in particular place. Stabenow, App., 495 N.E.2d 197 (card at Z.9.c.3); Layman, 407 N.E.2d 259. PC must be supported by attestations of fact, not mere conclusions of affiant. Carnes, 480 N.E.2d 581 (card at Z.2.b.1). Here, magistrate had information indicating that D was connected with marijuana plants. Testimony re D's car supported connection between D's home & criminal activity. Further, officer's experience-based statement that most growers store cultivating equipment & marijuana leaves in home was fact from which magistrate could infer that such items would be found in D's home. Cf. Stabenow; State v. Anspach, Or. App., 682 P.2d 786. Held, PC affidavit was sufficient, & even if it weren't, good faith exception would apply.

TITLE: Leicht v. State

INDEX NO.: Z.2.b.1.

CITE: (2nd Dist., 10-07-03), Ind. App., 798 N.E.2d 204

SUBJECT: Validity of search warrant

HOLDING: Tr. Ct. did not err in denying D's motion to suppress evidence, where there was substantial basis to conclude that there was probable cause to believe that evidence of trafficking in marijuana might be recovered from D's residence. After police officers found marijuana in informant's home, she gave police detailed statements about a long-term relationship dealing marijuana for D, including price, payment & delivery arrangements. Further, many of the hearsay statements that affidavit attributed to informant were statements against penal interest, subjecting D to criminal prosecution for dealing & conspiracy to deal in marijuana. Statements against declarant's penal interest constitute an *indicia* of credibility which may be used in ascertaining credibility of an informant whose information provides basis of affidavit for search warrant. Nash v. State, 433 N.E.2d 807 (Ind. Ct. App. 1982); Houser v. State, 678 N.E.2d 95 (Ind. 1997). Held, judgment affirmed; Baker, J., dissenting, noted that informant did not subject herself to additional criminal liability by revealing her source, & argued that Newby v. State, 701 N.E.2d 593 (Ind. Ct. App. 1997), compels different outcome in this case.

RELATED CASES: Spillars, 847 N.E.2d 949 (Ind. 2006) (because informant had already been caught with cocaine in his possession, his decision to reveal his source to police did not subject him to any additional criminal liability, aside from "*de minimus*" potential liability for misdemeanor false informing offense; see full review, this section); Cheever-Ortiz, App., 825 N.E.2d 867 (considering anonymous tip, Stale information involving D, & police surveillance of D's home, there was substantial basis to determine that probable cause existed to issue search warrant for D's home); Allen, App., 798 N.E.2d 490 (hearsay statements of several eyewitnesses & suspects used in affidavit were declarations against their penal interests); Creekmore, App., 800 N.E.2d 230 (informant's credibility in this case can be inferred because in reporting source of drugs in his car, informant implicated himself in delivery of marijuana & mushrooms).

TITLE: McGrath v. State
INDEX NO.: Z.2.b.1.
CITE: (5/1/2018), 95 N.E.3d 522 (Ind. 2018)
SUBJECT: Probable cause for search warrants authorizing use of thermal imaging scanners and search of D's home
HOLDING: A substantial basis existed to support magistrate's decision to issue search warrant for use of thermal imaging scanners and for issuing a subsequent warrant to search D's residence. An anonymous tip about a possible marijuana grow house included the house's address and color, the first names of the occupants, a report of a bright light from an upstairs window, and the odor of marijuana emanating from the house. A detective conducted an independent surveillance and corroborated the house's color, address, names of the occupants but not the odor of marijuana. The detective also discovered the house had both central air conditioning and window units, dark covering over the windows, and a "high intensity glow" of light emitting from upstairs, all of which are consistent with an indoor marijuana operation. Although these facts are prone to innocent explanation when viewed discretely, Court must look at "the whole picture." District of Columbia v. Wesby, 138 S. Ct. 577, 589 (2018). When viewed collectively and in the context of detective's training and experience, these facts are sufficiently indicative of a marijuana grow operation to support a search warrant to conduct thermal imaging of the house.

Court also held that, under the collective knowledge doctrine, the detective's second affidavit relating another officer's report of an "atypical heat signature emanating from the home" contained sufficient information to establish probable cause for a warrant to search the property. The collective-knowledge doctrine presumes a fellow officer's credibility, thus "no special showing of reliability need be made as a part of the probable cause determination." (*quoting* LaFave, *Search & Seizure: A Treatise on the Fourth Amendment* § 3.5(a) (5th ed. 2017)). Finally, the absence of a statement detailing the accuracy of the thermal imaging device, or the method by which it operates, "is of no consequence here."

Under the totality of the circumstances, probable cause supported both search warrants. Held, transfer granted, Court of Appeals opinion at 81 N.E.3d 655 vacated, judgment affirmed.

TITLE: Merritt v. State

INDEX NO.: Z.2.b.1.

CITE: (4th Dist., 2-13-04), Ind. App., 803 N.E.2d 257

SUBJECT: Search warrant - no probable cause to search D's residence

HOLDING: Tr. Ct. erred in denying D's motion to suppress, where police officer's affidavit failed to link unidentified black male with drugs to his residence. An affidavit demonstrates probable cause to search premises if it provides a sufficient basis of fact to permit a reasonably prudent person to believe that a search of those premises will uncover evidence of a crime. Hensley v. State, 778 N.E.2d 484 (Ind. Ct. App. 2002); Ind. Code 35-33-5-2. Here, officer stated in his affidavit that, while a confidential informant was in D's residence on one occasion, an unidentified black male offered to sell informant what appeared to be cocaine. Officer did not state that unidentified black male frequented, resided, or concealed contraband at D's address nor did he state that there was good cause to believe that the black male would possess cocaine in residence when warrant was obtained. Moreover, affidavit did not set forth facts from which a reasonable inference could be drawn that numerous drug transactions had taken place at residence, or that residence was a "crack house." Thus, Tr. Ct. abused its discretion in denying D's motion to suppress. Held, judgment reversed.

RELATED CASES: Moore, App., 872 N.E.2d 617 (Merritt was a substantial departure for the law in existence at the time of its decision; whether the departure was unwarranted is a question for another day); Massey, App., 816 N.E.2d 979 (Distinguishing Merritt, Ct. noted that: 1) male selling cocaine in this case was identified as D, rather than being unidentified; 2) affidavit stated that informant advised that he has observed large quantities of cocaine, money, & weapons inside D's residence; & 3) informant also stated that D always had a pistol on his person & had observed several weapons inside residence; this was not a one-time interaction with an unknown dealer, thus affidavit & reasonable inferences therefrom provided sufficient evidence for a reasonable person to believe drugs would be found in D's residence).

TITLE: Neuhoﬀ v. State

INDEX NO.: Z.2.b.1.

CITE: (1st. Dist., 4-9-99), Ind. App., 708 N.E.2d 889

SUBJECT: Sufficient probable cause for issuance of search warrant

HOLDING: Smell testing by trained Ind. dog was sufficient in itself to support issuance of search warrant for package. Kenner, App., 703 N.E.2d 1122. Postal inspectors in Texas intercepted package being mailed from Brownsville, Texas, to Evansville, Ind., because they were suspicious of size, weight, & city of origin of package. When package was presented to drug sniffing dog in Texas, dog alerted to presence of drugs. Package was forwarded to Ind. authorities & search warrant was obtained after trained dog from Indianapolis alerted to presence of drugs. Probable cause affidavit contained sufficient representation concerning Ind. drug sniffing dog's reliability, where affiant stated that dog & its handler were certified yearly by Indianapolis Police Department; that dog had participated in approximately 250 searches in field & in training situations; & that dog & its handler had received specialized training in detection of odor of marijuana & other drugs.

Ct. noted that there was additional information in probable cause affidavit to justify search warrant in this case. Package contained several indicia enumerated in drug smuggling profile utilized by postal inspectors in determining suspiciousness of parcels sent through U.S. mail. Profile contained following elements: 1) source city is known for its illegal drug trade; package was unusual size & shape; & 3) return addressee was fictitious. Based on these facts, there was sufficient probable cause for issuance of search warrant & no error in admitting marijuana into evidence. Held, judgment affirmed; Sullivan, J., concurring, expressed concern about majority's reliance upon use of drug smuggling profile to support probable cause.

RELATED CASES: Rios, App., 762 N.E.2d 153 (given her training & experience, dog's alert to D's package clearly established probable cause necessary for warrant).

TITLE: Phillips v. State

INDEX NO.: Z.2.b.1.

CITE: (8/13/2021), Ind. Ct. App., 174 N.E.3d 635

SUBJECT: Probable cause for search warrant based solely on informant's statement

HOLDING: Informant's statements against penal interest beyond that for which she was arrested were sufficient to establish probable cause for a search warrant for Defendant's home. Defendant argued that the only basis for issuance of the warrant was a drug addict's unreliable statements, which failed to establish the necessary probable cause for the warrant. After police arrested informant on an outstanding warrant at Defendant's home, she told the officers that Defendant had been using and dealing methamphetamine as well. Although the affidavit was not clear on whether informant's allegation of Defendant's drug dealing was based on direct observation or speculation, Court concluded that the remainder of the allegations in the affidavit support the judge's determination that informant's hearsay statements were reliable enough to support both a finding of probable cause and issuance of the search warrant for Defendant's home. Although the better course would have been for the officer to reveal informant's statement about her recent drug use, Court found that Defendant failed to establish that the officer omitted any material facts in the affidavit that would have left probable cause in doubt.

Court also found that, as charged and tried, Defendant's Level 3 felony possession of methamphetamine conviction was a factually included offense of his dealing conviction and that his offenses constituted a single transaction under Wadle v. State, 151 N.E.3d 227 (Ind. 2020). Held, possession conviction vacated, dealing conviction affirmed.

TITLE: Powers v. State
INDEX NO.: Z.2.b.1.
CITE: (10/21/82), Ind., 440 N.E.2d 1096
SUBJECT: Search warrant - probable cause; informant; affidavit; corroborating information
HOLDING: Ind. Code 35-1-6-2(a), now Ind. Code 35-33-5-2, requires affidavit based on hearsay to contain reliable information establishing credibility of source & factual basis for information furnished. Statement in affidavit declaring that informant previously supplied valid information satisfies statutory requirement of facts as to credibility of informant. Tinnin, 416 N.E.2d 116. See McClain, 410 N.E.2d 1297 (factors precedent to issuance of search warrant). Here, affiant (police officer) stated informant provided information regarding D which proved accurate & correct on 8 prior occasions. Ct. rejects D's reliance on Bowles, 267 N.E.2d 56 (tip alone insufficient to establish necessary credibility; no history of reliability of source nor extrinsic facts either from informer or other proper sources) because of 8 instances of reliability. Search warrant met statutory & case law requirements. Held, drug convictions affirmed.

RELATED CASES: Marlowe, App., 786 N.E.2d 751 (although officer did not offer factual basis for hearsay at probable cause hearing, officer responded affirmatively when magistrate asked him whether police department had relied on confidential informant in past & whether information from informant had always proven truthful & accurate); Foster, App., 633 N.E.2d 337 (In deciding issue adversely to D, Ct. conducted extensive discussion of probable cause to obtain warrant); Seltzer, 489 N.E.2d 939 (tip from informant (who had contacted Crime Stoppers) was sufficiently corroborated by officer's statements & affidavit; Ct. finds probable cause existed for issuance of search warrant); Ruth, App., 462 N.E.2d 269 (affidavit containing only affiant's & informant's conclusions lacks information necessary to qualify hearsay statements for consideration/fails to state probable cause for search of D's home; held, reversed).

TITLE: Powers v. State
INDEX NO.: Z.2.b.1.
CITE: (10/21/82), Ind., 440 N.E.2d 1096
SUBJECT: Search warrant - probable cause (P.C.); illegally seized evidence as basis for
HOLDING: Opinion by Pivarnik. Whether P.C. was sufficient for issuance of search warrant is determined by examining facts & circumstances known at time search warrant issued. Smith, 271 N.E.2d 133 (arrest case). Showing made after trial that P.C. was based in part on illegally obtained evidence does not change fact P.C. existed for search & subsequent arrest. Here, D sought to show at hearing on BMCE - newly discovered evidence that police affidavit was based on illegal wire taps (in violation of 18 U.S.C. Section 2515). Ct. found confidential informant's (C.I.) testimony fraught with inconsistencies, but assuming she was telling truth, no new trial was required. Timing of testimony held crucial - she should have been produced by D at suppression hearing (D had made offer to prove she was C.I.). Held, drug convictions affirmed.

TITLE: Query v. State

INDEX NO.: Z.2.b.1.

CITE: (4-11-01), Ind., 745 N.E.2d 769

SUBJECT: Search warrant - duty to disclose material new facts to issuing magistrate

HOLDING: Where State learns that material fact establishing probable cause underlying search warrant is incorrect, State must inform issuing magistrate of new facts &, if it fails to do so, warrant is per se invalid. Information is material if it might affect either issuance of warrant or scope of warrant. Here, search warrant was based on confidential informant's exchange of money for methamphetamine. After search warrant was issued but before its execution, detective learned that laboratory results revealed that substance did not contain methamphetamine. Neither prosecuting attorney nor detective informed issuing judge of laboratory results. Prosecutor advised detective that results did not change basis for probable cause, because D was engaged in dealing in look-alike substance, a Class D felony.

Ct. found that this case presents extremely unusual example of immaterial change. Although new information undermined crime suggested by information supplied to magistrate, it also simultaneously provided probable cause for second crime, & if second search warrant had been issued, police would have been authorized to search same location for virtually identical items. In the end, officers did exactly what they would have done anyway to execute warrant based on new information. Because nature & scope of search for methamphetamine is identical to nature & scope of search for look-alike, correcting information in this unusual case did not constitute "material" change. Ct. noted that both validity & scope of search must be unaffected to render information immaterial. Otherwise, police who do not keep magistrate fully informed run risk that withheld information will be found to have been material, & original search warrant will be held invalid. Held, transfer granted, Ct. App. opinion at 725 N.E.2d 129 vacated, judgment of Tr. Ct. affirmed; Rucker & Sullivan, JJ., dissenting.

TITLE: Rader v. State
INDEX NO.: Z.2.b.1.
CITE: (08-24-10), 932 N.E.2d 755 (Ind. Ct. App. 2010)
SUBJECT: Nexus between D's home and IP address; no expectation of privacy in internet subscriber information
HOLDING: In child solicitation prosecution, probable cause affidavit established a sufficient nexus between D's home and alleged criminal activity to justify issuance of a search warrant. As in Mehring v. State, 884 N.E.2d 371 (Ind. Ct. App. 2008), Court found that the internet protocol (IP) address used by D to communicate with detective was connected to his address. An individual using the Yahoo! screen name "monty20064" attempted to solicit sex from, and exposed himself to, detective who was posing online as a fourteen-year-old girl. This username was registered to D, and account was accessed on dates of the instant messaging in question from a certain IP address. This IP address was associated with the house where D lived. From this, the issuing magistrate could properly link the criminal activity of the monty20064 account to both D and the address where he lived.

Court also rejected D's argument that, under Article 1, Section 11 of the Indiana Constitution, it should recognize a privacy interest in the subscriber information of an individual's internet account. A prosecutor can properly secure information from a third party, such as an internet service provider, by the issuance of a subpoena duces tecum. State v. Reid, 945 A.2d 26 (N.J. 2008), upon which D relies, does not afford the broad protection of subscriber information he apparently seeks. Moreover, Court cannot ignore the holding of the Indiana Supreme Court with regard to issuance of investigatory subpoenas to third parties. Oman v. State, 737 N.E.2d 1131 (Ind. 2000). Held, judgment affirmed.

TITLE: Richard v. State

INDEX NO.: Z.2.b.1.

CITE: (5th Dist., 1-14-05), Ind. App., 820 N.E.2d 749

SUBJECT: Search warrant - probable cause; child informant

HOLDING: D's eight-year-old daughter's personal observation of marijuana, the specificity of her statements with regard to location of marijuana, & her statement that she knew the appearance of marijuana from being around it before, formed a substantial basis upon which issuing magistrate could determine that there was a fair probability that evidence of possession of marijuana would be found in D's barns & house. Despite her young age, eight-year-old was considered reliable citizen informant & there were no incriminating circumstances which cast suspicion on her reliability. She voluntarily told school counselor that there was marijuana on D's property. Thus, search warrant was supported by probable cause & Tr. Ct. acted within its discretion when it admitted evidence seized during execution of search warrant. Court noted that although determination of a child's competency utilizing test set forth in, e.g., Harrington v. State, 755 N.E.2d 1176 (Ind. Ct. App. 2001), would assist in its review of probable cause cases involving child informants, law enforcement officers are not required to make such a specific inquiry into a child's competency for purposes of establishing probable cause to issue a search warrant. Held, judgment affirmed.

TITLE: Short v. State

INDEX NO.: Z.2.b.1.

CITE: (12/27/82), Ind., 443 N.E.2d 298

SUBJECT: Search warrant - probable cause; citizen/victim informant

HOLDING: Affidavit of police officer based upon statements from citizen/victim established probable cause. Here, police suspected D had stolen construction materials & was installing them in his own construction projects. Police had observed D driving stolen truck thought to be transport vehicle for stolen goods. In seeking search warrant for D's warehouse, officer relied on statements of citizen/victim. Ct. finds this information constituted tips from reliable informants, as informants were citizen/victim of a crime. See Armstrong, 429 N.E.2d 647; Riddle, 275 N.E.2d 788. Held, search warrant supported by probable cause.

RELATED CASES: Allen, App., 798 N.E.2d 490 (information given to police from witnesses who personally witnessed murders was reliable and sufficiently corroborated); Washington, 496 N.E.2d 392 (S & S 114, 117; information given to police by "concerned citizen" & included in police officer's affidavit (which went into great detail re info furnished by "concerned citizen" including description of D that fit one given by victim & details re stolen objects believed to be in D's home) was sufficient to validate search warrant); Clifford, 474 N.E.2d 963 (S & S 3.6(3); police officer's affidavit containing statement of victim (of criminal deviate conduct) established probable cause, *citing Baker*, 449 N.E.2d 1085 & Wells, 397 N.E.2d 1250); Matter of M.R.D., App., 482 N.E.2d 306 (although affidavit, based on hearsay of concerned mother whose minor daughter was attending party with alcoholic beverages, lacked probable cause & did not comply with Ind. Code 35-33-5-2 (requiring evidence of source's credibility & factual basis), Ct. finds officer was justified in his good faith reliance on warrant; held, grant of juvenile's motion to suppress reversed & cause remanded).

TITLE: State v. Griggs
INDEX NO.: Z.2.b.1.
CITE: 2001 MT 211, 34 P.3d 101 (Mont. 2001)
SUBJECT: Anonymous Tip -- must be corroboration of facts associated with criminal activity
HOLDING: Although it may be possible to establish probable cause for a search warrant by corroborating only innocent facts from anonymous tip, some of the corroboration must in some manner raise suspicions concerning the alleged criminal activity.

TITLE: State v. Haines

INDEX NO.: Z.2.b.1.

CITE: (2nd Dist., 9-12-02), Ind. App., 774 N.E.2d 984

SUBJECT: Search warrant - stale information from reliable confidential informant

HOLDING: Tr. Ct. properly granted D's motion to suppress. At probable cause hearing, deputy sheriff testified that a reliable confidential informant purchased crack cocaine from a specific residence. He failed to tell Tr. Ct. that informant purchased crack cocaine from residence anywhere from two to six weeks prior to probable cause hearing. This information was stale. Stale information cannot support finding of probable cause, but only gives rise to a mere suspicion & not a reasonable belief, especially when items to be obtained in a search are easily concealed & moved. Raymer v. State, 482 N.E.2d 253 (Ind. 1985). Furthermore, information from other confidential informants, who stated that crack cocaine could be purchased at residence, did not constitute reliable hearsay, as these confidential informants were never used as reliable confidential informants. They were only used as sources of information. Finally, deputy sheriff testified at probable cause hearing that there was an investigation of residence. However, at suppression hearing, he testified that there was not a criminal investigation of residence at any time on or before probable cause hearing. Ct. concluded that sheriff's testimony misled Tr. Ct. & thus, good faith exception to exclusionary rule did not apply. Newby v. State, 701 N.E.2d 593 (Ind. Ct. App. 1998). Held, judgment affirmed.

RELATED CASES: Cheever-Ortiz, App., 825 N.E.2d 867 (Stale information alone cannot support a finding of probable cause, but can be considered & gives rise to a "mere suspicion")

TITLE: State v. Spillers

INDEX NO.: Z.2.b.1.

CITE: (05-23-06), Ind., 847 N.E.2d 949

SUBJECT: Search warrant - reliability of informant; statement against penal interest

HOLDING: Declarations against penal interest can furnish sufficient basis for establishing the reliability of an informant where a search warrant is sought based on hearsay information. Houser, 678 N.E.2d 95. Admission of crimes under circumstances in which they otherwise would likely have gone undetected carry their own indicia of credibility--sufficient at least to support a finding of probable cause to search. United States v. Harris, 403 U.S. 573 (1973). Here, informant was caught "red-handed" with drugs in his possession before naming his purported supplier. Although informant admitted committing additional crimes of possession of cocaine, his tip was less a statement against his penal interest than an obvious attempt to curry favor with the police. Because informant had already been caught with cocaine in his possession, his decision to reveal his source to police did not subject him to any additional criminal liability, aside from "de minimus" potential liability for misdemeanor false informing offense. Under totality of circumstances, informant's declarations were not against his penal interest & therefore did not demonstrate that informant was a credible source of information. Although probable cause did not exist to support issuing a warrant to search D's residence, search was upheld under the "good faith" exception to exclusionary rule. Held, transfer granted, Ct. App.' opinion at 816 N.E.2d 67 vacated, grant of motion to suppress reversed; Boehm & Dickson, JJ. concurring in result with separate opinion.

RELATED CASES: Stave v. Stone, 151 N.E.3d 815 (Ind. Ct. App. 2020) (08/31/2020) (statements made to police by informant who sold stolen gun to D were statements against interest and furnished sufficient basis for establishing informant's credibility and probable cause for search warrant); Smith, 953 N.E.2d 651 (Ind. Ct. App. 2011) (Although officer told CI that he would not go to jail and that any possible theft charges would vanish, the officer made these statements after the CI and D committed the theft; before the CI committed the theft with the D, the officer told him not to commit the theft; thus, CI's statements that he committed theft with D were against his penal interest); Lanham, 937 N.E. 2d 419 (Ind. Ct. App. 2010) (M.B.'s statement that she had smoked marijuana with D was a statement against penal interest and not a statement motivated to curry favor with the police where he had not been caught in the commission of an unlawful act. Nor was she facing a criminal charge or juvenile allegations); Hirshey, App., 852 N.E.2d 1008 (informant had already been arrested for dealing methamphetamine, & her statements did not tend to expose her to any greater criminal liability. Thus, her statements were not against penal interest).

TITLE: State v. Tungate
INDEX NO.: Z.2.b.1.
CITE: (1st Dist., 12-31-08), Ind. App., 899 N.E.2d 60
SUBJECT: Search warrant - probable cause & search of multiple units at single address
HOLDING: A search of multiple units at a single address must be supported by probable cause to search each unit and is no different from a search of two or more separate houses. Figert v. State, 687 N.E.2d 827 (Ind. 1997). Here, trooper searched five areas of property pursuant to search warrant: the farmhouse, the barn, the white camper trailer, the tan camper, and the "curtilage" area of the property including yard and cave that was discovered near creek. Tr. Ct. properly concluded that State lacked probable cause to search tan camper, but improperly concluded that State lacked probable cause to search the barn and white camper trailer.

Incorrect information regarding electric meter's identification number cannot serve as basis for invalidating warrant for barn and trailer, because D did not present any evidence to show that informants intentionally misread the meter's ID number or that trooper knew these informants had misread the identification number and intentionally omitted such information from the affidavit. Tr. Ct.'s finding that search for evidence of electricity theft was a pretext also cannot serve as a basis for invalidating warrant because a law enforcement officer's subjective intent is irrelevant when determining existence of probable cause. Whren v. United States, 517 U.S. 806 (1996).

Tr. Ct. also invalidated warrant based on finding that affidavit supporting it contained unreliable hearsay, specifically information from trooper's colleague that employee from electric company discovered an unauthorized electric meter on the property. After receiving information from his colleague, trooper spoke with employee, who informed trooper that he visited the property and observed an extension cord running from the unauthorized meter to the barn. Although Court hesitated to conclude that informants who provide law enforcement with information obtained during course of their employment always fall under the "concerned citizen" class of informants, Court nevertheless concluded that employee's status as informant is more accurately described as that of a concerned citizen because he personally witnessed evidence of an ongoing crime (i.e., electricity theft) and did so not because he expected a reward similar to what a "professional" informant might expect, but because he was obligated to do so as an employee of electric company. Totality of circumstances, including employee's status as a "concerned citizen" informant, sufficiently corroborates employee's hearsay as to render it reliable. Held, judgment affirmed in part, reversed in part, and remanded.

TITLE: State v. Vance
INDEX NO.: Z.2.b.1.
CITE: (2/13/2019), 119 N.E.3d 626 (Ind. Ct. App. 2019)
SUBJECT: Invalid search warrant - inadequate controlled buy & omission of critical facts in affidavit
HOLDING: Tr. Ct. did not abuse its discretion in granting D's motion to suppress evidence obtained at his residence in violation of his Fourth Amendment rights. Search warrant for D's residence was not supported by probable cause due to the State's omission of material facts indicating irregularities in the controlled buy, including a break in surveillance, failure to search the drug dealer and inference that drug dealer lived at residence he was seen leaving, but instead he was a visitor. These omissions combined indicated drugs could have come from a location other than the residence to be searched. The good faith exception to the exclusionary rule did not apply to resurrect the search warrant because the omissions created a misleading impression for the issuance of a warrant. Held, judgment affirmed; Bradford, J., dissenting, believes the search warrant was supported by probable cause.

TITLE: Stephenson v. State

INDEX NO.: Z.2.b.1.

CITE: (5th Dist., 10-6-03), Ind. App., 796 N.E.2d 811

SUBJECT: Invalid search warrant - false & misleading statements

HOLDING: Tr. Ct. erred in denying D's motion to suppress, where probable cause affidavit contained several false & misleading statements by the investigating officer. Individual came to sheriff's department & stated that he had bought methamphetamine at D's home. Informant then took officer to brother's home, where he recovered a small amount of methamphetamine. In probable cause affidavit, officer stated he had "personal knowledge" that informant had purchased drugs from D & was inside D's residence when he saw drugs & implements for manufacturing meth. Majority reversed because affidavit suggests that the officer had "personal knowledge" & witnessed the purchase & does not indicate that the informant simply told him these facts. Held, judgment reversed & motion to suppress granted; Baker, J., concurring, would reverse on basis that nothing in affidavit established informant's credibility, that credibility was not established by a declaration against penal interest, & that hearsay was not corroborated under "totality of circumstances" as required by Ind. Code 35-33-5-2(b)(2).

TITLE: U.S. v. Allen
INDEX NO.: Z.2.b.1.
CITE: 168 F.2d 293 (6th Cir. 1999) vacated 179 F.3d. 1002
SUBJECT: Search Warrant -- PC Affidavit; Uncorroborated Tip
HOLDING: Reliable informant's tip that three days earlier he had seen D with cocaine in a particular apartment did not provide probable cause for search warrant. There was no indication that the informant was personally familiar with the appearance of cocaine, and no indication of the amount seen. The amount is important in light of the three-day delay before search warrant was obtained and possibility that cocaine could have been consumed. Affidavit's statement of officer's uncorroborated belief in informant's tip did not provide sufficient probable cause for a search warrant and was so lacking in indicia of probable cause that good faith exception does not apply.

TITLE: U.S. v. Weaver

INDEX NO.: Z.2.b.1.

CITE: 99 F.3d 1372 (6th Cir. 1996)

SUBJECT: Boilerplate Affidavit for Search Warrant Fails to Establish Probable Cause

HOLDING: Affidavit based on informer's tip, consisting of preprinted "boilerplate" language with only small amount of information filled in by affiant failed to provide enough specific information to provide probable cause. Where there should have been particularized facts, there was merely a recitation of information that could arguably have been obtained by any person who had walked by the subject premises. Averments concerning the informer and what he knew were composed entirely of boilerplate language except for the D's name and the type of contraband he allegedly possessed. The affidavit contained language claiming that the informer had recently been on the premises and had seen marijuana that was going to be distributed, but there were no facts supporting informer's knowledge regarding distribution. Affidavit was so clearly deficient that it could not be saved by "good faith" exception.

RELATED CASES: Herron, 44 N.E. 3d 833 (Ind. Ct. App. 2015) (by failing to allege that D was driving her car, partially completed, boilerplate OWI affidavit failed to establish probable cause; see full review, this section).

TITLE: Ware v. State
INDEX NO.: Z.2.b.1.
CITE: (4th Dist., 01-09-07), Ind. App., 859 N.E.2d 708
SUBJECT: Probable cause affidavit- omission of material evidence
HOLDING: The fact the police omitted from the probable cause affidavit a witness' identification of a man other than the D did not invalidate the warrant. When the State omits information from a probable cause affidavit, in order for the warrant to be invalid, a D must show: (1) the police omitted facts with the intent to make, or in reckless disregard of whether they thereby made, the affidavit misleading; and (2) that the affidavit if supplemented by the omitted information would not have been sufficient to support a finding of probable cause. The best course for police to follow is to include any information that could conceivably affect a probable cause determination.

Here, two boys were shot while egging cars. In a probable cause affidavit for a search warrant for D's home and truck, the police stated that there was an anonymous tip, some of which was corroborated, that a man named "Donny" had claimed that he had shot someone who egged him, that the witness at the scene claimed a white man in red truck had a gun and told her he would get the kids who were egging, and an officer at the scene identified the D as the man in the red truck. However, the police omitted the fact that the witness at the scene identified another white man as the driver of the red truck. Because the officer knew there were procedural problems with the witness' identification and that the man identified by the witness had been excluded as a suspect, the failure to include the identification in the affidavit was not intentional or reckless. Further, had the identification been included, there still was probable cause supporting the search warrant. Held, judgment affirmed.

RELATED CASES: Rotz, App., 894 N.E.2d 989 (officer's failure to include in affidavit date of shipment from company that sells marijuana growing equipment and outcomes and dates of D's previous arrests did not invalidate warrant; they were innocent mistakes that would not have affected outcome of application for warrant).

Z. SEARCH AND SEIZURE

Z.2. Search Warrant (Ind. Code 35-33-5)

Z.2.b.2. False information in affidavit (Franks v. Delaware)

TITLE: Darrring v. State
INDEX NO.: Z.2.b.2.
CITE: (5/2/2018), 101 N.E.3d 263 (Ind. Ct. App 2018)
SUBJECT: Probable cause affidavit's inaccuracies and omissions were not grounds to reverse denial of motion to suppress
HOLDING: On interlocutory review, Court of Appeals held that even though the officer's affidavit contained some inaccuracies and omitted some facts, the officer did not recklessly disregard the truth. See Franks v. Delaware, 438 U.S. 154, 155-56 (1978). Moreover, the omissions and inaccuracies did not undermine the Tr. Ct.'s finding that there was probable cause to search D's home for marijuana. See id.; see also Jones v. State, 783 N.E.2d 1132, 1136 (Ind. 2003).

D's neighbor claimed D shot him, so IMPD Officer Dwayne May investigated. Officer May and other officers at the scene smelled the odor of marijuana wafting from D's home. Sergeant Stephan Crooke filed an affidavit for a search warrant.

The affidavit was factually incorrect in alleging that Officer May initially knocked on D's door, that D came out to talk with him, and that Officer May immediately smelled marijuana. In fact, D met Officer May outside, about twenty feet from the front door. And Officer May did not smell marijuana until a few minutes later when he followed D as he entered his front door to get his identification. The omissions include the following: 1) the officers smelled the odor of raw marijuana along the fence line and near a shed; and 2) Officer May smelled marijuana throughout the neighborhood when he first arrived at the scene.

D does not allege, and the record does not demonstrate that Sergeant Crooke's mistakes and omissions were deliberately made to mislead the magistrate or were made with a reckless disregard for the truth. Moreover, the mistakes and omissions were not material to the determination of probable cause. See Query v. State, 745 N.E.2d 769, 772 (Ind. 2001); see also Franks, 438 U.S. 155-56; Jones, 783 N.E.2d at 1136. This includes the omissions related to the odor and existence of raw marijuana on the curtilage of D's home, as well as the general odor of marijuana in the neighborhood. D claims that, if included, these facts would have caused the magistrate to conclude that there was no probable cause that D's home was emitting the odor. However, the fact that there were other sources of the odor does not negate the fact that both Officer May and Sergeant Crooke smelled the odor coming from inside the house. Held, denial of motion to suppress affirmed.

TITLE: Keeylen v. State
INDEX NO: Z.2.b.2.
CITE: (8/8/2014), 14 N.E.3d 865, *aff'd*, 21 N.E.3d 840 (Ind. Ct. App 2014)
SUBJECT: Search warrant - omitted information in affidavit re: use of GPS tracking devices
HOLDING: Warrantless installation and use of GPS tracking devices constituted improper search, but suppression of evidence discovered during execution of a search warrant on D's residence was not warranted because D failed to establish that police engaged in deliberate falsehood or acted with reckless disregard for the truth when they omitted information regarding the GPS tracking devices from the probable cause affidavit. D filed a reverse Franks petition alleging that facts were omitted from the affidavit to support a warrant for the search of D's home, to wit: that the police had improperly attached a GPS device to D's car. The police obtained court orders approving the installation of the device, but this was not sufficient because there was no showing a court found probable cause. See United States v. Taylor, 979 F.Supp.2d 865 (S.D. Ind. 2013). Detective submitted affidavit to very same trial judge who had been authorizing warrantless the GPS searches for over a year and he explained that the reason he omitted information regarding the GPS searches was not to mislead trial judge, but to keep from D the fact that police had been tracking his movements.

Moreover, D failed to establish that probable cause would no longer exist if the omitted information had been considered by the issuing judge. Probable cause affidavit set forth extensive, long-term investigation of D, which included numerous controlled buys, which was sufficient to find probable cause to support search warrant. Held, denial of motion to suppress affirmed.

TITLE: Majko v. State

INDEX NO.: Z.2.b.2.

CITE: (2/19/87), Ind., 503 N.E.2d 898

SUBJECT: Search warrant (SW) - false information in affidavit

HOLDING: Where statement used to establish probable cause is recanted after sentencing, D has right to hearing on question of probable cause for original arrest warrant. Here, affidavit attached to D's motion to correct error stated that police induced affiant to give statement implicating D by offering rewards of good plea bargain, a dinner & drugs. Ct. uses analysis of Franks v. Delaware (1978), 438 U.S. 154, 98 S. Ct. 2674, 57 L.Ed.2d 667. Evidentiary hearing is required where D alleges deliberate falsehood or reckless disregard of truth & makes offer to prove. Ct. finds other cases distinguishable, because issue of probable cause was litigated during course of trial or made in allegation in affidavit concerning ineffective assistance of counsel. [Citations omitted.] Ct. rejects application of good faith exception. If police officer were permitted to falsify warrant affidavit & avoid penalties for such falsification simply by having another officer serve warrant, mandates of 4th/14th Amends. would be meaningless. Held, ruling on motion to correct error set aside; evidentiary hearing on issue ordered.

TITLE: Johnson v. State

INDEX NO.: Z.2.b.2.

CITE: (1-11-85), Ind., 472 N.E.2d 892

SUBJECT: Search warrant - false information in affidavit

HOLDING: In order to sustain claim that affidavits for probable cause for the arrest and search warrant contained false allegations and material misrepresentations, and that without improper material, warrants lacked probable cause. Burden is on D to show that relevant matter as expressed in the affidavits was untrue. Everroad, 442 N.E.2d 994. Allegations of negligence or innocent mistake are insufficient. Franks v. Delaware, 98 S. Ct. 2674 (1978). Held, denial of motion to suppress affirmed. Prentice, J., concurred in result. DeBruler, J., concurred in part and dissented in part.

RELATED CASES: Jones, 783 N.E.2d 1132 (warrant is not invalid simply because it contains slightly inaccurate material that is immaterial to warrant's validity); Cutter, App., 646 N.E.2d 704 (although D offered several alleged inaccuracies and omissions in officer's memory, inaccuracies as alleged were relatively minor and would not have affected determination of probable cause; moreover, even assuming officer's testimony could be characterized as inaccurate, D did not demonstrate that officer intentionally or recklessly misrepresented the truth.) Mason, 532 N.E.2d 1169 (false affidavit generally renders search warrant invalid and fruits of any search made pursuant to it are generally suppressible. It may not be necessary that a D have "standing" to challenge warrant, so long as D is able to show that falsity was essential to probable cause determination made by the issuing magistrate; falsities in affidavit must be disregarded when considering the adequacy of the affidavit vis-a-vis issuance of warrant.)

TITLE: Murphy v. State

INDEX NO.: Z.2.b.2.

CITE: (9/16/83), Ind., 453 N.E.2d 219

SUBJECT: Search warrant (SW) - false information in affidavit

HOLDING: Factual basis for affidavit sufficient to authorize issuance of SW existed; errors in affidavit did not render SW invalid. Here, police officer's affidavit stated that witness King saw D enter building at 6:30 a.m. & remove various items including boxes labeled Kodak & that owner of car used to remove property from premises told officer D showed her items taken from building. Officer at suppression hearing stated time of burglary noted in affidavit was incorrect. No Kodak boxes were found during search. Owner of car (friend of D) denied telling officer she saw stolen items. 4th Amend. requires SW be issued on probable cause supported by oath or affirmation. Franks v. DE, (1978), 438 U.S. 154, 98 S. Ct. 2674, 57 L.Ed.2d 667. A false affidavit would render SW invalid & fruits of any search made pursuant to it suppressible. Gunter, 275 N.E.2d 810. D failed to prove errors in affidavit were perjured, made in reckless disregard or otherwise rendered affidavit insufficient to establish probable cause. Other information in affidavit was correct. Held, no error.

RELATED CASES: Johnson, 472 N.E.2d 892 (held, no showing of deliberate false allegations/material misrepresentations).

TITLE: Snyder v. State

INDEX NO.: Z.2.b.2.

CITE: (2d Dist. 2/29/84), Ind. App., 460 N.E.2d 522

SUBJECT: Search warrant (SW) - false information in affidavit

HOLDING: Tr. Ct. did not err in admitting evidence seized pursuant to a SW which was issued based upon affidavits that were later recanted. Here, 2 men arrested for burglary executed SW affidavits against D, alleging they had seen marijuana packaged for sale in D's apartment & had purchased some. SW was issued following "an extensive probable cause hearing. Police executed warrant & found virtual marijuana store containing \$35,000 worth of marijuana. Although acknowledging that false affidavit will render SW invalid & make any evidence seized inadmissible (Gunter, 275 N.E.2d 810; Watt, App., 412 N.E.2d 90; Moore, App., 307 N.E.2d 92), Ct. finds that magistrate's determination of probable cause bears "a presumption of validity" to which reviewing Cts. "must pay substantial deference." Watt. If facts known at time SW is issued constitute probable cause, that is all 4th Amend. requires. IL v. Gates, (1983), U.S., 103 S. Ct. 2317, 76 L.Ed. 2d 527; Powers, 440 N.E.2d 1096; Riggenbach, 397 N.E.2d 953. "Later information casting doubt on facts shown at the probable cause hearing will not, absent state participation in false evidence, invalidate a search." Whether SW rests upon false information is factual question for Tr. Cts. to resolve. Ct. in footnote seems to retreat from Gunter by saying "where a truthful police officer bases his application for a SW on the sworn statement of any informant who supports it with sufficient underlying facts, the warrant should stand." Ct. parallels situation to state witness, upon whose word D's conviction was based, who later recants; no reversal is required there. Held, no error.

RELATED CASES: Bradley, 4 N.E.3d 831 (Ind. Ct. App 2013) (witnesses backtracking at trial from earlier allegations that D sold them marijuana did not negate probable cause determination; legality of search warrant focuses on facts presented to issuing judge, not on facts alleged after warrant was issued).

TITLE: State v. Hendricks
INDEX NO.: Z.2.b.2.
CITE: 31 Kan.App.2d 138, 61 P.3d 722 (Kan.Ct. App. 2003)
SUBJECT: Omission of Facts Detracting from Informer's Veracity
HOLDING: Information casting doubt on the veracity of an informer was material to finding of probable cause and should have been included in affidavit based on tip from informer. Deliberate omission of these facts spoiled warrant, and further preclude application of good faith doctrine.

TITLE: State v. Worrall
INDEX NO.: Z.2.b.2.
CITE: 968 P.2d 968 (Mont. 1999)
SUBJECT: Standard for Challenging Inaccurate Information in Warrant Application or Affidavit
HOLDING: Montana S. Ct. departs from U.S. Supreme Court standard for D challenging inaccurate information in search warrant affidavit or application. U.S.S. Ct. set out framework for such challenge in Franks v. Delaware, 438 U.S. 154 (1978), requiring D to prove not only that warrant application contained false statements, but that they were made knowingly, intentionally, or with reckless disregard for the truth. Mont. S. Ct. abandons this framework, holding that it is sufficient for D to prove by a preponderance of the evidence that the challenged information is false. D should not bear burden of proving the state of mind of the affiant or informer. Further, mistake or good faith do not detract from the unreasonable invasion of privacy occasioned by a search not based on probable cause. Once D proves by preponderance that information is false, it must be stricken from the application or affidavit and probable cause must be evaluated anew. If it cannot be established in the absence of the false information, the warrant must be voided, and its fruits suppressed.

TITLE: State v. Stropkaj
INDEX NO.: Z.2.b.2.
CITE: 2001 Ohio 1837 (Ohio Ct. App. 2001)
SUBJECT: False Information in Warrant - Knowledge of Officer Charged with Checking Facts
HOLDING: Where a police officer preparing search warrant affidavit asks another officer to check accuracy of facts in affidavit, failure of that officer to disclose facts undermining credibility of informant violates 4th Amendment. Generally, material omissions from warrant affidavit are to be judged only on basis of knowledge of affiant, but where another officer accepts responsibility to check accuracy of affidavit, intentional failure to correct misleading statement or omission constitutes police misconduct and warrant may be suppress under Franks v. Delaware, 438 U.S. 154 (1978). Here, officer failed to disclose that informant had been fired by D, and thus had motive to lie.

TITLE: Wainscott v. State

INDEX NO.: Z.2.b.2.

CITE: (5/16/2023) 210 N.E.3d 853, Inc. Ct. App.

SUBJECT: Victim's recantation did not require suppression under Franks v. Delaware because search warrant had already been executed

HOLDING: Police obtained a search warrant for Defendant's phone based on his 11-year-old niece's accusation that Defendant molested her. After police seized Defendant's phone—but before they analyzed its contents—the victim partially recanted her allegations. Doubting the veracity of the recantation, the investigating detective and local prosecutor proceeded with analyzing the phone without informing the magistrate who issued the warrant of the new development. Defendant moved to suppress all evidence derived from the search warrant, arguing that the State's failure to inform the magistrate of the victim's recantation constituted an omission of material facts that rendered the warrant invalid. The trial court denied Defendant's motion. Defendant filed an interlocutory appeal, arguing the AV's recantation happened before the search warrant had been fully executed because the contents of the phone seized through the warrant had not yet been analyzed. The Court of Appeals disagreed. Assuming that the recantation is a material fact, it would have required the State to inform the magistrate judge of this development. But Indiana law contradicted Defendant's interpretation of a search warrant's execution. Under Indiana Code § 35-33-5-7(f), a search warrant is deemed executed when a law enforcement officer seizes the item. The partial recantation, which happened weeks after the phone's seizure, could not have affected the search warrant's validity. Because the warrant had already been executed by the seizure of the phone, the State had no obligation to inform the magistrate of the partial recantation. Further, the affidavit reflected a fair and accurate rendition of events prompting the request for a search warrant and supported a finding of probable cause. Held: affirmed.

Z. SEARCH AND SEIZURE

Z.2. Search Warrant (Ind. Code 35-33-5)

Z.2.b.3. Staleness

TITLE: Breitweiser v. State
INDEX NO.: Z.2.b.3.
CITE: (2nd Dist., 1-22-99), Ind. App., 704 N.E.2d 496
SUBJECT: Search warrant - staleness challenge rejected
HOLDING: Lapse of eight days between police officer's recovery of marijuana plant fragments from D's trash & issuance of warrant did not render information too stale to support Tr. Ct.'s finding of probable cause. Staleness of information upon which search warrant is based must be judged by facts & circumstances of each case. Armstrong, 429 N.E.2d 647. Character of criminal activity under investigation is important factor to consider when determining whether contraband or evidence of crime is still in particular place. Time between occurrence & issuance of warrant is of less significance where affidavit or testimony recites criminal activity of protracted or continuous nature. U.S. v. Lamon, 930 F.2d 1183 (7th Cir. 1991). In this case, police officers began to investigate drug activity at D's residence after receiving information from anonymous source. Quantity & size of fragments of marijuana plants discovered in D's trash & repeated evidence of drug activity suggested continuing use & ongoing cultivation of marijuana at residence. Thus, there was substantial basis for Tr. Ct.'s determining that probable cause existed under facts of this case. Initial probable cause supporting issuance of search warrant continued to exist at time of search, despite three-day delay in its execution. Held, denial of motion to suppress evidence affirmed, Sullivan, J., concurring.

Note: Left unresolved is whether probable cause finding can be based on discovery of marijuana plant material, e.g., stems, which do not legally constitute marijuana.

RELATED CASES: Shell, 927 N.E.2d 413 (Ind. Ct. App 2010) (Ct. rejected D's argument that, because the information given by the CI was approximately three weeks old and evidence could have been placed in the trash in the two weeks before the search, the search warrant was based on stale information); Allen, App., 798 N.E.2d 490 (although shootings occurred two months prior to execution of search warrant, initial probable cause supporting issuance of search warrant continued to exist at time of search).

TITLE: Huffines v. State

INDEX NO.: Z.2.b.3.

CITE: (2nd Dist.; 12-21-00), Ind. App., 739 N.E.2d 1093

SUBJECT: Probable cause - staleness

HOLDING: Where search warrant was not executed until eight days after issuance of search warrant & eleven days after incident giving rise to probable cause, search warrant was invalid due to dissipation of probable cause. Search warrant must be executed not more than ten days after date of issuance. Ind. Code 35-33-5-7(b). However, Cts. determine probable cause under totality - of-the-circumstances approach. Important facts to consider in determining whether probable cause has dissipated, rendering warrant fatally stale, include lapse of time since warrant was issued, nature of criminal activity & kind of property subject to search. U.S. v. Gibson, 123 F.3d 1121 (8th Cir. 1997). Moreover, under Indiana Constitution, State bears burden of showing that, in totality of circumstances, intrusion was reasonable. Callahan, App., 719 N.E.2d 430. Here, warrant was based on probable cause affidavit that stated confidential informant had observed & purchased cocaine from D at his residence three days prior to issuance of warrant. After warrant was issued, police waited another eight days to serve warrant. State presented no evidence that police conducted surveillance of D's residence between time warrant was issued & when it was executed, no evidence regarding any increase or decrease in traffic to & from D's home, & no evidence indicating on-going drug activity. Although police executed search warrant within ten- day statutory limit, considering totality of circumstances, probable cause dissipated in eight days that lapsed between time of warrant's issuance & search of D's home. Thus, search was violation of Fourth Amendment of U.S. Constitution & Article 1, Section 11 of Indiana Constitution. Held, judgment reversed.

RELATED CASES: Byers, 134 N.E.3d 1051 (Ind. Ct. App. 2019) (four-day interval between drug activity in video and the finding of probable cause did not render the warrant stale); Caudle, App., 749 N.E.2d 616 (distinguishing Huffines, Ct. concluded that, even if warrant were stale, evidence from search was admissible because police executed search warrant in good faith).

TITLE: Mehring v. State

INDEX NO.: Z.2.b.3.

CITE: (5th Dist., 04-15-08), Ind. App. 884 N.E.2d 371

SUBJECT: Staleness - computer images depicting child pornography not stale after 10.5 months

HOLDING: Tr. Ct. properly denied D's motion to suppress. Time can be a critical requirement in determining probable cause. However, when making a staleness determination, our courts have also considered the nature of the crime, the nature and type of evidence seized or sought, and even a police affiant's opinion, based on his training and experience, regarding the nature of the evidence sought. Here, there were ten and one-half months between when an FBI agent downloaded child pornography images posted from D's IP address on LimeWire and when IPD detective applied for a search warrant of D's apartment. Evidence of child pornography is likely to be kept in a safe and private place like a home, and digital or computer images are saved to a hard drive or to other types of digital media that can be retained. Further, the search warrant was also based on the detective's knowledge regarding the retention habits of people having child pornography. It is also reasonable to believe that D still had the images and took them with him when he moved his computer. Thus, although the time lapse of ten and one-half months is a concern, when considered with the nature of the crime, the nature and type of evidence sought and the detective's opinion, the probable cause was not stale. Held, judgment affirmed; Mathias, J., dissenting on basis that the information was stale and that "such images are a mouse-click away from being moved or deleted."

TITLE: Moran v. State

INDEX NO.: Z.2.b.3.

CITE: (12-12-94), Ind., 644 N.E.2d 536

SUBJECT: Search warrants - staleness

HOLDING: Ct. rejected federal & state staleness challenges to issuance of warrants, where most recently acquired evidence was nearly two weeks old & trash search had been conducted three months prior to execution of warrant (warrantless trash search upheld at Z.1.a). Affidavit contained no false or misleading information, delay would not have rendered official belief in presence of marijuana in house entirely unreasonable, police acted in good faith in executing warrant, & facts in affidavit permitted conclusion of ongoing criminal enterprise. Held, transfer granted, decision of Ct. App. vacated, denial of motion to suppress affirmed, & case remanded. Dickson, J., concurred on staleness issue & dissented on application of reasonableness test to closed trash containers; Sullivan, J., dissented; Shepard, C.J., did not participate.

RELATED CASES: Scott, App., 883 N.E.2d 147 (in light of CI's information that D was involved in ongoing methamphetamine manufacture, officer's information regarding detecting odor of ether at D's residence within previous two months was not stale); McGrew, App., 673 N.E.2d 787, summarily affirmed, 682 N.E.2d 1289 (Ct. rejected staleness challenge to search warrant for sexual device issued 81 days after alleged commission of crime; sexual device was type of property which D could reasonably be expected to keep for length of time in question).

TITLE: Williams v. State

INDEX NO.: Z.2.b.3.

CITE: (10-7-81), Ind., 426 N.E.2d 662

SUBJECT: Search warrant - Staleness

HOLDING: Search warrant was not invalid on staleness grounds because there was probable cause to believe substances would be at house and premises 67 days after purse burned. Objects of search were burnt remnants of purse and its contents. Contents of purse consisted of ashes or sludge having innocent appearance and no utility. There was substantial probability that refuse of that nature would not have been removed from site of burning. Search warrant naming burnt remnants of purse and its contents provided ample justification for police intrusion into house and premises. Shotgun shells and sinkers were found by officers in house in plain view. Therefore, seizure of this evidence was not contrary to Fourth Amendment prohibition against unreasonable searches and seizures. Held, judgment affirmed in part and reversed in part on other grounds.

Z. SEARCH AND SEIZURE

Z.2. Search Warrant (Ind. Code 35-33-5)

Z.2.b.4. Form of warrant (Ind. Code 35-33-5-3)

TITLE: Schiro v. State
INDEX NO.: Z.2.b.4.
CITE: (8/5/83), Ind., 451 N.E.2d 1047
SUBJECT: Search warrant form; issued by commissioner
HOLDING: Tr. Ct. did not err in admitting evidence seized pursuant to search warrant issued by commissioner. See Ind. Code 33-4-1-82.2(a). Here, D argues warrant was invalid, relying on State ex rel. Smith v. Starke Circuit Ct. 417 N.E.2d 1115 (holding unconstitutional certain provisions of statutes providing for appointment of commissioners by circuit Cts. of Starke, Vanderburgh & St. Joseph counties). Provision allowing commissioner to issue search warrant was not held unconstitutional by State ex rel. Smith. Held, no error.

TITLE: State v. Smith

INDEX NO.: Z.2.b.4.

CITE: (1st Dist. 11/14/90), Ind. App., 562 N.E.2d 428

SUBJECT: Search warrant - form; signature of issuing judge

HOLDING: Failure of issuing judge to sign service copy of search warrant did not invalidate warrant or its execution so as to require suppression of evidence obtained in search. After hearing, judge determined that probable cause existed but failed to sign service copy of warrant, which was given to Ds. Ds moved to suppress based on this lack of signature, & Tr. Ct. granted suppression. State appeals. Neither 4th Amend. of U.S. Const. or Art. I, Sec. 11 of Ind. Const., which each prohibit unreasonable searches & seizures, require signing of search warrant or service of copy on person whose property is to be searched. Although facsimile of approved search warrant form set out at Ind. Code 35-33-5-3 includes line for issuing judge's signature, there is no explicit statutory requirement of signature. Signature of issuing judge or magistrate on original of search warrant has been held to be ministerial act. Provided judge or magistrate found probable cause & intended to issue warrant, omission of signature will not invalidate search warrant. See, e.g., Commonwealth v. Pellegrini (Mass. 1989), 539 N.E.2d 514; People v. Snyder (Mich. App. 1990), 449 N.W.2d 703; State v. Andries (Minn. 1980), 297 N.W.2d 124. Further, while Ind. Code 35-33-5-7(d) requires officer executing search warrant to announce authority & purpose of visit, there is no requirement that service of copy of warrant be made upon person whose property is to be searched. Officer here announced authority & purpose, & lack of signature on service copy of warrant did not invalidate search. Held, suppression order reversed.

RELATED CASES: Taylor, 69 N.E.3d 502 (Ind. Ct. App 2017) (no error in showing D electronic copy of valid search warrant; see full review at Z.2.d.5).

TITLE: Taylor v. State
INDEX NO.: Z.2.b.4.
CITE: (1/17/2017), 69 N.E.3d 502 (Ind. Ct. App 2017)
SUBJECT: Showing D electronic copy of valid search warrant is equal to paper copy
HOLDING: Trial court did not err in denying Defendant's motion to suppress blood draw evidence because it was obtained via a valid search warrant despite the fact the police officer did not serve Defendant with a paper copy of the search warrant before the blood draw. Instead, the prosecutor's office sent an electronic photograph of the signed search warrant to officer's cellphone via email. Defendant argued that the electronic copy of the search warrant in officer's possession was insufficient to proceed with the blood draw. But the officer need not serve the search warrant on the person to be searched at all, let alone in any particular format. State v. Smith, 562 N.E.2d 428 (Ind. Ct. App 1990).

And Ind. Code § 35-33-5-8 allows for a judge to transmit a duplicate copy of a warrant via electronic means as long as the affidavit and warrant are printed and retained as if they were original, to protect the defendant's Fourth Amendment rights. A photograph or PDF of a search warrant transmitted via email is as valid and effective as a paper copy. See Smith v. State, 311 P.3d 132, 140 (Wyo. 2013). Held, judgment affirmed.

Z. SEARCH AND SEIZURE

Z.2. Search Warrant (Ind. Code 35-33-5)

Z.2.b.5. Description of place to be searched

TITLE: Carter v. State

INDEX NO.: Z.2.b.5.

CITE: (6/28/2018), 105 N.E.3d 1121 (Ind. Ct. App. 2018)

SUBJECT: Warrant sufficiently specific for search of cell phone

HOLDING: A warrant that allowed police to search D's cell phone was sufficiently specific to satisfy the particularity requirement of the federal and state constitutions. Police found 205 grams of meth, 27 grams of heroin, a syringe, and a spoon in a car where D was a passenger. Police obtained a warrant to search D's phone. The warrant authorized searching the phone for, *inter alia*, "any information relating to calls, messages . . . photographs, images, emails, letters, applications, and folders as well as any messages that may be stored on the phone that would indicate the identity of the phone's owner/user. . . ." In executing the warrant, law enforcement extracted more than one thousand pages of information from the phone. Several of D's text messages were admitted at trial. D was convicted of two dealing felonies and was adjudicated as an habitual offender. On appeal, he argued the warrant allowed an impermissibly broad exploratory search because it wasn't sufficiently particular, as required by both the federal and state constitutions. The particularity requirement "ensures that the search will be carefully tailored to its justifications, and will not take on the character of the wide-ranging exploratory searches the Framers intended to prohibit." Maryland v. Garrison, 480 U.S. 79, 84 (1987). The requirement aims to prevent rummaging through a person's belongings. Coolidge v. New Hampshire, 403 U.S. 443, 467 (1971). However, while the warrant must describe with some specificity where officers may search and what they may seize, "there is no requirement that there be an exact description." Overstreet v. State, 783 N.E.2d 1140, 1158 (Ind. 2003).

Appearing to concede that the warrant authorized police to search everything on the phone, the Court nonetheless found the warrant sufficiently specific and the scope of the search permissible: "Although [D] draws our attention to the quantity of data extracted, he has not demonstrated that there was any other way to practically conduct the permitted search. As the State observes, '[a] great deal of other information will likely have to be sifted through in order to find the relevant information—similar to looking through drawers in a home or office file cabinet for specific files or letters that are relevant to the investigation.' [Thus,] we discern no indication that law enforcement had the ability to determine, *ex ante*, that certain pages could not have contained any of the information sought. See United States v. Stabile, 633 F.3d 219, 238 (3d Cir. 2011) ("'[A] computer search may be as extensive as reasonably required to locate the items described in the warrant' based on probable cause." (*quoting United States v. Grimmer*, 439 F.3d 1263, 1270 (10th Cir. 2006))); Wheeler v. State, 135 A.3d 282, 301 (Del. 2016) ("Some irrelevant files may have to be at least cursorily perused to determine whether they are within the authorized search ambit.")." Accordingly, because the text messages were not seized pursuant to an impermissible general warrant, the trial court did not abuse its discretion in admitting the text messages. Held, judgment affirmed.

RELATED CASES: Price, 119 N.E.3d 212 (Ind. Ct. App. 2019) (evidence seized from D's phone was not pursuant to an impermissibly general warrant).

TITLE: Dost v. State

INDEX NO.: Z.2.b.5.

CITE: (1st Dist., 7-27-04), Ind. App., 812 N.E.2d 232

SUBJECT: Search warrant with no address and imprecise description of residence

HOLDING: Trial Ct. did not err in denying D's motion to suppress evidence obtained by search warrant which did not contain address of residence to be searched but did contain an imprecise description of residence. Probable cause affidavit included the address for the property, but not the warrant itself. Further, the warrant included some inaccuracies in describing the property as to color (grey not white) and how far brownstone went up the front side. Ct. adopted test from factually similar case of U.S. v. Bonner, 808 F.2d 864, 866 (1st Cir. 1986), as to "whether the description is sufficient to enable the executing officer to locate and identify the premises with reasonable effort, and whether there is any reasonable probability that another premise might be mistakenly searched." Ct. emphasized that the objective was to ensure that innocent homes would not likely be searched. Ct. noted that in this case, one officer involved in the actual search had done surveillance of the property, determining the address, description of the property and that D's last name was on the mailbox. He had also run a check on a vehicle in the driveway that matched the D, so the inaccuracies in the description of the property were not significant enough to warrant suppression because officer involved with the search knew the exact location of the property. Although the record was not clear whether the probable cause affidavit including the property's address was served with the warrant, the Ct. relied on two decisions from other jurisdictions that found this minor, procedural oversight did not invalidate search warrant. Instead, "[t]he test is for 'practical accuracy,' and common sense should prevail over hyper technicality." State v. Dye, 826 P.2d 500 (Kan. 1992). Even if the warrant were determined unconstitutional, the good-faith exception of U.S. v. Leon, 468 U.S. 897 (1984) would allow the search because the officers took reasonable steps to ensure the search was legal. Held, judgment affirmed.

RELATED CASES: Salyer, 938 N.E. 2d 239 (Ind. Ct. App. 2010) (the incorrect address information on the warrant did not invalidate it because the executing officer knew the precise location of D's home, prepared the search warrant and accompanying affidavit, and executed the search warrant. Thus, as in Dost, there was no risk that officer would enter the wrong residence or undertake indiscriminate searches of other homes).

TITLE: Ewing v. State

INDEX NO.: Z.2.b.5.

CITE: (3rd Dist., 05-04-93), Ind. App., 613 N.E.2d 53

SUBJECT: Search warrant with erroneous description not improper

HOLDING: Where after to issuance of warrant, it was determined description of premises was erroneous, but post office address was proper & possibility wrong residence would be searched was foreclosed, warrant was still proper. Based on informant's tip that he had been at house & seen marijuana, officers prepared search warrant. Informant was unable to supply adequate directions to house, so officers obtained post office address from accident report & got description of house they thought was involved. When officers attempted to serve warrant, they discovered description was of property owned by different man with same name, although post office address was proper. Owner told them D lived with his mother, & two officers were familiar with where mother lived, so officers proceeded to her house. When they arrived, Ds were present & large amount of marijuana was found in house.

When warrant is challenged for insufficient particularity, State must show description was such that officer executing warrant could, with reasonable effort, identify place intended. Validity of warrant must be assessed on basis of information officers had duty to discover & disclose to magistrate, but facts that emerge after issuance of warrant have no bearing on its initial validity. Maryland v. Garrison (1987), 480 U.S. 79. In instant case, warrant correctly stated name & mailing address, but with benefit of hindsight, it was determined that physical description of property was incorrect & conceivably broad enough to cover two separate residences. In similar situations, Cts. have been sympathetic to arguments showing officers could not reasonably have executed warrant against property other than that intended. Ct. held where identifying information in warrant exists to allow officers to determine premises to be searched with reasonable degree of certainty, warrant is not invalid. Although imperfect, warrant passed muster when issued, & foreclosed possibility of prohibited general or exploratory search. Even if warrant were defective, good faith exception would apply to render evidence admissible.

RELATED CASES: Marlow, App, 786 N.E.2d 751 (warrant sufficiently described property to be searched despite mistake in identifying address of D's house; besides address, warrant identified house as white in color and as single-family dwelling).

TITLE: Figert and Green v. State

INDEX NO.: Z.2.b.5.

CITE: (10-23-97), Ind., 686 N.E.2d 827

SUBJECT: Warrant; no probable cause - search of separate residences

HOLDING: When police obtained warrant to jointly search three trailers situated in U-shape & alone in rural area, affidavit needed to establish probable cause to justify search of each trailer & not all trailers collectively. When issuing warrant to search multi-unit dwelling, affidavit must establish probable cause as to each unit in dwelling except when dwelling appears to be several units but is actually single residence or separate structures used as single communal residence. U.S. v. Butler, 71 F.3d 243, 249 (7th Cir. 1995); U.S. v. Hinton, 219 F.2d 324 (7th Cir. 1955). Here, warrant failed to establish probable cause as to third trailer because affidavit failed to establish that persons dealing drugs resided in third trailer, & exception did not apply because affidavit stated that trailers were situated in U-shape in rural area, with several unidentified individuals around trailers & drug transaction occurring in communal driveway. Affidavit failed to establish that trailers were in fact being used as single communal property rather than three separate residences.

Because use of one warrant to search several dwellings, whether occupied by same person or different parties, may confuse determination whether probable cause existed to search each residence, police should obtain separate warrant for each residence or place unless police proceed under "collective dwelling" theory, in which case facts supporting that theory should be set forth in affidavit. In addition, facts alleged in probable cause affidavit used to support search of each unit in multiunit dwelling are better set forth in separate paragraph for each unit where feasible to avoid confusion. Held, transfer granted, Ct. App.' decision at 683 N.E.2d 1314 reversed & remanded with instructions to grant D's motion to suppress.

RELATED CASES: Tungate, App., 899 N.E.2d 60 (where there was probable cause to search barn and white camper trailer on property, Tr. Ct. properly concluded that State lacked probable cause to search tan camper, absent evidence that there was a nexus between the barn and the tan camper; fact that trooper observed the tan camper next to the barn is insufficient); Marlowe, App., 786 N.E.2d 751 (although controlled buys occurred at D's place of business rather than his home, totality of evidence supported finding that PC existed for search of D's home; informant told police that D had drugs at his residence on day before search & that D was selling drugs at his business); Sowers, 724 N.E.2d 588 (although tent was in area in which D had expectation of privacy, search warrant was valid for search of tent to same degree as for any other structure within curtilage of residence); Gusan, 549 F.2d 15 (7th Cir.) (because D had dominion and control over areas police searched and found contraband search warrant was sufficiently specific, even though building to be searched was duplex with four separate apartments and building's entrances had separate address numbers and warrant only named one address number).

TITLE: Maryland v. Garrison

INDEX NO.: Z.2.b.5.

CITE: 480 U.S. 79, 107 S. Ct. 1013, 94 L.Ed.2d 72 (1987)

SUBJECT: Warrant determined overbroad during course of search

HOLDING: 4th Amend. Warrant Clause prohibits issuance of warrant, except one "particularly describing the place to be searched & the persons or things to be seized." Here, warrant obtained authorizing search of "the premises of 2036 Park Avenue third floor apartment." Police believed there was only one apartment on described premises, but in fact third floor was divided into 2 apartments. Police searched D's apartment, finding contraband, before they realized there were 2 third floor apartments. Warrant was based upon probable cause to believe occupant of other apartment had contraband & other paraphernalia in his possession. Court finds that had officers known/should have known, there were 2 separate dwelling units on third floor, they would have been obligated to exclude D's apartment from scope of requested warrant. However, constitutionality of officers' conduct must be judged in light of information available to them at time they acted. Those items of evidence that emerge after warrant is issued have no bearing on whether warrant was validly issued. Here, officers made reasonable investigation, including verification of information obtained from reliable informant, exterior examination of building, & inquiry of utility company. Discovery of contraband cannot validate otherwise invalid warrant. Nor can discovery of facts demonstrating valid warrant was unnecessarily broad retroactively invalidate warrant. Validity of warrant must be assessed on basis of information that officers disclosed or had duty to discover & disclose to issue magistrate. Held, warrant was valid when issued. Blackmun, joined by Brennan & Marshall, DISSENTS.

RELATED CASES: Carter v. State, App. 105 N.E.3d 1121 (Ind. Ct. App 2018) (warrant was sufficiently specific for search of cell phone and thus satisfied particularity requirement of both federal and state constitutions; see full review, this section).

Z. SEARCH AND SEIZURE

Z.2. Search Warrant (Ind. Code 35-33-5)

Z.2.b.6. Description of things to be seized

TITLE: Carter v. State
INDEX NO.: Z.2.b.6.
CITE: (6/28/2018), 105 N.E.3d 1121 (Ind. Ct. App. 2018)
SUBJECT: Warrant sufficiently specific for search of cell phone
HOLDING: A warrant that allowed police to search D's cell phone was sufficiently specific to satisfy the particularity requirement of the federal and state constitutions. Police found 205 grams of meth, 27 grams of heroin, a syringe, and a spoon in a car where D was a passenger. Police obtained a warrant to search D's phone. The warrant authorized searching the phone for, *inter alia*, "any information relating to calls, messages . . . photographs, images, emails, letters, applications, and folders as well as any messages that may be stored on the phone that would indicate the identity of the phone's owner/user . . ." In executing the warrant, law enforcement extracted more than one thousand pages of information from the phone. Several of D's text messages were admitted at trial. D was convicted of two dealing felonies and was adjudicated as a habitual offender. On appeal, he argued the warrant allowed an impermissibly broad exploratory search because it wasn't sufficiently particular, as required by both the federal and state constitutions. The particularity requirement "ensures that the search will be carefully tailored to its justifications and will not take on the character of the wide-ranging exploratory searches the Framers intended to prohibit." Maryland v. Garrison, 480 U.S. 79, 84 (1987). The requirement aims to prevent rummaging through a person's belongings. Coolidge v. New Hampshire, 403 U.S. 443, 467 (1971). However, while the warrant must describe with some specificity where officers may search and what they may seize, "there is no requirement that there be an exact description." Overstreet v. State, 783 N.E.2d 1140, 1158 (Ind. 2003).

Appearing to concede that the warrant authorized police to search everything on the phone, the Court nonetheless found the warrant sufficiently specific and the scope of the search permissible: "Although, [D] draws our attention to the quantity of data extracted, he has not demonstrated that there was any other way to practically conduct the permitted search. As the State observes, '[a] great deal of other information will likely have to be sifted through in order to find the relevant information—similar to looking through drawers in a home or office file cabinet for specific files or letters that are relevant to the investigation.' [Thus,] we discern no indication that law enforcement had the ability to determine, *ex ante*, that certain pages could not have contained any of the information sought. See United States v. Stabile, 633 F.3d 219, 238 (3d Cir. 2011) ('[A] computer search may be as extensive as reasonably required to locate the items described in the warrant' based on probable cause." (*quoting United States v. Grimmett*, 439 F.3d 1263, 1270 (10th Cir. 2006)); Wheeler v. State, 135 A.3d 282, 301 (Del. 2016) ("Some irrelevant files may have to be at least cursorily perused to determine whether they are within the authorized search ambit."))." Accordingly, because the text messages were not seized pursuant to an impermissible general warrant, the trial court did not abuse its discretion in admitting the text messages. Held, judgment affirmed.

RELATED CASES: Price, 119 N.E.3d 212 (Ind. Ct. App. 2019) (evidence seized from D's phone was not pursuant to an impermissibly general warrant).

TITLE: Conn v. State

INDEX NO.: Z.2.b.6.

CITE: (4th Dist. 8/19/86), Ind. App., 496 N.E.2d 604

SUBJECT: Search warrant - specificity of items to be seized

HOLDING: Tr. Ct. erred in admitting unlawfully seized items into evidence over D's objections.

Here, police obtained search warrant specifying 9 items of stolen property to be recovered from D's home. A "gregarious search party" of more than 15 police officers descended upon D's rural residence, searching it for 4 to 5 hours, seizing 254 items in all. The search extended to closet shelves, beds, chair cushions, jewelry boxes, & a zippered suitcase. General warrants, authorizing seizure of any & all items are proscribed by both U.S. & IN Constitutions. Layman, App., 407 N.E.2d 259. State argues that seizure of 245 items not listed in warrant was proper under plain view doctrine established in Coolidge v. NH (1971), 403 U.S. 443, 91 S. Ct. 2022, 29 L.Ed.2d 564. Ct. concludes that because discovery was anticipated, plain view doctrine is inapplicable. Hewell, App., 471, 1235. Informant told police what items of stolen property they might find & detective recorded items in notebook, which was referred to during search & seizure. Even assuming knowledge gained from notebook made it readily apparent which items were stolen, plain view doctrine still does not apply because discovery was not inadvertent. Ct. concludes police conducted unlawful general search of Conn's property. Held, conviction reversed; cause remanded for new trial.

TITLE: Groh v. Ramirez
INDEX NO.: Z.2.b.6.
CITE: 540 U.S. 551 (2004)
SUBJECT: Defective Search Warrants, Qualified Immunity
HOLDING: A search warrant which does not describe the things or persons to be seized is defective under the 4th Amendment, and a search conducted under such a warrant is effectively "warrantless." Officers who conduct a search pursuant to such a warrant are not entitled to qualified immunity.

The petitioner, a BATF agent, heard from a 'concerned citizen' that Ramirez had various automatic weapons at his house, so he sought a search warrant. The warrant application described the weapons, but the warrant itself did not. The magistrate found probable cause and issued the warrant. Law enforcement served the warrant but did not bring the application with them (it had been placed under seal). The warrant did not incorporate the application by reference. The search revealed no weapons, and Ramirez sued.

The Court held 7-2 that the search violated the 4th Amendment, and 5-4 that the BATF agent was not entitled to qualified immunity.

The 4th Amendment requires search warrants to "particularly describ[e] the place to be searched and the persons or things to be seized." A search warrant which does not describe the things to be seized is defective, even if the application for the warrant does describe the things to be seized.

The Court left open the issue of whether a search warrant can incorporate other documents by reference if the warrant uses appropriate words of incorporation and if the supporting document accompanies the warrant. In this case, the warrant did not incorporate other documents, and the affidavit and application had been placed under seal and did not accompany the warrant.

RELATED CASES: Messerschmidt, 132 S. Ct. 1235 (2012) (officers entitled to qualified immunity, even though search warrant was overly broad and lacked probable cause, because officers were not "plainly incompetent" in seeking and executing warrant).

TITLE: Hester v. State

INDEX NO.: Z.2.b.6.

CITE: (1st Dist. 3/29/90), Ind. App., 551 N.E.2d 1187

SUBJECT: Search warrant - insufficient specificity; items to be seized

HOLDING: Search warrant authorizing search of D's car for "any & all property which may have been the subject of Theft or Burglary" at any of 6 homes listed was improper general warrant. Evidence showed that police were on lookout for blue "Camaro type" car that had been seen around several recent burglaries. Officer saw D & friend in car matching that description & pulled them over. Officer noticed portable TV in back seat, & upon determining that car was improperly registered, ordered it impounded. After smelling gasoline, wrecker driver opened trunk to make sure car was safe & observed cameras & what he believed to be guns in trunk. Above quoted warrant was then issued & car was searched. Warrant may not issue unless it describes with particularity place to be searched & items to be seized so that executing officer is not left with discretion. Hewell, App., 471 N.E.2d 1235. Warrant here fails to describe in any detail precisely what items were taken in robberies listed. State argues that items found were actually taken in burglary which officers had not yet learned of, so that they could not have been particularly described. However, this does not justify general warrant issued here. Ct. rejects state's Leon good faith exception argument, finding that no reasonably trained police officer could have believed that search warrant completely lacking description of items to be seized could be valid. Ct. also rejects state's argument that search was proper because evidence could have been found during routine inventory search, since there was no evidence that this was in fact routine inventory search. Held, evidence improperly admitted; conviction reversed.

TITLE: Warren v. State

INDEX NO.: Z.2.b.6.

CITE: (1-10-02), Ind., 760 N.E.2d 608

SUBJECT: Search warrant - specificity of items to be seized

HOLDING: Fourth Amendment to United States Constitution requires search warrants to particularly describe place to be searched, & persons or things to be seized. General warrants are prohibited by the Fourth Amendment, & a warrant that leaves executing officer with discretion is invalid. Hester v. State, 551 N.E.2d 1187 (Ind. Ct. App. 1990). Here, in murder prosecution, search warrant that included language authorizing search for "any other indicia of criminal activity including but not limited to books, records, documents, or any other such items" granted police officers unlawful unbridled discretion to conduct general exploratory search. However, infirmity of this catchall language did not doom entire warrant, but rather only required suppression of evidence seized pursuant to that part of warrant but not suppression of evidence obtained pursuant to the valid specific portions of warrant. United States v. Greene, 250 F.3d 471 (6th Cir. 2001); United States v. Reed, 726 F.2d 339 (7th Cir. 1984). Police properly seized identification cards & driver's licenses because they were particularly described in warrant as "lists of acquaintances." Held, convictions affirmed.

RELATED CASES: Levenduski, App., 876 N.E.2d 798 (evidence of methamphetamine manufacturing was illegally seized as part of over-broad catch-all phrase of warrant because State failed to present any evidence that the evidence was in plain view; Bailey, J., dissenting); Foy, App., 862 N.E.2d 1219 (in murder prosecution, search warrant authorizing a search for "any and all trace evidence" was not invalid as a general warrant); Sisk, App., 785 N.E.2d 271 (authorization to search person of "Antonio Hardin" granted by challenged warrant did not thereby grant officers unbridled discretion to conduct general exploratory search; see full review at Z.2).

Z. SEARCH AND SEIZURE

Z.2. Search Warrant (Ind. Code 35-33-5)

Z.2.c. Permissible scope of search and seizure

TITLE: Baker v. State

INDEX NO.: Z.2.c.

CITE: (6/21/83), Ind., 449 N.E.2d 1085

SUBJECT: Search warrant - photograph of D

HOLDING: Warrant issued to arrest D for sole purpose of taking his picture does not violate Davis v. MS (1969), 394 U.S. 721, 89 S. Ct. 1394, 22 L.Ed.2d 676. Here, detective's probable cause affidavit recited facts surrounding rape & tentative identification of D by victim & witness from photograph of poor quality. After reviewing probable cause affidavit, Ct. issued warrant under Davis to arrest D for sole purpose of photographing & fingerprinting him. Warrant specified procedures to be performed. Warrant directed police to immediately release D upon completion of photographing & fingerprinting. This process readily distinguishes it from Davis in which police, without warrants, took Davis & 23 other black youths to police station for fingerprinting & questioning concerning rape of an elderly woman who could identify rapist only as a black youth. Without warrant or probable cause for arrest, police drove 14-year-old Davis 90 miles, confined him overnight & again fingerprinted him. His prints matched prints lifted from scene of offense. U.S. S. Ct. reversed Davis' conviction, holding 4th Amend. applicable to investigatory seizures. No attempt was made to comport with 4th Amend. requirements. Record in present case reveals no interrogation, duplicate processes, or violation of arrest warrant. Held, no error. Prentice DISSENTS without opinion.

TITLE: Hayes v. Commonwealth

INDEX NO.: Z.2.c.

CITE: 514 S.E.2d 357 (Va. Ct. App. 1999)

SUBJECT: Warrant to Search Home for Drug Evidence Does Not Authorize Search of People Present

HOLDING: Warrant to Search residence for evidence of drug dealing did not authorize Search of persons who happened to be present. Search of persons must be supported by probable cause particularized with respect to each person. Mere presence in residence where evidence of drug- dealing is found does not, by itself, provide probable cause to Search. Here, officer did not know who D was, and nothing besides his presence linked him to the residence. Further, D was cooperative and did not engage in suspicious or furtive behavior as police were searching the residence.

TITLE: Lee v. State
INDEX NO.: Z.2.c.
CITE: (2nd Dist., 9-20-99, Ind. App., 715 N.E.2d 1289
SUBJECT: Search of coat pocket exceeded scope of search warrant for particular person
HOLDING: Tr. Ct. erred in denying D's motion to suppress evidence police found in pocket of coat in closet, because warrant under which evidence was obtained authorized only search of apartment for particular person. Particularity requirement found in Ind. Code 35-33-5-2(a)(1)(B) restricts scope of search, authorizing seizure of only those things described in warrant. Green, App., 676 N.E.2d 755. Search warrant for person only allows police officer to search areas which would be big enough to hide that person. Id. Thus, police officers would have been justified in opening closet door & looking in. They were not justified in searching pocket of coat in closet in hopes of finding 180-pound man therein. Held, denial of motion to suppress reversed.

TITLE: U.S. v. Foster
INDEX NO.: Z.2.c.
CITE: 100 F.3d 846 (10th Cir. 1996)
SUBJECT: Search Warrant -- Disregard of Warrant's Terms Requires Suppression of All Evidence Obtained
HOLDING: Where warrant was validly issued to search D's home for marijuana and four specific weapons, officer's disregard of these terms and execution of warrant as if it were "general" one required suppression of all evidence obtained in the search, including those specifically listed in the warrant. The state of mind of the officers when they obtained the warrant is irrelevant because the police misconduct that must be deterred occurred in the warrant's execution.

Z. SEARCH AND SEIZURE

Z.2. Search Warrant (Ind. Code 35-33-5)

Z.2.c.1. Place to be searched

TITLE: Figert and Green v. State
INDEX NO.: Z.2.c.1.
CITE: (10-23-97), Ind., 686 N.E.2d 827
SUBJECT: Warrant; no probable cause - search of separate residences
HOLDING: When police obtained warrant to jointly search three trailers situated in U-shape & alone in rural area, affidavit needed to establish probable cause to justify search of each trailer & not all trailers collectively. When issuing warrant to search multi-unit dwelling, affidavit must establish probable cause as to each unit in dwelling except when dwelling appears to be several units but is actually single residence or separate structures used as single communal residence. U.S. v. Butler, 71 F.3d 243, 249 (7th Cir. 1995); U.S. v. Hinton, 219 F.2d 324 (7th Cir. 1955). Here, warrant failed to establish probable cause as to third trailer because affidavit failed to establish that persons dealing drugs resided in third trailer, & exception did not apply because affidavit stated that trailers were situated in U-shape in rural area, with several unidentified individuals around trailers & drug transaction occurring in communal driveway. Affidavit failed to establish that trailers were in fact being used as single communal property rather than three separate residences.

Because use of one warrant to search several dwellings, whether occupied by same person or different parties, may confuse determination whether probable cause existed to search each residence, police should obtain separate warrant for each residence or place unless police proceed under "collective dwelling" theory, in which case facts supporting that theory should be set forth in affidavit. In addition, facts alleged in probable cause affidavit used to support search of each unit in multiunit dwelling are better set forth in separate paragraph for each unit where feasible to avoid confusion. Held, transfer granted, Ct. App.' decision at 683 N.E.2d 1314 reversed & remanded with instructions to grant D's motion to suppress.

RELATED CASES: Marlowe, App., 786 N.E.2d 751 (although controlled buys occurred at D's place of business rather than his home, totality of evidence supported finding that PC existed for search of D's home; informant told police that D had drugs at his residence on day before search & that D was selling drugs at his business); Sowers, 724 N.E.2d 588 (although tent was in area in which D had expectation of privacy, search warrant was valid for search of tent to same degree as for any other structure within curtilage of residence).

TITLE: Lindquist v. State

INDEX NO.: Z.2.c.1.

CITE: (12/30/2021), Ind. Ct. App., 179 N.E.3d 1051

SUBJECT: Search warrant -- particularized description of place to be searched despite incorrect address

HOLDING: A search warrant does not violate the State or Federal constitutions if the property to be search is adequately described and includes sufficient particularity even if the address listed is in the warrant incorrect. Here, police obtained a search warrant for Defendant's home that was on property which adjoined his mother's property where she also had a house. The search warrant listed the address for the mother's home but the physical description of Defendant's home. Defendant moved to suppress the evidence obtained in the search of his home because the search warrant listed his mother's address and not his address. On interlocutory appeal from a denial of a motion to suppress, the Court of Appeals affirmed the trial court's denial of the suppression motion under both the State and Federal Constitutions. Under a 4th Amendment analysis, the Court found no constitutional violation because the warrant adequately and accurately described the physical characteristics of the property to be searched. Under an Indiana constitutional analysis, there was sufficient particularity of the description of the property to be searched to withstand a constitutional challenge.

TITLE: Manning v. State
INDEX NO.: Z.2.c.1.
CITE: (3d Dist. 2/20/84), Ind. App., 459 N.E.2d 1207
SUBJECT: Search warrant - permissible scope; place to be searched
HOLDING: Where search extended to places object of warrant (maroon Oldsmobile) could not have been found, search was illegal because it exceeded scope of warrant. Second warrant was thus based on illegally obtained information; evidence seized pursuant to second warrant should have been excluded. Here, officers checked VINs & license numbers of all vehicles in shed at salvage yard. Criminality of these vehicles was not "readily apparent." Officers opened doors & lifted hoods to search for VINs. State argues vehicles were in plain view. "Plain view doctrine may not be used to extend general exploratory search from one object to another until something incriminating at last emerges." Coolidge v. NH, (1971), 403 U.S. 443, 91 S. Ct. 2022, 29 L.Ed.2d 564. An item's criminality is "readily apparent" if contraband is clearly connected to a crime. Lance, 425 N.E.2d 77; Cochran, App., 429 N.E.2d 672. Held, conviction for receiving stolen property reversed. [Three other counts affirmed because of failure to object or lack of standing.] DISSENT by Hoffman contends shed readily appeared to be a "chop shop," in which true identity of stolen automobiles is transformed for purpose of resale. VINs & license numbers were in plain view.

TITLE: State v. Lucas

INDEX NO.: Z.2.c.1

CITE: (9/28/2018), 112 N.E.3d 726 (Ind. Ct. App 2018)

SUBJECT: Vehicle search in garage did not exceed scope of search warrant

HOLDING: Under the Fourth Amendment, a search warrant authorizing a search of a particularly described premises permits the search of vehicles owned or controlled by the owner of, and found on, the premises. Here, police officer was executing a warrant at D's home to look for a baseball bat, bloody clothes, and blood evidence from an assault at the home reported earlier that allegedly had been perpetrated by D's sister. The warrant authorized a search of the home with an attached garage to look for that evidence, and money and a cell phone that the assault victim claimed had been stolen from him. When the officer entered the garage, he had not yet located the cell phone or money the victim had reported stolen. Thus, the officer lawfully searched the vehicle and was permitted to lift a blanket covering a large mound located in the back seat, because both were capable of containing those objects. United States v. Ross, 456 U.S. 798 (1982). Held, grant of motion to suppress reversed and remanded.

Z. SEARCH AND SEIZURE

Z.2. Search Warrant (Ind. Code 35-33-5)

Z.2.c.2. Person to be Searched

TITLE: State v. Dills
INDEX NO.: Z.2.c.2.
CITE: 514 S.E.2d 917 (Ga. Ct. App. 1999)
SUBJECT: Search Warrant -- Particularized Description of Person and Place to Be Searched
HOLDING: Warrant authorizing search of D and his home, and which listed D only by name, did not authorize search of D's person at his place of employment. Warrant contained description of D's house and directions for locating it but listed D only by name. To execute warrant, officers went to D's job site, told him they had warrant to search his home, asked him to accompany them to his home, and asked him to empty his pockets. Noticing a bulge in one of D's pockets, an officer patted him down and determined that the bulge felt like a pill bottle, which he then seized. D moved to suppress contents of pill bottle, on grounds that the warrant did not authorize search of his person away from his home. Tr. Ct. denied, but Ga. Ct. App. reverses, holding that the search of the D at his workplace exceeded the scope of the warrant, which only authorized a search at his home.

TITLE: State v. Thomas

INDEX NO.: Z.2.c.2.

CITE: 540 N.W.2d 658 (Iowa S. Ct. 1995)

SUBJECT: "All Persons" Warrant - Public Tavern

HOLDING: Warrant was issued authorizing search of all persons at public tavern, based on application stating that investigation of drug activity at tavern had resulted in 30 arrests and 8 controlled buys of crack cocaine. Application further stated that "vast majority" of persons on premises are either selling or holding crack at any time, and that "all of the people present on the premises at any time" were "probably" in possession of either weapons or drugs. These allegations, without more, do not establish probable cause to issue a warrant to search "all persons" in the tavern. There was no indication of the capacity of the tavern from which to determine how many persons might be searched, nor was there any indication whether persons not involved in illegal activity had been seen on the premises.

TITLE: McAllister v. State
INDEX NO.: Z.2.c.2.
CITE: (1st Dist., 2-7-74), Ind. App., 306 N.E.2d 395
SUBJECT: Search warrant - permissible scope of search and seizure; person to be searched
HOLDING: Search warrant for person or persons must be as specific as search warrant directed to particular location and property. Search warrant vesting discretion in officer is void. Rose, Ind., 87 NE 103; Brown, Ind., 157 N.E.2d 174. Here, sheriff utilized informer to secure information about drug dealing at inn. Search warrant authorized, inter alia, search of inn for drugs. Ct. held that police exceeded scope of warrant. Fact that officer is armed with search warrant for particular building does not authorize search of all persons found in it. Held, judgment reversed and remanded.

Z. SEARCH AND SEIZURE

Z.2. Search Warrant (Ind. Code 35-33-5)

Z.2.c.3. Body Search

TITLE: Adams v. State

INDEX NO.: Z.2.c.3.

CITE: (8-10-73), Ind., 299 N.E.2d 834

SUBJECT: Body Search - Surgical procedure exceeded permissible scope of warrant

HOLDING: Ct.-ordered operation to remove bullet from inside D's body to secure evidence for purpose of establishing guilt or innocence constituted unreasonable search. D was shot by policeman he killed in robbery attempt. When D was arrested on other charge, police noticed D had 2 bullet wounds. X-ray showed metal fragments in D's body. Search warrant to retrieve fragments from D's body based on informer tip that D was involved in robbery. Ct. held 4th Amendment prohibits forcible removal of bullet from D's body as intrusion into D's body, even with search warrant. Surgical procedure was not minor intrusion into D's body as in Schmerber v. California 384 U.S. 757 (1966). Held, conviction reversed. Prentice, J., dissenting.

RELATED CASES: Clark, Ind., 380 N.E.2d 55 (X-ray not unwarranted physical intrusion.)

TITLE: Balding v. State

INDEX NO.: Z.2.c.3.

CITE: (5th Dist., 7-22-04), Ind. App. 812 N.E.2d 169

SUBJECT: Compulsory collection of DNA samples from convicted offenders

HOLDING: Tr. Ct. properly granted State's motion to compel D to submit a DNA sample to be included in Indiana DNA database. D was convicted of sexual battery, but State did not request that he submit a DNA sample until after his probation revocation. State's delay in requesting a sample until after probation revocation did not make requirement to submit a sample a new term of D's sentence. Addressing D's Fourth Amendment claim, Ct. held that compulsory collection of DNA samples from convicted offenders for inclusion in Indiana DNA database falls within "special needs" exception to Fourth Amendment, beyond normal need for law enforcement. See Ind. Code 10-13-6-13. Balancing competing private & public interests at stake, Ct. noted that D's reasonable expectation of privacy was greatly reduced because he had just been discharged from probation & sentenced to serve the suspended portion of his sentence because he violated probation. Character of intrusion into D's privacy was minimal because requiring him to submit to a buccal swab was noninvasive & pain free. Finally, D's privacy was outweighed by State's substantial interest in creating a database of DNA samples of convicted offenders to assist in future criminal investigations & to use for research & other administrative purposes, such as developing a population statistics database. Held, judgment affirmed.

RELATED CASES: Keeney, App., 873 N.E.2d 187 (DNA bank for convicted felon is not unconstitutional); Sharp, App., 835 N.E.2d 1079 (Ct. rejected D's challenge to the comparison of DNA taken from the victims to his DNA profile as that issue had already been litigated & once DNA is used to create a profile, the individual has no possessory or ownership interest in it).

TITLE: Birchfield v. North Dakota
INDEX NO.: Z.2.c.3.
CITE: (6/23/2016), 136 S. Ct. 2160 (U.S. 2016)
SUBJECT: Fourth Amendment requires warrant for blood draw
HOLDING: The Fourth Amendment requires a warrant to take a blood draw from an OWI arrestee but not for a breath test.

The impact of breath tests on privacy is slight, and the need for breath testing is great to promote safety on the nation's roads and highways. See Skinner v. Railway Labor Executives' Assn., 489 U. S. 602, 626 (1989). However, blood tests are significantly more intrusive, and their reasonableness must be measured in light of the availability of the less invasive breath test. See id. at 625. However, a warrantless blood draw may be permissible in some exigent circumstances. Held, cert. granted, and judgment reversed. Alito, J., joined by Roberts, C.J., and Kennedy, Breyer, and Kagan, JJ; Sotomayor, J., concurring in part and dissenting in part, joined by Ginsburg, J.; Thomas, J., concurring in the judgment and dissenting in part.

Note: The Court also held that states may not charge and convict person for refusing to take a blood test. though they may impose administrative sanctions, such as license suspensions.

TITLE: Garcia-Torres v. State

INDEX NO.: Z.2.c.3.

CITE: (06-30-11), 949 N.E.2d 1229 (Ind. 2011)

SUBJECT: Cheek swab for DNA - Pirtle warning not required

HOLDING: A person in police custody is not entitled to be advised of his right to the assistance of counsel before consenting to a buccal swab for DNA. A person held in police custody is entitled to the presence and advice of counsel prior to consenting to a search and that the right, if waived, must be explicitly waived. Pirtle v. State, 263 Ind. 16, 29, 323 N.E.2d 634, 640 (1975). Here, police interrogated D about two rapes, but did not properly translate the Miranda warnings into Spanish. After D admitted to the rapes, he consented to a cheek swab for DNA testing. Although Tr. Ct. suppressed D=s confession, it allowed D's DNA into evidence. Court summarily affirmed Court of Appeals= finding that D=s consent to the buccal swab was not a product of the illegal confession. Moreover, D=s consent to the swab was voluntary despite his limited education and his young age. Only coercive police activity will result in an involuntary consent. Implying that the taking of DNA through a cheek swab may not be a search, Court concluded that Fourth Amendment principles seem to suggest that DNA has more in common with fingerprints than it does with blood alcohol content. Regardless, the Pirtle advisement of the right to counsel before consenting to a search only applies to the weightiest intrusions, such as a search of a home or vehicle. The intrusion caused by the buccal swab was slight. It caused no discomfort, and D has no legitimate interest in concealing his identity following his lawful arrest, as evidenced by the fact the police can take fingerprints upon arrest. Thus, Tr. Ct. did not abuse its discretion by admitting evidence of D's DNA at trial. Held, transfer granted, Court of Appeals' opinion at 914 N.E.2d 268 vacated in part and summarily affirmed in part, judgment affirmed; Rucker, J., dissenting on basis that Article I, Section 11 of the Indiana Constitution protects not only against unreasonable searches of a home or vehicle, but also searches of a "person" and thus, D was entitled to be advised of his right to attorney before being asked to consent to the buccal swab for DNA; moreover, the dissent recognizes that it is settled law that the obtaining of bodily substances for DNA testing is a search.

RELATED CASES: Maryland v. King, 133 S. Ct. 1958 (2013) (overruling, in part, Garcia-Torres to extent it holds that: 1) a cheek swab is not a search and 2) that cheek swabs are allowed in arrests for all offenses, not just "serious" offenses; see full review in this section); Anderson, 961 N.E.2d 19 (Ind. Ct. App 2012) (the taking of a buccal swab did not violate U.S. or Indiana Constitutions where the probation officer mistakenly believed D's conviction was entered as a felony rather than misdemeanor under the alternative misdemeanor sentencing statute; the taking of the buccal swab fell under the statutory mistake exception).

TITLE: In re C.T.L.

INDEX NO.: Z.2.c.3.

CITE: 722 N.W.2d 484 (Minn. Ct. App. 2006)

SUBJECT: Search warrant required for DNA testing prior to conviction

HOLDING: Minnesota Court of Appeals held law enforcement officials must obtain a search warrant before requiring a person who has been charged with but not yet convicted of a crime submit a biological sample for DNA testing. Striking down a state law that compels Ds to provide such samples after a judge has found probable cause for criminal charges, the Court said such a finding cannot substitute for the determination of probable cause necessary to get a warrant to search for evidence in a particular place. State argued that the probable cause requirement was satisfied by the DNA statute itself because the law prohibits police officers from collecting a sample until a court has made a probable cause determination with respect to the D. However, "probable cause to support a criminal charge is not the same thing as probable cause to issue a search warrant." Probable cause to support a criminal charge exists when the relevant evidence against the D makes it reasonably probable that he engaged in the charged conduct, while probable cause to support the issuance of a search warrant exists when, under the totality of the circumstances, there is a fair probability that evidence of a crime will be found in a particular place. Court found that DNA statute was not consistent with Schmerber v. California, 384 U.S. 757 (1966), which established that probable cause to arrest a person does not, by itself, allow the state to take a blood sample from a charged person without a warrant. Court noted that statute, in essence, dispensed with the requirement that there is a fair probability that the search will produce contraband or evidence of a crime because the statute renders it unnecessary for anyone to consider whether the biological specimen to be taken is related in any way to the charged crime or to any other criminal activity. Court distinguished from cases holding that requiring criminal offenders to submit a sample for DNA testing without a warrant does not violate his right to be free from unreasonable searches and seizures, noting statutes involved in those case required samples to be taken after - not prior to - a D's conviction, at a time when a D has a reduced expectation of privacy that does not outweigh the State's interest in DNA testing.

TITLE: Maryland v. King
INDEX NO.: Z.2.c.3.
CITE: (6/3/2013), 133 S. Ct. 1958 (US Sup. Ct. 2013)
SUBJECT: DNA cheek swab is a search but warrantless swab is reasonable tool to identify arrestees
HOLDING: When officers make arrest based on probable cause to hold arrestee for serious offense, taking and analyzing cheek swab for DNA to help identify arrestee is like fingerprinting, minimally intrusive and a reasonable police booking procedure under 4th Amendment.

King arrested for pulling a shotgun. As allowed by statute, police swabbed his cheek. King's DNA matched DNA from cold rape case. King convicted of rape.

Cheek swab is a search. Even so, intrusion is slight, reducing D's expectation of privacy. In determining reasonableness, great weight given to State's interest in identifying arrestees. This interest outweighs minimal intrusion from cheek swab.

In dissent, Justice Scalia said Fourth Amendment forbids searching person for evidence of crime when there is no basis to believe they committed the crime. Also, the majority's identification rationale is a sham. The DNA sample wasn't sent to lab until three weeks after arrest.

The obvious reason for swabs is to solve cold cases. The Maryland statute says so: "collecting and testing DNA samples" is designed to be "as part of an official investigation into a crime." Scalia, concluded: "I doubt that the proud men who wrote the charter of our liberties would have been so eager to open their mouths for royal inspection." Kennedy, J., joined by Roberts, C.J., Thomas, Breyer, and Alito, J.J. Scalia, J., dissenting, joined by Ginsburg, Sotomayor, and Kagan, J.J.

TITLE: Patterson v. State

INDEX NO.: Z.2.c.3.

CITE: (3rd Dist.; 12-19-00), Ind. App., 742 N.E.2d 4

SUBJECT: Body search - DNA analysis performed on blood already in police possession

HOLDING: Although drawing of blood is seizure & subsequent DNA analysis is search, warrantless second DNA analysis was reasonable under circumstances of this case. Collection & subsequent analysis of requisite biological samples must be deemed Fourth Amendment searches. Skinner Railway Labor Executives Ass'n, 489 U.S. 602, 109 S. Ct. 1402, 103 L.Ed.2d 639 (1989). To determine whether government's action was unreasonable, Cts. ask whether action taken was unlawful search & seizure under common law at time Fourth Amendment was enacted. If that inquiry yields "no" answer, Cts. must evaluate search & seizure under traditional standards of reasonableness by assessing, on one hand, degree to which it intrudes upon individual's privacy & on promotion of legitimate governmental interests. Wyoming v. Houghton, 526 U.S. 295, 119 S. Ct. 1297, 143 L.Ed.2d 408 (1999). Although it is clear that DNA tests are searches under Fourth Amendment, Ct. reasoned that DNA testing was clearly not on minds of framers of Federal Constitution. Thus, Ct. utilizes traditional standards of reasonableness, rather than probable cause, in addressing subsequent testing of D's DNA.

Here, D was convicted of burglary based on DNA comparison between blood left at scene & blood police obtained from D through search warrant. Later, State performed another DNA analysis on same blood obtained through search warrant to compare with blood left at scene in instant case, which involved unrelated rape. D's conviction for burglary was reduced to residential entry, which is not subject to DNA data bank. Neither DNA test involved invasion of D's body nor release of information unrelated to performance of RFLP or PCR test. Although State intruded upon D's privacy by analyzing his blood for DNA evidence, his privacy was outweighed by State's interest in protecting citizens of Indiana by promoting DNA analysis in criminal investigations. Thus, subsequent testing of D's blood was reasonable under Fourth Amendment. Moreover, under these circumstances, D did not have continued reasonable expectation of privacy in his blood because at time DNA tests in question were performed, D had been lawfully required to provide DNA sample for Database. Held, judgment affirmed.

Note: In FN 3, Ct. recognizes that view that DNA analysis is no different than traditional fingerprinting systems is becoming less palatable. Also, Ct. App. contradicts itself in FN 6 saying that DNA analysis is search & requires probable cause. Moreover, Ct.'s analysis is flawed in that it confuses dates as to when D would have been subjected to DNA bank.

RELATED CASES: Patterson, App., 744 N.E.2d 945 (on rehearing, Ct. *clarified* that it did not use "special needs" exception to warrant requirement to base its decision that probable cause is not required in order to perform subsequent DNA analysis on D's blood).

TITLE: People v. Hall

INDEX NO.: Z.2.c.3.

CITE: 886 N.E.2d 162 (N.Y. 2008)

SUBJECT: Rectum search violated Fourth Amendment

HOLDING: New York Court of Appeals held police officers who, during a lawful body cavity examination of an arrested drug dealer, saw an object protruding from his rectum violated the Fourth Amendment's warrant requirement when they removed the object. At the stationhouse, officers conducted a strip search but found no drugs on D's person or in his clothes. They then directed D to squat and observed an object protruding from his rectum. When D refused to remove the object himself, the officers pulled out the object, which turned out to be a plastic bag containing crack. Plurality interpreted holding in People v. More, 764 N.E.2d 967 (N.Y. 2002) as holding that a visual body cavity examination may be justified by reasonable suspicion, but that the removal of any observed objects from a body cavity must satisfy the warrant requirement. Plurality concluded in present case that officer's inability to find any crack during the strip search gave rise to a reasonable suspicion that D had drugs hidden in body cavity. This reasonable suspicion justified the visual cavity examination and ripened into probable cause as soon as the officers observed the object protruding from D's rectum. Plurality decided, however, that the record in this case did not establish a basis for applying the exigent circumstances exception to the warrant requirement. There was no evidence that the drugs were in danger of being destroyed or were endangering D's health. Two judges concurred with result but believed warrant requirement should apply to visual cavity examinations; three justices dissented because nothing in record suggested D's body was touched.

TITLE: Schmerber v. California

INDEX NO.: Z.2.c.3.

CITE: 384 U.S. 757 (1966)

SUBJECT: Body search -- withdrawal of blood

HOLDING: Taking blood from petitioner was protected under Fourth Amendment, but not under Fifth Amendment. Here, petitioner was hospitalized following accident involving automobile which he had been driving. Police officer smelled liquor on Petitioner's breath and noticed other symptoms of drunkenness at accident scene & hospital, placed him under arrest, and informed him that he was entitled to counsel, that he could remain silent, and that anything he said would be used against him. At officer's direction, physician took blood sample from petitioner despite his refusal on advice of counsel to consent. Search warrants are required, absent emergency, where intrusions into human body are concerned because importance of informed, detached, and deliberate determinations of issue whether or not to invade another's body in search of evidence of guilt is indisputable and great. However, since blood test evidence, although incriminating product of compulsion, was neither Petitioner's testimony nor evidence relating to some communicative act or writing by petitioner, it was not inadmissible on privilege grounds. Held, judgment affirmed; Harlan, J., concurring; Warren, C.J., dissenting.

RELATED CASES: Birchfield v. North Dakota, 136 S. Ct. 2160 (U.S. 2016) (4th Amend. requires a warrant for a blood draw from an OWI arrested but not for a breath test; also, states cannot criminalize blood test refusals; see full review, this section).

TITLE: Smith v. State

INDEX NO.: Z.2.c.3.

CITE: 753 So.2d 713 (Fla. Ct. App. 2000)

SUBJECT: Specific Consent for Search of Mouth

HOLDING: Florida Court of Appeals calls for its supreme court to adopt bright-line requirement of specific consent before officer may search subject's mouth. Under this rule, general consent to search should not be enough to permit officer to look in subject's mouth. Here, subject opened mouth refused to move his tongue as instructed by officer. Through this conduct, it is clear that subject denied or withdrew consent for mouth search. Further, officer's actions forcing subject to remain with mouth open for prolonged period was evidence that officer was seeking compliance, not requesting consent to search. Bright line rule requiring specific consent for mouth search would be particularly helpful because individuals who cooperate with police and consent to search may not know how to end it when it has become too intrusive.

TITLE: Smith v. State

INDEX NO.: Z.2.c.3.

CITE: (3-27-01), Ind., 744 N.E.2d 437

SUBJECT: Blood draw - use of DNA in unrelated matter

HOLDING: State's retention & use of DNA profile from prior unrelated case in which D was acquitted did not violate U.S. or Indiana Constitutions. Although D had legitimate expectation of privacy in his body & blood samples at time they were taken in investigation of prior case, D had no possessory or ownership interest in samples once DNA was used to create profile. Profile became property of crime lab. Moreover, society does not recognize expectation of privacy in records made for public purposes from legitimately obtained samples. Thus, comparison of DNA profile with other DNA evidence from database does not constitute unreasonable seizure or invasion of privacy, & therefore does not violate Fourth Amendment or Indiana Constitution, Article 1, Section 11.

Ct. also rejected D's argument that, because he was acquitted in prior case, inclusion of his DNA profile in crime lab database violated Ind. Code 10-1-9-8. Statute authorizes police to create Indiana DNA database consisting of "records for convicted criminals, crime scene specimens, unidentified missing persons, & close biological relatives of missing persons." Although D met none of criteria for inclusion in database, exclusion of evidence of DNA match is not consequence of that circumstance. Record was not clear whether Indiana DNA database authorized by statute played any role in identification of D's profile. Even if DNA database statute applied in this case, in absence of clear directive from legislature, Ct. concluded that potential for abuse in future is not sufficiently clear to warrant adopting rule excluding evidence from database on ground that it was obtained or retained beyond authorized classification. Held, transfer granted, denial of motion to suppress affirmed.

Note: Ind. Code 10-1-9-20 allows for those whose convictions are reversed on appeal to petition to have their DNA results expunged from DNA bank. Thus, if representing someone who is acquitted at trial level, file petition to expunge DNA results.

TITLE: Sparks v. Stutler

INDEX NO.: Z.2.c.3.

CITE: 71 F.3d 259 (7th Cir. 1995)

SUBJECT: Search warrant - body search; catheterization

HOLDING: Involuntary catheterization of prisoner did not violate 4th Amendment. Catheter is more intrusive than needle, but less intrusive than scalpel, making it hard to classify procedure under objective reasonableness inquiry. Catheter may be analogous to needle to draw blood, as permissible under Schmerber v. California, 384 U.S. 757 (1966). Here, guards found syringe in one of prisoner Sparks' shoes during shakedown. Guards requested Sparks provide urine sample, but he was unable to do so. Catheter, which was inserted into Sparks without his permission, revealed bladder to be empty. Later urine test was positive for drugs. This was not violation of Sparks' 4th Amendment rights. Held, judgment reversed.

TITLE: State v. Hodson
INDEX NO.: Z.2.c.3.
CITE: 907 P.2d 1155 (Utah 1995)
SUBJECT: Methods for Forcing Suspect to Spit Out Drugs - Chokehold Found Unreasonable
HOLDING: Utah Supreme Court finds that use of chokehold to force suspect to spit out drugs is unreasonable. Under Winston v. Lee (1985), 470 U.S. 753, reasonableness of force used to extract evidence from suspect's body must be measured against extent to which procedure used may threaten safety and health of individual, extent of intrusion upon bodily integrity and privacy, and community's interest in fairly and accurately determining guilt and innocence. Here, chokehold presented great risk to suspect's health and was highly intrusive of bodily integrity and dignity, outweighing community's interest. Officers could have waited for evidence to pass through suspect's system or use drug-testing methods. (Court also condemned officer's action of briefly pointing gun at suspect's head.)

TITLE: U.S. v. Holloway
INDEX NO.: Z.2.c.3.
CITE: 906 F. Supp. 1437 (D. Kan. 1995)
SUBJECT: Methods for Forcing Suspect to Spit Out Drugs - Use of Pepper Spray Found Reasonable
HOLDING: Federal District Court in Kansas finds that use of pepper spray to force suspect to spit out drugs is reasonable. Although suspect was asthmatic and suffered breathing difficulty as result of the spray, it did not present great risk to his health. Intrusion upon bodily integrity was not as great as that in Rochin v. California (1952), 342 U.S. 165 (officers administered emetic to suspect to force him to vomit evidence). Finally, although state was not so cynical as to argue it, Court notes that forcing suspect to spit out drugs minimized his risk of accidental overdose.

TITLE: State v. Rodriguez
INDEX NO.: Z.2.c.3.
CITE: 2007 UT 15, 156 P.3d 771 (Utah 2007)
SUBJECT: Technology advances bring *Schmerber* into question
HOLDING: The Utah Supreme Court held the fact that evidence of blood-alcohol content tends to dissipate rapidly does not by itself give rise to the level of exigent circumstances required by the Fourth Amendment to immediately draw a blood sample from an automobile-homicide suspect without a warrant. Noting instantaneous modern communications and the availability of remote warrants, Court saw no reason why the delay occasioned by a warrant application would significantly hamper an investigation.

Court distinguished from Schmerber v. California, 384 U.S. 757 (1966) where one factor considered by the Supreme Court in allowing a blood draw without a warrant was that evidence of intoxication would have dissipated in the time it would have taken to obtain a warrant. Court rejected the contention that Schmerber stands for the proposition that the loss of evidence of a person's blood-alcohol level through the metabolism of alcohol is by itself a sufficient exigency to justify a warrantless blood draw. The Schmerber court relied on multiple factors in finding exigent circumstance, the Court noted, and employed "guarded language." Court added that a warrant can be obtained far more speedily today than at the time Schmerber was decided due to technology advances. Court found it highly unlikely that if the U.S. Supreme Court squarely addressed the issue today whether it hold similarly due to state law that allows affiants to give testimony and magistrates to issue warrants by "telegraph, telephone or other reasonable means."

[Ed. **Note:** Compare to Justice v. State, 552 N.E.2d 844 (Ind. Ct. App 1990) where Court held that absent an auto accident, dissipation of alcohol in blood does not create exigent circumstances to justify a warrantless, non-consensual blood test.]

Z. SEARCH AND SEIZURE

Z.2. Search Warrant (Ind. Code 35-33-5)

Z.2.c.4. Items to be seized

TITLE: Clifford v. State

INDEX NO.: Z.2.c.4.

CITE: (2/22/85), Ind., 474 N.E.2d 963

SUBJECT: Search warrant - items to be seized

HOLDING: Evidence seized pursuant to search warrant was properly seized under Ind. Code 35-1-6-1 [now Ind. Code 35-33-5-1]. Statute provides for seizure of property (1) obtained unlawfully, (2) possessed unlawfully, (3) used or possessed with intent to commit or conceal offense, (4) constituting evidence of or tending to show individual committed offense, or (5) abandoned/neglected child or (6) evidence necessary to enforce statutes enacted to prevent cruelty to/neglect of children. Here, sexual paraphernalia seized (1) constituted evidence of/tending to show D committed offense of criminal deviate conduct (CDC) & (2) was evidence necessary to enforce CDC statute, which Ct. finds was enacted to prevent cruelty to/neglect of children. Held, no error in admission of evidence. Hunter CONCURS IN RESULT without opinion.

TITLE: Clifford v. State
INDEX NO.: Z.2.c.4
CITE: (2/22/85), Ind., 474 N.E.2d 963
SUBJECT: Search warrant - items to be seized
HOLDING: Evidence seized pursuant to search warrant was properly seized under Ind. Code 35-1-6-1 [now Ind. Code 35-33-5-1]. Statute provides for seizure of property (1) obtained unlawfully, (2) possessed unlawfully, (3) used or possessed with intent to commit or conceal offense, (4) constituting evidence of or tending to show individual committed offense, or (5) abandoned/neglected child or (6) evidence necessary to enforce statutes enacted to prevent cruelty to/neglect of children. Here, sexual paraphernalia seized (1) constituted evidence of/tending to show D committed offense of criminal deviate conduct (CDC) & (2) was evidence necessary to enforce CDC statute, which Ct. finds was enacted to prevent cruelty to/neglect of children. Held, no error in admission of evidence. Hunter CONCURS IN RESULT without opinion.

TITLE: Green v. State
INDEX NO.: Z.2.c.4.
CITE: (3rd Dist., 1-30-97), Ind. App., 676 N.E.2d 755
SUBJECT: Search warrant - removal & search of locked safe from premises
HOLDING: Tr. Ct. did not err in denying motion to suppress evidence found within locked safe removed from D's premises by police. To protect citizen's right to be free from unreasonable searches & seizures, State & federal constitutions require search warrant before conducting searches. Hewell, 471 N.E.2d 1235, *trans. denied*. Warrant may not be issued unless affidavit submitted to judge or magistrate describes with particularity place to be searched & items to be seized. Ind. Code 35-33-5-2. Particularity requirement restricts seizure to those items described in warrant. However, lawful search of premises generally extends to entire area in which object of search may be found & is not limited by possibility that separate acts of entry or opening may be required to complete search. U.S. v. Ross, 102 S. Ct. 2157 (1982).

Here, after receiving information that D was involved in sexual exploitation of child, State obtained warrant to search D's photography studio & apartment. Warrant authorized seizure of photographic & video material depicting minors engaged in sexual activity. Subsequent search did not reveal this material, but police found locked safe in darkroom of D's studio. After D stated that he was unable to open safe, police transported safe to police station & obtained second warrant to open & search safe, where they found bag of marijuana, but not items listed in original warrant. Appealing denial of motion to suppress evidence of marijuana, D argued that scope of search did not extend to safe, because safe was not listed in initial search warrant & did not fall within one of well-delineated exceptions to warrant requirement. Ct. held that initial warrant authorized search of containers found on premises which reasonably might conceal items listed in warrant, without need for second warrant. U.S. v. Johnson, 709 F.2d 515 (8th Cir. 1983); U.S. v. Wright, 704 F.2d 420 (8th Cir. 1983). Because safe was located in studio & listed items could have fit inside, it was reasonable to believe that safe contained illicit items. D's inability or refusal to open safe justified its removal for subsequent search. Held, denial of motion to suppress affirmed.

RELATED CASES: Brown, 118 N.E.3d 763 (Ind. Ct. App. 2019) (search warrant authorized police to search locked safe, which was included in the search warrant's specification that officers were allowed to look in closed containers for methamphetamine); Allen, App., 798 N.E.2d 490 (a pistol is an object that reasonably might fit inside a cigar box).

TITLE: Hall v. State

INDEX NO.: Z.2.c.4.

CITE: (2-1-71), Ind., 266 N.E.2d 16

SUBJECT: Search Warrant - items to be seized

HOLDING: Affidavit stating that officers, pursuant to valid arrest, recovered goods taken in burglary and had obtained address of place to be searched from subjects arrested, who stated that such address was their home, was sufficient to establish probable cause for issuance of search warrant. Where search of D's home was conducted pursuant to properly issued warrant, items found in home were admissible in burglary prosecution, even though some items were not among those specifically named in search warrant. Held, denial of motion to suppress affirmed, new trial granted on other grounds.

TITLE: Hardin v. State

INDEX NO.: Z.2.c.4

CITE: (06/23/20), Ind. Ct. App., 148 N.E.3d 932

SUBJECT: Search extended to vehicle on curtilage even though not specifically listed on warrant

HOLDING: Though not explicitly listed in the search warrant, it was not improper for police to search Defendant's vehicle which he drove up and parked on his driveway while they were executing the warrant. The warrant permitted police to search areas of Defendant's yard, curtilage, and the interior of his home. The search did not violate the Fourth Amendment because police knew that Defendant owned and controlled the vehicle searched and objectively reasonable indicia showed the same, so the vehicle in this situation fell within the scope of the warrant for the home. Balancing the three factors set forth in Litchfield v. State, 824 N.E.2d 356 (Ind. 2005), a 3-2 majority of the Supreme Court held the search did not violate Article 1, Section 11 of the Indiana Constitution because the high degree of law-enforcement concern and moderate law-enforcement needs outweighed the moderate intrusion caused by the search, so the search was constitutionally reasonable under the totality of circumstances. Held, transfer granted, Court of Appeals' opinion at 124 N.E.3d 117 vacated, judgment affirmed. Slaughter, J., concurring, urges Court to reconsider Litchfield given the "widely varying conclusions" and "ongoing uncertainty among litigants and lower courts" in applying its three factors. David, J., joined by Rush, C.J., concurring with the majority's Fourth Amendment analysis, but would find that evidence obtained from Defendant's vehicle must be suppressed under Article 1, Section 11 because the search was "highly intrusive" and law enforcement needs were "extremely low." Because police could have and should have obtained a warrant to search Defendant's vehicle, the search was unreasonable under the Indiana Constitution.

TITLE: Hewell v. State

INDEX NO.: Z.2.c.4.

CITE: (1st Dist. 12/20/84), Ind. App., 471 N.E.2d 1235

SUBJECT: Search warrant - items to be seized

HOLDING: Tr. Ct. erred by not suppressing evidence of silver seized by police. Reversal is required because admission of this evidence contributed to conviction. Here, D was object of sting operation. Decker (police informant) sold jewelry he represented was stolen to D on 5 separate occasions. Police obtained warrant to search D's 3 buildings for this jewelry. Deputy prosecutor supervised search & decided what items would be seized. Upon discovery of silver, police called Herbert (who had told police he had sold stolen silver to D) to identify it before seizure. State contends silver was properly seized under plain view. Ct. examines 3 requirements of plain view. Coolidge v. NH. Ct. finds police expected to recover silver. Every item in warehouse with serial # was run through National Crime Computer to determine if it was stolen. Requirement that items be discovered inadvertently means police may not know in advance that certain property exists in area to be searched. TX v. Brown. Rationale for requirement is that it prevents properly restricted search warrant from becoming general warrant authorizing seizure to any & all items. Coolidge. Reliance on plain view is pretense when police conduct search authorized by warrant that fails to mention certain items police expect to find during search. Coolidge; Brown; McReynolds 460 N.E.2d 960. Ct. refuse(s) to allow search, restricted in scope by valid warrant, to be so substantially broadened under guise of plain view doctrine." 471 at 1239 n.5. Ct. finds direct evidence of only one incident of receiving stolen property if evidence of silver is discounted. Conviction for corrupt business influence requires 2. Held, reversed & remanded for new trial.

RELATED CASES: Levenduski, App., 876 N.E.2d 798 (evidence of methamphetamine manufacturing was illegally seized as part of over-broad catch-all phrase of warrant because State failed to present any evidence that the evidence was in plain view; Bailey, J., dissenting)

TITLE: McGrew v. State
INDEX NO.: Z.2.c.4.
CITE: (5th Dist., 11-27-96), Ind. App., 673 N.E.2d 787, summarily affirmed, 682 N.E.2d 1289
SUBJECT: Search warrants - item to be seized not instrument of criminal act
HOLDING: Sufficient nexus between item to be seized pursuant to search warrant & alleged criminal act does not automatically exist where item is not fruit of crime instrumentality, or contraband; probable cause must exist to believe that item will assist in apprehension or conviction of D. Maryland Penitentiary v. Hayden, (1967), 87 S. Ct. 1642, 1650. Here, although alleged criminal deviate conduct took place in D's automobile, victim reported to police that D told her at time of crime that he had a sexual device in his home that he would like to use on her. Tr. Ct. issued search warrant identifying sexual device as item to be seized. State argued that device tended to show that D was person who committed offense notwithstanding fact that identity of D was not at issue. Ct. found that probable cause for warrant existed because recovery of device rendered victim's testimony more credible regarding sexual nature of D's conversation & conduct. Held, determination of probable cause affirmed; conviction reversed & remanded on other grounds.

TITLE: Pavey v. State

INDEX NO.: Z.2.c.4.

CITE: (1st Dist., 3-5-02), Ind. App., 764 N.E.2d 692

SUBJECT: Search did not exceed scope of warrant

HOLDING: Tr. Ct. did not err when it admitted into evidence D's leather jacket, cameras & film taken from his living room, & a blanket taken from his bed. D argued that police exceeded scope of warrant to search his apartment when they seized these items. Warrant authorized police to search D's apartment for "[i]tems of evidence related to the murder of [victim]...including, but not limited to: Any clothing in the possession of [D] similar in appearance to clothing described by witnesses at HillJack's Bar...as having been worn by [D], including but not limited to ...dark bandanas, black pants, black boots...black "palm gloved,"...hairs, fibers, soils..." Search warrant did not expressly include D's black leather jacket in list of items to be seized, & D maintained that warrant improperly left executing officer with discretion regarding what clothing was "similar" to that specifically listed. While items to be searched for & seized must be described with some specificity, there is no requirement that there be an exact description. Phillips v. State, 514 N.E.2d 1073 (Ind. 1987). Here, police could not have made warrant any more specific. Given executing officer's understanding that D wore "biker- type" clothing & given witness's descriptions of D's clothing that night as consisting of black or dark-colored shirt & that he always wore dark clothing, Ct. could not say that police exceeded scope of search warrant when they seized D's black leather jacket. Regarding other items, Ct. did not decide whether they were lawfully seized because any error in their admission into evidence was harmless. Held, judgment affirmed.

TITLE: State v. Andrews
INDEX NO.: Z.2.c.4.
CITE: 201 Wis. 383; 549 N.W.2d 210 (Wis. 1996)
SUBJECT: Search of Personal Items under Premises Warrant
HOLDING: Wisconsin Court holds that, when executing warrant to search private premises, officers may search all items found on premises that could plausibly hold objects named in warrant, except items worn by or in physical possession of persons whose search is not authorized by warrant. Court chooses “proximity” test over “relationship” test, which distinguishes between items belonging to occupants and items belonging to mere visitors, and “notice” test, which attaches importance to whether officers were aware that items belonged to non-residents. These tests are subject to abuse and have resulted in inconsistent rulings in jurisdictions in which they are applied.

TITLE: State v. Figgures
INDEX NO.: Z.2.c.4.
CITE: (12-28-05), Ind. App., 839 N.E.2d 772
SUBJECT: Suppression granted -- warrant is specific to individual named
HOLDING: Tr. Ct. properly granted D's motion to suppress, where police used a valid warrant for another individual to open D's mail -- bank statements & letters from welfare department -- which led to D being charged with welfare fraud. The warrant to search for drugs & information pertaining to drug sales was valid as to the two individuals named in the warrant but did not allow police to open mail of D who was not named in the warrant but lived at the address named in the warrant. D "was neither suspected of dealing drugs during the investigation nor a target of the search & did nothing to render herself amenable to the privacy invasion of having her mail opened & read by police officers looking in her bedroom" for evidence of crack sales by other individuals. The mail was irrelevant to the criminal activity being investigated & "was outside the warrant's scope." Further, the plain view doctrine did not apply as the incriminating nature of the evidence was not immediately apparent until opened. Because the seizure of D's mail was illegal, any evidence produced as a result of further investigation by the welfare department should be suppressed as fruit of the poisonous tree. "Good faith" does not apply to prevent exclusion under Ind. Code 35-37-4-5 as the officers were acting outside the scope of the warrant in opening & reading the letters, which could have no link to crack sales by other individuals. Held, judgment affirmed.

[Ed. **note:** The July 2005 *Indiana Defender* included an article on the good faith exception to the exclusionary rule under the Indiana Constitution & Ind. Code 35-37-4-5. A section of that article focused on Indiana's appellate Ct's. mixing analysis of Indiana's good faith statute with Fourth Amendment jurisprudence, U.S. v. Leon, often noting that good faith is established under the statute if an "inducement of probable cause" exists on which an officer can rely. This case is significant in that it simply quotes the statute without any mention of Leon in its analysis.]

TITLE: Taylor v. State

INDEX NO.: Z.2.c.4.

CITE: (12-28-95), Ind., 659 N.E.2d 535

SUBJECT: Items outside scope of search warrant - plain view

HOLDING: Seizure of blood-stained paper & two-page letter during warranted search of car was justified under plain view doctrine. As part of homicide investigation, police secured search warrant for car D drove on night of shooting. Warrant specified search for large caliber handgun & ammunition. Upon opening car door, officer who conducted search saw blood-stained yellow lined paper next to driver's seat & retained it as evidence. Officer also opened center console & seized two folded sheets of yellow lined paper, which turned out to be letter from D to murder victim's mother. Although seizures were beyond scope of search warrant, Ct. held that incriminating nature of items was immediately apparent to police officer. "Immediately apparent" prong of plain view doctrine requires that law enforcement officials have probable cause to believe evidence will prove useful in solving crime. White v. State (1987), Ind., 517 N.E.2d 83. Here, apparent blood stains on sheet of paper in door justified its seizure. When officer stumbled across letter, he naturally connected it with similar paper found in door. Person of reasonable caution could have concluded that pages from console were related to page found in door, & that together they would aid in murder investigation. Officer's subsequent discovery that contents of letter were relevant to murder was also reasonable. Held, convictions affirmed; DeBruler, J., dissenting on other issue.

TITLE: U.S. v. Carey
INDEX NO.: Z.2.c.4.
CITE: 72 F.3d 1268 (8th Cir. 1999)
SUBJECT: Warrant to Search Computer for Drug Files Didn't Justify Opening Child-Porn Image Files
HOLDING: Warrant authorizing police to Search computer for files related to drug trafficking did not authorize officer's opening of more than 100 JPG image files labeled with sexually suggestive names. Government made two arguments: first, that illegal pornographic nature of child-porn image files was readily apparent so that their seizure was proper under plain view exception to warrant requirement; and second, that computer was analogous to filing cabinet, so that warrant authorizing Search for drug transaction information authorized Search of all files because any file might have contained evidence of drug trafficking. Court rejects plain view argument because it was contents of files, not files themselves, that were seized. Court rejects file cabinet analogy because, by officer's own admission, after he opened first JPG file and found it to be child pornography image, he expected to find evidence of child pornography, rather than drug trafficking, when he accessed each of the additional JPG files.

TITLE: Hudson v. Michigan

INDEX NO.: Z.2.d.

CITE: 547 U.S. 586 (2006)

SUBJECT: "Knock and announce" Rule, 4th Amendment; exclusionary rule

HOLDING: Violation of the "knock-and-announce" rule does not require suppression of evidence found in a search. Since the State conceded that the entry here was a knock-and-announce violation, the only issue is whether the exclusionary rule is appropriate for such a violation. This Court has rejected "[i]ndiscriminate application" of the exclusionary rule, United States v. Leon, 468 U. S. 897, 908, holding it applicable only "where its deterrence benefits outweigh its >substantial social costs," "Pennsylvania Bd. of Probation and Parole v. Scott, 524 U. S. 357, 363. Exclusion may not be premised on the mere fact that a constitutional violation was a "but-for" cause of obtaining the evidence. The illegal entry here was not the but-for cause, but even if it were, but-for causation can be too attenuated to justify exclusion. Attenuation can occur not only when the causal connection is remote, but also when suppression would not serve the interest protected by the constitutional guarantee violated. The interests protected by the knock-and-announce rule include human life and limb (because an unannounced entry may provoke violence from a surprised resident), property (because citizens presumably would open the door upon an announcement, whereas a forcible entry may destroy it), and privacy and dignity of the sort that can be offended by a sudden entrance. But the rule has never protected one's interest in preventing the government from seeing or taking evidence described in a warrant. Since the interests violated here have nothing to do with the seizure of the evidence, the exclusionary rule is inapplicable. The social costs to be weighed against deterrence are considerable here. In addition to the grave adverse consequence that excluding relevant incriminating evidence always entails "the risk of releasing dangerous criminals" imposing such a massive remedy would generate a constant flood of alleged failures to observe the rule and claims that any asserted justification for a no-knock entry had inadequate support. Another consequence would be police officers' refraining from timely entry after knocking and announcing, producing preventable violence against the officers in some cases, and the destruction of evidence in others. Next to these social costs are the deterrence benefits. The value of deterrence depends on the strength of the incentive to commit the forbidden act. That incentive is minimal here, where ignoring knock-and-announce can realistically be expected to achieve nothing but the prevention of evidence destruction and avoidance of life-threatening resistance, dangers which suspend the requirement when there is "reasonable suspicion" that they exist, Richards v. Wisconsin, 520 U. S. 385, 394. Massive deterrence is hardly necessary. Contrary to the argument that without suppression there will be no deterrence, many forms of police misconduct are deterred by civil-rights suits, and by the consequences of increasing professionalism of police forces, including a new emphasis on internal police discipline. Scalia, joined by The Chief Justice, Thomas, and Alito, concluded that Segura v. United States, 468 U. S. 796, New York v. Harris, 495 U. S. 14, and United States v. Ramirez, 523 U. S. 65, confirm the conclusion that suppression is unwarranted in this case. Held, judgment affirmed; Kennedy, J., concurred in part and concurred in the judgment; Breyer, J., filed a dissenting opinion, in which Stevens, Souter, and Ginsburg, JJ., joined. The lengthy dissent centered on the significant departure from the Court's precedents, the past significance the Court had given privacy in relation to an individual's home, and its weakening of much of the practical value of the Constitution's knock-and-announce protection. It also challenged the majority's speculation that other avenues (civil suits, internal investigation, etc. . .) will address violations of the rule noting the legion of cases reporting

knock-and announce violations and the nominal damages available in civil suits and significant costs associated with such suits.

TITLE: Willingham v. State
INDEX NO.: Z.2.d.
CITE: (1st Dist., 8-29-03), Ind. App., 794 N.E.2d 1110
SUBJECT: Service of search warrant - "knock & announce" rule
HOLDING: Under both Fourth Amendment & Article 1, section 11, there exists a requirement that police knock & announce their authority before conducting a search of dwelling. State v. Dusch, 259 Ind. 507, 289 N.E.2d 515 (1972). Further, once police comply with knock & announce rule, they must give inhabitants a reasonable opportunity to respond. Id. In this case, D argued that his rights under State & Federal Constitution were violated when detectives failed to comply with "knock & announce" rule in executing their warrant to search his home. Testimony of D & detective conflicted as to length of time detectives waited to enter D's residence after knocking & announcing their authority. However, detective's testimony provided sufficient evidentiary basis for Tr. Ct. to determine that detectives waited at least seven seconds, & possibly as long as 15 to 20 seconds, before forcing entry to D's residence. Because Tr. Ct.'s denial of motion to suppress was supported by substantial basis of probative value, there was no violation of D's rights under federal or state constitutions. Held, judgment affirmed.

TITLE: Wilson v. Arkansas

INDEX NO.: Z.2.d.

CITE: 514 U.S. 927, 115 S. Ct. 1914, 131 L.Ed.2d 976 (1995)

SUBJECT: Search & seizure - knock and announce

HOLDING: Fourth Amendment reasonableness requirement includes obligation that law enforcement officers, in some circumstances, knock and announce their presence and authority before forcibly entering dwelling. Knock and announce principle existed in common law at time of framing of constitution, and as such is included in Fourth Amendment reasonableness inquiry. Exceptions include circumstances presenting threat of violence, or circumstances in which police reasonably believe that evidence will be destroyed. Held, reversed, and remanded to determine whether unannounced entry was reasonable under circumstances here.

Z. SEARCH AND SEIZURE

Z.2. Search Warrant (Ind. Code 35-33-5)

Z.2.d.1. Execution of warrant - in general

TITLE: Brown v. State

INDEX NO.: Z.2.d.1.

CITE: (02-10-21), 164 N.E.3d 153 (Ind. Ct. App. 2021)

SUBJECT: Erroneous exclusion of cellphone data in civil forfeiture proceeding

HOLDING: The State cross appealed, arguing the trial court erred in excluding data obtained from Defendant's cell phone on the basis of a nine-day delay in the officer's execution of the search warrant. Defendant argued the search of his cell phone was unconstitutional under the Indiana Constitution. Under the Litchfield analysis, Court found the cellphone search is intrusive, but law enforcement has a broad need to combat the war on drugs and probable cause was found to issue the search warrant in this case. On balance, police did not unreasonably execute the search warrant and the cell phone data should have been admitted as evidence. Court noted that the amendment of I.C. 35-33-5-7 to include subsection (f) was a remedial measure intended to clarify that a search warrant is considered "executed" for purposes of the statute when officers seize the items described in the search warrant. The Court remanded the case for a new evidentiary hearing where Defendant's pre-Miranda statements should be excluded but the cellphone data may be admitted.

TITLE: Lacey v. State
INDEX NO.: Z.2.d.1.
CITE: (05-10-11), 946 N.E.2d 548 (Ind. 2011)
SUBJECT: Police not required to request "no-knock" warrant if exigent circumstances known
HOLDING: The Indiana Constitution does not require prior judicial authorization for a no-knock execution of a warrant when justified by exigent circumstances, even if such circumstances are known to the police when the warrant is obtained. Rather, courts will assess the reasonableness of the entry based on the totality of the circumstances at the time the warrant was served. Indiana's knock and announce statute (Ind. Code 35-33-5-7) permits exigent circumstances to justify an officer to bypass the knock and announce requirement when executing search and arrest warrants. See Beer v. State, 885 N.E.2d 33 (Ind. Ct. App 2008).

Here, police were not required to present known exigent circumstances and obtain specific judicial authorization before executing an unannounced no-knock entry, but the better police practice is to seek such advance approval when supported by facts known when the warrant is sought. Held, transfer granted, Court of Appeals' opinion at 931 N.E.2d 378 vacated, denial of motion to suppress evidence affirmed.

RELATED CASES: Ware, 78 N.E.3d 1109 (Ind. Ct. App. 2017) (D's IAC claim failed, because had counsel moved to suppress evidence seized by officers who entered her home with a valid warrant, but without first clearly announcing their presence, the motion would not have been successful under Article 1, § 11), Wilkins, 946 N.E.2d 1144 (Ind. 2011) (two co-Ds' histories-- including an arrest for criminal recklessness, Lacey's conviction for dealing in cocaine, a bond revocation warrant that indicated Lacey may be armed, and Wilkins' conviction for armed robbery and resisting arrest--combined with officers' belief Wilkins was in Lacey's house and there would "possibly" be weapons constituted sufficient exigent circumstances to dispense with the knock and announce rule; even if circumstances were insufficient to justify no-knock entry, such a violation does not require suppression of evidence under the Fourth Amendment).

TITLE: State v. Jackson

INDEX NO.: Z.2.d.1.

CITE: 742 N.W.2d 163 (Minn. 2007)

SUBJECT: Search warrant at night unconstitutional without justification; Hudson distinguished

HOLDING: Minnesota Supreme Court held a requirement that law enforcement officers have some justification for executing a search warrant at night is one of the common law privacy protections incorporated into the Fourth Amendment, rejecting State's argument that the Hudson v. Michigan, 547 U.S. 586 (2006) established that the exclusionary rule does not apply to Fourth Amendment violations stemming from the execution of a valid warrant in an unreasonable manner. In this case and the companion case of State v. Jordan decided on the same day, police obtained search warrants that allowed them to be executed at night, but neither was supported by an affidavit adequately setting out a justification for a nighttime search. Court conducted a survey of the common law when the Constitution was drafted and found a "historical aversion to nighttime searches" in the common law as well as in laws passed by the fledgling legislatures of the time and in the writings of the Framers. "While the Supreme Court has never held that a nighttime search implicates the reasonableness requirement of the Fourth Amendment, it has repeatedly acknowledged the especially intrusive nature of nighttime searches of the home." Court noted the greater anxiety and more private nature of activities that occur inside a home at night. Majority distinguished Hudson on basis that "an unannounced entry involves significantly different interests than the interests protected by the constitutional prohibition on nighttime searches." Hudson hinged on the inevitable discovery of evidence following an unannounced entry, but evidence obtained in an unlawful nighttime search may or may not have still been in the house the next day when the sun came up. Majority also agreed with Hudson dissenters that when violation is likely to be repeated there is deterrent value in applying the exclusionary rule. Three justices dissented on basis of express authority of warrants and fact neither D was asleep, and even assuming they had the good faith exception to the exclusionary rule would apply.

TITLE: Maryland v. Garrison

INDEX NO.: Z.2.d.1.

CITE: 480 U.S. 79, 107 S. Ct. 1013, 94 L.Ed.2d 72 (1987)

SUBJECT: Scope of warrant determined overbroad during course of search

HOLDING: While purposes justifying police search strictly limit permissible extent of search, Court has recognized need to allow some latitude for honest mistakes made by officers. Brinegar v. U.S. (1949), 338 U.S. 160, 69 S. Ct. 1302, 93 L.Ed.2d 1879. Here, warrant obtained authorizing search of "the premises of 2036 Park Avenue third floor apartment." Police believed there was only one apartment on described premises, but in fact third floor was divided into 2 apartments. Police searched apartment of D, finding contraband, before they realized that there were 2 third floor apartments. As officers recognized, they were required to discontinue search of D's apartment as soon as they discovered there were 2 separate units on third floor & therefore were put on notice of risk that they might be in unit erroneously included within warrant's terms. Warrant was based upon probable cause to believe that occupant of other apartment had in his possession contraband & other paraphernalia. Validity of search of D's apartment pursuant to warrant authorizing search of entire third floor depends on whether officers' failure to realize overbreadth of warrant was objectively understandable & reasonable. Hill v. CA (1971), 401 U.S. 797, 91 S. Ct. 1106, 28 L.Ed.2d 484. Objective facts available to officers at time suggested third floor contained only one apartment. Neither occupant advised police that there were 2 third floor apartments. In seeking warrant officers sufficiently investigated facts which led them to believe there was only one apartment. Held, execution of warrant did not violate D's 4th Amend. rights. Blackmun, joined by Brennan & Marshall, DISSENTS.

TITLE: Ware v. State

INDEX NO.: Z.2.d.1.

CITE: (5/31/2017), 78 N.E.3d 1109 (Ind. Ct. App 2017)

SUBJECT: Ineffective assistance of counsel claim - failure to move to suppress alleged "knock-and-announce" violation

HOLDING: Defendant's IAC claim failed, because had counsel moved to suppress evidence seized by officers who entered her home with a valid warrant, but without first clearly announcing their presence, the motion would not have been successful under Article 1, Section 11. The degree of concern, suspicion, or knowledge that Defendant engaged in criminal activity was substantial, as officers conducted two controlled drug buys from her before obtaining the search warrant. The degree of intrusion by officers not engaging in standard knock-and-announce procedures was minimal. The extent of law enforcement needs was high. The officers had a valid warrant to search Defendant's residence for drugs; officers knew that she had a prior felony conviction for dealing in cocaine and knew, based on their experience, that drug dealers commonly possess firearms. When Defendant observed the officers' presence and then quickly closed the door on them, the need to secure the location and execute the warrant safely was substantial. Court rejected argument that Article 1, § 11 requires knock-and-announce procedures unless exigent circumstances are present. The ultimate question is whether the officers' decision to enter without first knocking and announcing their presence was reasonable in light of totality of circumstances at time of entry. Lacey v. State, 946 N.E.2d 548, 552 (Ind. 2011). Held, judgment affirmed.

RELATED CASES: Peak, 26 N.E.3d 1010 (Ind. Ct. App 2015) (D's IAC claim failed, because had counsel moved to suppress evidence seized by officers who entered her home with a valid warrant, but without first clearly announcing their presence, the motion would not have been successful under Article 1, § 11); Lacey, Z.2.d.1 (rejecting argument that Article 1, § 11 requires knock-and-announce procedures unless exigent circumstances are present.)

Z. SEARCH AND SEIZURE

Z.2. Search Warrant (Ind. Code 35-33-5)

Z.2.d.2. Search or detention of persons

TITLE: Arizona v. United States

INDEX NO.: Z.2.d.2.

CITE: (06-25-2012), 132 S. Ct. 2492 (Sup. Ct. 2012)

SUBJECT: Most of Arizona immigration law preempted by federal law

HOLDING: Section 2(B) of the Arizona immigration statute requires officers who conduct a lawful stop, detention, or arrest to verify a person's immigration status. At this stage, it was improper to enjoin section 2(B) before the state courts had an opportunity to interpret it without some showing that the section's enforcement actually conflicts with federal immigration law. Section 2(B) has three limitations: 1) a detainee is presumed not to be an illegal alien if he or she provides a valid Arizona driver's license or similar identification; 2) officers may not consider race, color, or national origin except as allowed by the United States and Arizona Constitutions; and 3) section 2(B) must be "implemented in a manner consistent with federal law regulating immigration, protecting the civil rights of all persons and respecting the privileges and immunities of United States citizens." If section 2(B) only requires state officers to conduct a status check during an authorized, lawful detention or after a detainee has been released, it would likely survive preemption.

TITLE: Carroll v. State
INDEX NO.: Z.2.d.2.
CITE: (2-28-05), Ind. App., 822 N.E.2d 1083
SUBJECT: Warrantless search of D during execution of search warrant on residence
HOLDING: Warrantless search of D was proper when he was being detained while officers executed a search warrant on his residence. Under Fourth Amendment, police officers executing a search warrant have the authority to require a person to re-enter the house & to remain there while they conducted their search. Michigan v. Summers, 452 U.S. 692 (1981). In Summers Court noted that at the time of the arrest, officers had developed probable cause to search D's person by virtue of discovery of narcotics in his house. The search warrant's very existence provides an objective justification for detaining the D.

Here, as in Summers, D was an occupant of house being served, was outside the house when the search warrant was served, was not allowed to leave, but instead taken inside house while house was being searched, & after contraband was found in house, D's person was searched, & further contraband was discovered thereby. Clearly, the detention & search of D's person was consistent with Fourth Amendment principles under Summers. D waived claim that he was entitled to relief under Article I, Section 11 of Indiana Constitution, as he failed to present argument that analysis under Indiana Constitution differs from analysis under United States Constitution, as set forth in Summers. Held, denial of motion to suppress affirmed.

TITLE: Illinois v. McArthur

INDEX NO.: Z.2.d.2.

CITE: 531 U.S. 326, 121 S. Ct. 946, 148 L.Ed.2d 838 (2001)

SUBJECT: Search warrant, warrantless detention

HOLDING: D's wife asked police to go with her to the marital home so that she could remove her belongings. When she came out, she told the police that the D had marijuana in the trailer. The police knocked on the door, told D what his wife had said, and asked permission to enter and search the trailer. D refused. The police then sought a warrant and told D that he could not reenter the trailer unescorted until the warrant was obtained and served. An officer returned with a search warrant within two hours, and the police searched the trailer, finding a pipe and a small quantity of marijuana. Held, the warrantless 'seizure' before the warrant was obtained and served was not unreasonable under the Fourth Amendment, *citing* four factors. First, the police had probable cause to search the trailer. Second, the police had good reason to fear that D would destroy the drugs if permitted back in the trailer. Third, the police "made reasonable efforts to reconcile their law enforcement needs with the demands of personal privacy", neither arresting D nor searching the trailer until a warrant was in hand. Fourth, the restraint was only for a limited time (two hours), which was no longer than reasonably necessary to obtain the warrant. Note that apparently, while D was not allowed to reenter his home alone while the police sought a warrant, he was free to leave the scene.

RELATED CASES: Sugg, 991 N.E.2d 601 (Ind. Ct. App 2013) (police did not violate 4th Amendment or Ind. Const. Art. I, Sec. 11 by refusing to let D reenter her home alone while police sought a search warrant because police reasonably believed home contained contraband and that if left alone, D might destroy evidence or retrieve a weapon).

TITLE: Michigan v. Summers

INDEX NO.: Z.2.d.2.

CITE: 452 U.S. 692, 101 S. Ct. 2587, 69 L.Ed.2d 340 (1981)

SUBJECT: Service of search warrant - search or detentions of persons

HOLDING: Initial detention of D, which was "seizure" & was assumed to be unsupported by probable cause, did not violate D's constitutional rights. For Fourth Amendment purposes, warrant to search for contraband founded on probable cause implicitly carries with it, limited authority to detain occupants while proper search is conducted. It was lawful in this case to require D to re-enter & to remain in house until evidence establishing probable cause to arrest D was found. Therefore, D's arrest & search incident thereto was constitutionally permissible. Held, judgment reversed. Stewart, Brennan, & Marshall, JJ., dissented.

RELATED CASES: Bailey v. United States, 133 S. Ct. 1031 (2013) (Summers allows detention pursuant to a search only within the immediate vicinity of the place to be searched; because the detention here was nearly one mile from the residence being searched, it was an illegal detention).; Arizona v. United States, 132 S. Ct. 2492 (2012) (Provision of Arizona immigration statute that assuming officers make a lawful stop, they must ask a person to verify their immigration status); Muehler v. Mena, 544 U.S. 93 (2005) (use of handcuffs to detain a person on the premises during a search did not violate the 4th Amendment; questioning detained person about immigration status was not a 4th Amendment violation).

TITLE: Muehler v. Mena

INDEX NO.: Z.2.d.2.

CITE: 544 U.S. 93 (2005)

SUBJECT: 4th Amendment, immigration, handcuffs

HOLDING: Mena, a lawful permanent resident, filed a ' 1983 action, claiming that SWAT and immigration officers violated her 4th Amendment rights by detaining her in handcuffs while they searched her residence pursuant to a warrant. During the detention and search, the INS officer also asked Mena and the other detainees about their immigration status. The District Court and 9th Circuit denied the officer's claims of qualified immunity, except as to Mena's claim that the warrant was overbroad. The jury found that the officers violated Mena's 4th Amendment rights by detaining her with more force, and for a longer period of time, than was reasonable, and awarded her damages.

The U.S. Supreme Court reversed. Under Michigan v. Summers, 452 U.S. 692 (1981), officers executing a search warrant have authority to detain the occupants of the premises while the search is being conducted, including the use of reasonable force in the detention. Note that the authority to detain the occupants of premises being searched under a warrant does not include the authority to search their persons. See Ybarra v. Illinois, 444 U.S. 85 (1979).

TITLE: Shotts v. State
INDEX NO.: Z.2.d.2.
CITE: (4/27/2016), 53 N.E.3d 526 (Ind. Ct. App 2016)
SUBJECT: Detention & search of non-resident arriving at house during execution of warrant
HOLDING: Under Michigan v. Summers, police officers may detain occupants of the premises during execution of a search warrant. 452 U.S. 692 (1981). "Occupant" means anyone who is in the immediate vicinity of the premises to be searched at the time the search is executed.

Here, police officers were executing a search warrant at a house, although from outside it was unclear this was occurring. D approached the residence, entered the front porch and walked in the front door. After an officer told him to "stop right there," D took several more steps in and told the officer he was there to see a friend. The officer ordered D to remove his hands from his pockets, handcuffed him and recovered a handgun.

On appeal, D argued he was seized in violation of the Fourth Amendment and the evidence obtained as a result of that seizure should not have been admitted at trial. The Court rejected the State's request to uphold the Tr. Ct.'s ruling under a Terry stop analysis and instead found D's seizure was authorized under Summers. Rejecting D's argument that he was not an "occupant" of the premises because he was not a resident of the house, Court concluded that requiring officers to determine whether he was a resident before detaining him would diminish the utility of Summers' bright-line rule. The purpose of the rule was "to keep an officer from having to make an ad hoc determination." Thus, Tr. Ct. did not err in refusing to exclude evidence obtained as a result of the seizure. Held, unlawful possession of a firearm by a serious violent felon affirmed.

TITLE: Sugg v. State
INDEX NO.: Z.2.d.2.
CITE: (7/24/2013), 991 N.E.2d 601 (Ind. Ct. App 2013)
SUBJECT: No constitutional violation for letting D reenter home only if accompanied by an officer
HOLDING: In issue of first impression, Court held police did not violate D's Fourth Amendment rights when they allowed her to enter her home only if accompanied by an officer while they sought a search warrant. See Illinois v. McArthur, 531 U.S. 326 (2001). Police had probable cause to believe D's home contained evidence of a crime, specifically, manufacturing methamphetamine, based on her and her husband's recent purchases of pseudoephedrine and the presence of precursors in her back yard. Police reasonably believed D, if unaccompanied in her home, would destroy evidence or get a weapon. The restraint was limited and tailored reasonably to law enforcement needs while still protecting D's privacy; restraint was imposed for only the short time it took to get the warrant.

Also, the search was reasonable under Art. I, Sec. 11 of the Indiana Constitution. The degree of intrusion on D's activities was low and the extent of law enforcement need to investigate was high. Held, judgment affirmed.

TITLE: United States v. Mittel-Carey

INDEX NO.: Z.2.d.2.

CITE: 456 F.Supp.2d 296 (D. Mass 2006)

SUBJECT: Detention and questioning violated Michigan v. Summers

HOLDING: The U.S. District Court for the District of Massachusetts held that the detention and questioning of a suspect during the execution of a search warrant exceeded the scope of the limited seizure permitted by the Fourth Amendment in Michigan v. Summers, 452 U.S. 692 (1981), and should have been preceded by Miranda warnings. *The police searched D's house based on an investigation that had uncovered* D's attempt to transmit at least three images of child pornography. It was undisputed that the federal agents did not read the Miranda warnings to D. The question presented was whether the agents were required to do so during the course of a Summers detention. The court rejected the argument that an agent's inquiry as to where additional items of child pornography might be found was in furtherance of the search, consistent with the stated rationales in Summers. The inquiry asked D to inculcate himself. After assessing the situation in its entirety, the court held that a reasonable person in D's position would think that he was in custody. Although he was in his own home when the interrogation began, the atmosphere was entirely police-dominated and more tense than a typical police inquiry at one's residence. A police officer not only made the suspect aware of the evidence against him, but also gave him the impression that it was fairly clear that he would be going to prison. Any self-incriminating statements he made that morning were therefore suppressed.

Z. SEARCH AND SEIZURE

Z.2. Search Warrant (Ind. Code 35-33-5)

Z.2.d.3. Manner of entry/knock and announce

TITLE: Commonwealth v. Macias

INDEX NO.: Z.2.d.3.

CITE: 711 N.E.2d 130 (Mass. 1999)

SUBJECT: Unannounced Entry -- Probable Cause to Believe Evidence Will Be Lost

HOLDING: Massachusetts Supreme Judicial Court holds that under its state constitution, reasonable suspicion to believe that evidence will be lost will not justify noncompliance with knock and announce rule for service of warrant. In order to make unannounced entry, officers must have probable cause to believe that evidence will be lost. Court disagrees with U.S. Supreme Court, which held in Richards v. Wisconsin, 520 U.S. 385 (1997), that federal constitution requires only reasonable suspicion.

TITLE: Davenport v. State

INDEX NO.: Z.2.d.3.

CITE: (7/6/84), Ind., 464 N.E.2d 1302

SUBJECT: Search warrant (SW) - manner of entry; knock & announce (K & A)

HOLDING: Tr. Ct. properly denied D's motion to suppress evidence, made because police did not announce authority (SW) before entering his house, where exigent circumstances existed. Here, officers knocked on door & showed police ID. Rather than opening door, D ran toward back of house. D's action presented exigency (attempt to escape/destroy illicit drugs). Four officers shouted "police" & kicked in 2 doors. D wounded 2 officers during confrontation. SW was executed & drugs were found. Ct. finds police entry to execute warrant valid. IN recognizes "K & A rule," which requires police K & A authority/purpose before forcing entry into home. Miller v. US (1958), 357 U.S. 301, 78 S. Ct. 1190, 2 L.Ed.2d 1332; State v. Dusch, 289 N.E.2d 515. However, notice is not required if officers have justifiable belief (based on activity inside house) that those within, aware of someone outside, are attempting to escape/destroy evidence. Ker v. CA (1963), 374 U.S. 23, 83 S. Ct. 1623, 10 L.Ed.2d 726. See also Cannon, App., 414 N.E.2d 578. Held, no error.

RELATED CASES: Beer, App., 885 N.E.2d 33 (police had reasonable suspicion that knocking and announcing their presence would be dangerous, thus no-knock aspect of search warrant was justified; during controlled buys, informants observed firearms in D's house and stated that D intended to use them if police attempted to enter his home); Crabtree, App., 479 N.E.2d 70 (exigent circumstances justify violation of K & A rule, although there was evidence that police did K & A at same time they opened door with pass key; police must have some indicator of D's intent to evade lawful execution of warrant, *citing Davenport*; Cannon; & Johnson, App., 299 N.E.2d 194; DISSENT contends spirit & letter of K & A rule were violated, inasmuch as police did not intend to allow Ds any time to respond to knock).

TITLE: People v. Krueger
INDEX NO.: Z.2.d.3.
CITE: 175 Ill.2d 60; 675 N.E.2d 604 (Ill. 1996)
SUBJECT: No-Knock Statute -- Prior Possession of Firearm Insufficient Exigency
HOLDING: Illinois Supreme Court finds that state's no-knock statute violates both state and federal constitutional guarantees against unreasonable searches and seizures insofar as it declares that "the prior possession of firearms of an occupant of [a] building within a reasonable period of time" is, without more, an exigent circumstance authorizing police executing search warrant to enter without first knocking and announcing their office. Furthermore, evidence seized in search must be excluded even if officers relied on statute in good faith. While U.S. Supreme Court announced such a good faith exception for searches undertaken on statutes, in Illinois v. Krull, 480 U.S. 340 (1987), Illinois constitution does not countenance impact on privacy rights that such an exception would have.

[**Note:** See also Richards v. Wisconsin, in Supreme Court Docket].

TITLE: Richards v. Wisconsin
INDEX NO.: Z.2.d.3
CITE: 520 U.S. 385, 117 S. Ct. 1416; 137 L.Ed.2d 615 (1997)
SUBJECT: Search & Seizure -- No Per Se Exception to Knock & Announce Requirement for drug cases
HOLDING: While the requirement that officers knock and announce their presence when executing warrant may be waived under certain exigent circumstances, per se exception for felony drug investigations violates 4th Amendment. A no-knock entry is reasonable only if information known to officers at the time of entry gives rise to reasonable suspicion that knocking and announcing present would be dangerous or futile, or would inhibit effective investigation, i.e., due to destruction of evidence. Here, because information available gave rise to such suspicion, search is upheld.

TITLE: State v. Larson
INDEX NO.: Z.2.d.3.
CITE: 215 Wis.2d 154; 572 N.W.2d 127 (Wis. Ct. App. 1997)
SUBJECT: Knock and Announce -- Exceptions
HOLDING: Officer's generalized knowledge that drug dealers are likely to be armed and are quick to destroy evidence upon learning police are present is insufficient to justify non-compliance with knock-and-announce requirement when serving residential search warrant. State must show case-specific facts supporting non-compliance, although this burden is not onerous.

TITLE: U.S. v. Bates

INDEX NO.: Z.2.d.3.

CITE: 84 F.3d 790 (6th Cir. 1996)

SUBJECT: Knock & Announce -- Exigency

HOLDING: Officers executing warrant to search apartment for 15-kilogram cocaine shipment were constitutionally required to knock and announce their presence, even though they had been told that front door was barricaded and there was weapon on premises. While exigency will excuse knock and announce requirement, facts known to officers did not create such exigency. Facts provided by informer did not include anything indicating that anyone inside dwelling was prone to violence, nor did records of anyone police knew to be present indicate they would respond violently. Mere presence of weapon does not create sufficient exigency to excuse knock and announce requirement. As for possible destruction of evidence, also argued by state, court expresses doubts that 15 kilograms of cocaine could be destroyed in time it would take to knock and announce.

TITLE: U.S. v. Ramirez

INDEX NO.: Z.2.d.3.

CITE: 523 U.S. 65, 118 S. Ct. 992 (1998)

SUBJECT: Search & Seizure -- Knock & Announce; Property Damage

HOLDING: The 4th Amendment's knock and announce requirement does not set a higher standard for unannounced entries that involve property damage. In Wilson v. Arkansas, 514 U.S. 927 (1995), the Court held that in some circumstances an unannounced entry may be unreasonable under the 4th Amendment. In Richards v. Wisconsin, 520 U.S. 385 (1997), the Court determined that in order to justify a no-knock entry, police must have reasonable suspicion that knocking and announcing their presence would be "dangerous or futile, or that it would inhibit the effective investigation of the crime by, for example, allowing the destruction of evidence." The Court holds here that no greater exigency is required to justify a no-knock entry that involves property damage. Here, police had a warrant to search a residence for a fugitive with a record of violence. A confidential informant had told them that the garage of the residence contained a stash of guns and drugs. When the warrant was executed, one of the officers broke out a window in the garage and stuck his gun through the opening to prevent occupants of the residence from accessing the guns thought to be stored there. The Ninth Circuit held that the entry violated the 4th Amendment because there was no evidence of "more specific inferences of exigency" which were required to justify property damage in the course of a no-knock entry. The Supreme Court holds that no greater exigency is required to justify a no-knock entry involving property damage. Whether ... a 'reasonable suspicion' exists depends in no way on whether police must destroy property." Because the issue of whether an exigency justifies a no-knock entry is separate from the issue of whether the entry was affected reasonably, it is possible that property damage during entry can be unreasonable under the 4th Amendment, while the entry itself is lawful and the fruits of the search not subject to suppression. The Court found that the no-knock entry here was justified by reasonable suspicion, and that breaking the window was reasonable under the circumstances.

TITLE: Wilson v. Arkansas

INDEX NO.: Z.2.d.3.

CITE: 514 U.S. 927, 115 S. Ct. 1914 (1995)

SUBJECT: Search & Seizure - Knock & Announce

HOLDING: Fourth Amendment reasonableness requirement includes obligation that law enforcement officers, in some circumstances, knock & announce their presence & authority before forcibly entering dwelling. Knock & announce principle existed in common law at time of framing of constitution, & as such is included in Fourth Amendment reasonableness inquiry. Exceptions include circumstances presenting threat of violence, or circumstances in which police reasonably believe that evidence will be destroyed. Held, reversed & remanded to determine whether unannounced entry was reasonable under circumstances here.

Z. SEARCH AND SEIZURE

Z.2. Search Warrant (Ind. Code 35-33-5)

Z.2.d.5. Other

TITLE: State v. Smith
INDEX NO.: Z.2.d.5.
CITE: (1st Dist. 11/14/90), Ind. App., 562 N.E.2d 428
SUBJECT: Service of search warrant - lack of signature on service copy
HOLDING: Failure of issuing judge to sign service copy of search warrant did not invalidate warrant or its execution so as to require suppression of evidence obtained in search. After hearing, judge determined that probable cause existed but failed to sign service copy of warrant, which was given to Ds. Ds moved to suppress based on this lack of signature, & Tr. Ct. granted suppression. State appeals. Neither 4th Amend. of U.S. Const. or Art. I, Sec. 11 of Ind. Const. require signing of search warrant or service of copy on person whose property is to be searched. Although facsimile of approved search warrant form set out at Ind. Code 35-33-5-3 includes line for issuing judge's signature, there is no explicit statutory requirement of signature. Signature of issuing judge or magistrate on original of search warrant has been held to be ministerial act. Provided judge or magistrate found probable cause & intended to issue warrant, omission of signature will not invalidate search warrant. See, e.g., Commonwealth v. Pellegrini (Mass. 1989), 539 N.E.2d 514; People v. Snyder (Mich. App. 1990), 449 N.W.2d 703; State v. Andries (Minn. 1980), 297 N.W.2d 124. Further, while Ind. Code 35-33-5-7(d) requires officer executing search warrant to announce authority & purpose of visit, there is no requirement that service of copy of warrant be made upon person whose property is to be searched. Officer here announced authority & purpose, & lack of signature on service copy of warrant did not invalidate search. Held, suppression order reversed.

TITLE: Taylor v. State

INDEX NO.: Z.2.d.5

CITE: (1/17/2017), 69 N.E.3d 502 (Ind. Ct. App 2017)

SUBJECT: Showing D electronic copy of valid search warrant is equal to paper copy

HOLDING: Trial court did not err in denying Defendant's motion to suppress blood draw evidence because it was obtained via a valid search warrant despite the fact the police officer did not serve Defendant with a paper copy of the search warrant before the blood draw. Instead, the prosecutor's office sent an electronic photograph of the signed search warrant to officer's cellphone via email. Defendant argued that the electronic copy of the search warrant in officer's possession was insufficient to proceed with the blood draw. But the officer need not serve the search warrant on the person to be searched at all, let alone in any particular format. State v. Smith, 562 N.E.2d 428 (Ind. Ct. App 1990).

And Ind. Code § 35-33-5-8 allows for a judge to transmit a duplicate copy of a warrant via electronic means as long as the affidavit and warrant are printed and retained as if they were original, to protect the defendant's Fourth Amendment rights. A photograph or PDF of a search warrant transmitted via email is as valid and effective as a paper copy. See Smith v. State, 311 P.3d 132, 140 (Wyo. 2013). Held, judgment affirmed.

Z. SEARCH AND SEIZURE

Z.3. Exceptions to search warrant requirement

TITLE: Flippo v. West Virginia
INDEX NO.: Z.3.
CITE: 528 U.S. 11, 120 S. Ct. 7, 145 L.E.2d 16 (1999)
SUBJECT: No homicide scene exception to warrant requirement
HOLDING: There is no “murder scene exception” to the Warrant Clause of the Fourth Amendment. Police responded to a 911 call and found D, injured, outside a cabin in a state park. D reported that he and his wife had been attacked. The police found his wife’s body inside the cabin. After taking D to the hospital, the police searched the area and the cabin, collecting evidence and taking photographs for over 16 hours. During the search, the police opened a briefcase in the cabin and found some photographs of a friend of D, apparently undressing. The defense moved to suppress these photographs at D's trial for murder on the grounds that the search was made without a warrant and that no exception to the warrant requirement justified the search and seizure. The Tr. Ct. approved the search as one of a “homicide crime scene” and the State used the photographs to help establish a motive for the D to kill his wife. The U.S. Supreme Court reversed, following Mincey v. Arizona, 437 U.S. 385, 98 S. Ct. 2408, 57 L.Ed.2d 290 (1978). The Tr. Ct. below did not base its decision on any of the alternate theories proposed by the State on appeal, including the theory that the petitioner consented to the search by directing the police to the cabin. Held, remanded to Tr. Ct.

TITLE: Maryland v. Pringle

INDEX NO.: Z.3.

CITE: 540 U.S. 366, 124 S. Ct. 795 (2003)

SUBJECT: Probable cause, Fourth Amendment

HOLDING: Pringle was the front seat passenger in a 3 am traffic stop. When the driver opened the glove compartment for the vehicle registration, the officer noticed several hundred dollars cash there. The driver consented to a search of the car, which turned up five envelopes of cocaine hidden behind a folding armrest in the back seat. None of the three men in the car admitted possession of the cocaine, so the police arrested all three. Pringle later waived his rights under Miranda v. Arizona, 384 U.S. 436 (1966), and confessed to possessing the cocaine and intending to sell it.

At trial Pringle argued that the confession should be suppressed as the result of an illegal arrest. The Tr. Ct. denied the suppression motion, but the Court of Appeals of Maryland reversed, holding that the mere finding of cocaine in the back armrest of the car did not establish probable cause to arrest the front-seat passenger for possession.

The U.S. Supreme Court granted certiorari and affirmed the Tr. Ct. Examining the totality of the circumstances, viewed from the standpoint of an objectively reasonable police officer, the court concluded that the facts established probable cause to arrest Pringle, and the arrest was therefore reasonable under the 4th Amendment.

Reviewer's note: This opinion does not hold that police automatically have probable cause to arrest every occupant of an automobile where contraband is found. The Court said that the large quantity of cash and drugs found, and the fact that the drugs were hidden in a place accessible to anyone in the car, made it reasonable for the officer in this case to infer that the three men in this case were all engaged in drug dealing. The Court also distinguished Ybarra v. Illinois, 444 U.S. 85 (1979), where the Court invalidated the search of a patron of a tavern where a search warrant was being served and for whom no independent probable cause existed.

TITLE: State v. Webber

INDEX NO.: Z.3.

CITE: 141 N.H. 817; 694 A.2d 970 (N.H. 1997)

SUBJECT: "Identification Search" Beyond Scope of Terry Stop; Not Exception to Warrant Requirement

HOLDING: Search of wallet, found during valid Terry pat-down, for purpose of finding identification for suspect, was beyond scope of Terry stop and was unreasonable under New Hampshire Constitution. State argued that stop fit under "identification search" exception to warrant requirement, but Court rejects such an exception under state constitution's prohibition against unreasonable searches.

Z. SEARCH AND SEIZURE

Z.3. Exceptions to search warrant requirement

Z.3.a. Incident to arrest (Chimel v. California)

TITLE: Anderson v. State

INDEX NO.: Z.3.a.

CITE: (12/5/2016), 64 N.E.3d 903 (Ind. Ct. App 2016)

SUBJECT: Unconstitutional warrantless search of D's jacket incident to arrest - failure to follow inventory search protocol

HOLDING: Police may not automatically search an arrestee's vehicle when he is unable to reach it to retrieve weapons or evidence at the time of the search. Arizona v. Gant, 556 U.S. 322 (2009). Here, police stopped D's car after discovering he had an outstanding arrest warrant. When D stepped out of the car, he removed his jacket and left it on the front seat. The officer arrested D and called a tow truck for the car, which was interfering with traffic. Either as a search incident to arrest (as the officer wrote in his field arrest report), or as an inventory search before towing (as described in the probable cause affidavit), the officer searched D's jacket and found a handgun.

The Court held that, in accordance with Gant, the warrantless search was not reasonable as a search incident to D's arrest. Moreover, the search did not fall within the inventory search exception because the State failed to show that the officer followed established police department procedure. The officer did not create an inventory of items he found, and no inventory list was placed into evidence.

The Court did not address the State's inevitable discovery argument, as it does not apply under the Indiana Constitution. See Ammons v. State, 770 N.E.2d 927, 935 (Ind. Ct. App 2002). Held, judgment reversed.

TITLE: Arizona v. Gant

INDEX NO.: Z.3.a.

CITE: (04-21-09), U.S., 07-542

SUBJECT: Search of unoccupied vehicle following arrest

HOLDING: Police may search the passenger compartment of a vehicle incident to a recent occupant's arrest only if it is reasonable to believe that the arrestee might access the vehicle at the time of the search or that the vehicle contains evidence of the offense of arrest. When these justifications are absent, a search of an arrestee's vehicle will be unreasonable unless police obtain a warrant or show that another exception to the warrant requirement applies. In Chimel v. California, 395 U.S. 752 (1969), Court held that a search incident to arrest may only include the arrestee's person and the area within his immediate control--construing that phrase to mean the area from within which he might gain possession of a weapon or destructible evidence. In Belton v. NewYork, 453 U.S. 454, 460 (1981), Court considered Chimel's application in the automobile context and held that when an officer lawfully arrests the occupant of an automobile, he may, as a contemporaneous incident of that arrest, search the passenger compartment of the automobile and any containers therein. Court rejects a broad reading of Belton allowing a search of a vehicle and the items within it whenever there is an arrest. Such a rule would serve no purpose except to provide a police entitlement. This implicates the central concern underlying the Fourth Amendment-- the concern about giving police officers unbridled discretion to rummage at will among a person's private effects. Moreover, the experience of the 28 years since this Court decided Belton has shown that the generalization underpinning the broad reading of that decision is unfounded. Court now knows that articles inside the passenger compartment are rarely within the area into which an arrestee might reach. Blind adherence to Belton's faulty assumption would authorize myriad unconstitutional searches.

Here, after D was arrested for driving with a suspended license, handcuffed, and locked in the back of a patrol car, police officers searched his car and discovered cocaine in the pocket of a jacket on the back seat. Neither the possibility of access nor the likelihood of discovering offense-related evidence authorized the search in this case. Thus, the search of D's car was unreasonable. Held, judgment of Arizona Supreme Court reversing Gant's conviction affirmed. Scalia, J., CONCURRING on basis that the Court should abandon the Belton-Thornton charade of officer safety and overrule those cases by holding that a vehicle search incident to arrest is *ipso facto* "reasonable" only when the object of the search is evidence of that crime for which the arrest was made, or of another crime that the officer has probable cause to believe occurred; Alito, J., DISSENTING, with whom Roberts, C.J., Kennedy, J., join and Breyer, J., join except as to Part II-E.

RELATED CASES: Stark, 960 N.E.2d 887 (Ind. Ct. App 2012) (where unrestrained passengers remain in a vehicle, a search of the vehicle incident to D's arrest is permissible to alleviate officer safety concerns and to prevent the destruction of evidence; because three occupants were unsecured during arrest, D had behaved suspiciously regarding his jacket and they were in a high crime area, an objective officer would have been warranted in conducting a search incident to arrest under Gant's officer safety consideration); Henderson, 953 N.E.2d 639 (Ind. Ct. App. 2011) (Gant is not retroactive because applying it to past cases would not serve purpose of deterring police misconduct); Meister, 933 N.E.2d 875 (Ind. 2010) (on remand from U.S. Supreme Court for reconsideration in light of Gant, Ct. held that search was justified under the automobile exception although search did not meet requirements of Gant);

Hathaway, 906 N.E.2d 941 (Ind. Ct. App 2009) (the search of the car D was driving incident to his arrest for DWS was unreasonable under the Fourth Amendment and Article I, Section 11).

TITLE: Bean v. State

INDEX NO: Z.3.a.

CITE: (2-13-2020), 142 N.E.3d 456 (Ind. Ct. App 2020)

SUBJECT: Invalid pat down search - no reasonable suspicion motorist was armed and dangerous

HOLDING: The Court of Appeals reversed Defendant's convictions for dealing in a controlled substance and maintaining a common nuisance, holding that a series of non-consensual searches consisting of a second pat down search, a request to remove his shoes, and an order to shake out the front of his pants, could not be justified as a frisk for weapons. After a traffic stop, Defendant consented to a pat-down search as well as a search of his vehicle. The officers observed what they believed to be marijuana "shake" in his car but did not recover it, attempt to test it, or allow the drug-sniffing dog they had with them to circle the car. They then performed a second pat-down and ordered Defendant to remove his shoes and shake out his pants, which led to the discovery of a baggie containing numerous pills identified as hydrocodone and alprazolam, both controlled substances. The Court of Appeals held the officers lacked a reasonable belief Defendant was armed and dangerous when they discovered the pills, and the search was not justified as incident to arrest because the officers did not have the required probable cause to arrest him for marijuana possession. In so holding, the Court noted that the officer's bare, conclusory assertion that the substance found on passenger seat and floorboard was a prohibited substance did not establish probable cause for the subsequent searches. Judge Baker dissented, arguing that the discovery of marijuana shakes in the vehicle justified the second series of searches of Defendant's person under the search incident to arrest exception to the Fourth Amendment warrant requirement.

TITLE: Bell v. State

INDEX NO: Z.3.a.

CITE: (7/28/2014), 13 N.E.3d 543 (Ind. Ct. App 2014)

SUBJECT: Patdown search of passenger during traffic stop upheld - odor of raw marijuana

HOLDING: Pat-down search of passenger did not violate her rights under Fourth Amendment.

During traffic stop for illegally displayed temporary license plate, officer learned that driver did not have valid license and ordered vehicle's occupants to exit. As D exited the vehicle, officer smelled raw marijuana coming from both the vehicle and D's person. Officer handcuffed D and conducted a patdown search which revealed ten baggies of marijuana. Although officer had no reason to believe D was armed and dangerous, patdown search was permissible because odor of marijuana gave officer probable cause to arrest her. When probable cause exists to make an arrest, the fact that a suspect was not formally placed under arrest at the time of the search incident will not invalidate the search. Moffitt v. State, 817 N.E.2d 239 (Ind. Ct. App 2004). Like the smell of burnt marijuana, the smell of raw marijuana on a person is sufficient to provide probable cause that the person possesses marijuana. D did not challenge officer's training and experience in detecting the odor of raw marijuana. Held, judgment affirmed.

RELATED CASES: Parrott, 69 N.E.3d 535 (Ind. Ct. App 2017) (odor of raw marijuana in vehicle in which D was sole occupant gave police probable cause to search his person; see full review, this section).

TITLE: Best v. State

INDEX NO.: Z.3.a.

CITE: (5th Dist., 11-18-04), Ind. App., 817 N.E.2d 685

SUBJECT: Search incident to unlawful arrest - based on satisfied or otherwise invalid warrant

HOLDING: Under both State & Federal Constitutions, an unlawful arrest cannot be the foundation of a lawful search. Hammond v. State, 675 N.E.2d 353 (Ind. Ct. App 1996). Ind. Code 35-33-1-1 provides that a law enforcement officer may arrest a person when the officer has a warrant commanding that the person be arrested. Here, D was detained on a Jennings County warrant in Jay County for failure to appear on three occasions prior to his arrest on the warrant on date he was arrested. On each occasion Jennings County was notified of D's "hold" pursuant to the warrant & each time Jennings County chose not to take any action on the warrant & D was released. Jennings County's decision not to take D into custody, or to dismiss the warrant against him, subjected D to deprivation of his liberty on four occasions. D was served with Jennings County warrant when he was first detained pursuant to it. At that time, warrant was satisfied & therefore lost its validity as a proper basis for future arrests. Ct. did not hold that every seizure based on an arrest prompted by a computer mistake warrants suppression of evidence, but facts here clearly constitute an egregious violation of due process. Held, denial of motion to suppress evidence reversed.

RELATED CASES: Lewis, 904 N.E.2d 290 (Ind. Ct. App 2009 (agreeing with Williams, *supra*, and explaining that D could have requested warrant in discovery); Williams, App., 898 N.E.2d 400 (when admitting evidence seized pursuant to a search incident to an arrest, State has no duty to produce arrest warrant when D has not challenged the warrant's validity)

TITLE: Black v. State

INDEX NO.: Z.3.a.

CITE: (6-24-04), Ind., 810 N.E.2d 713

SUBJECT: Search incident to arrest - D away from vehicle

HOLDING: Tr. Ct. did not err in denying D's motion to suppress evidence of cocaine discovered inside his vehicle. D was lawfully arrested for driving while suspended at an auto repair shop after having parked & exited his car. Majority opinion of Ct. App. & Judge Riley's dissent debated availability to State in this case of "automobile exception" to Fourth Amendment's warrant requirement. Because recent U.S. S. Ct. decision in Thornton v. United States, 124 S. Ct. 2127 (2004), controls outcome of this case, Ct. did not address this issue. In Thornton, Ct. held that police may search passenger compartment of D's car even in situations where police first make contact with D after he has stepped out of his vehicle. Thus, circumstances in this case constituted a lawful warrantless search incident to arrest under Fourth Amendment. Held, transfer granted, Ct. App. opinion at 795 N.E.2d 1061 vacated, judgment affirmed.

TITLE: Buhrman v. Commonwealth

INDEX NO.: Z.3.a.

CITE: 275 Va. 501, 659 S.E.2d 325 (Va. 2008)

SUBJECT: Hand-rolled cigarettes, intoxication did not provide probable cause for arrest, search

HOLDING: Virginia Supreme Court held a police officer who approached a woman the officer suspected was preparing to drive while intoxicated and spied hand-rolled cigarettes inside her vehicle did not have probable cause to arrest the woman for possession of marijuana and search the car. Officer saw D in a convenience store in a "high drug" area having difficulty keeping her balance and staying awake. When D approached her car, the officer asked for identification. D opened the car door to get her ID and the officer saw hand-rolled cigarettes in the inside door handle. On the basis of her experience, the coloration of the cigarettes, and a "faint odor," the officer arrested D for possession of marijuana, with an ensuing search turning up marijuana and other drugs. Precedent in the state establishes that probable cause cannot be based "solely on the observation of material which can be used for legitimate purposes, even though the experience of an officer indicates that such material is often used for illegitimate purposes." Court did not accept that D's apparently "intoxicated" and "suspicious" behavior provided additional justification, noting evidence of inebriation and vaguely "suspicious" actions does not indicate that hand-rolled cigarettes hold marijuana rather than tobacco. Further, "behaving in an intoxicated and suspicious manner is not so overwhelmingly correlated with the use of marijuana as to exclude the reasonable inference that such behaviors are the result of the use of a legal substance such as alcohol." Three justices dissented.

TITLE: Carpenter v. United States
INDEX NO.: Z.3.a.
CITE: (6/22/2018), ____ N.E.3d ____ (U.S. Supreme Court 2018)
SUBJECT: Warrant required to access cell phone location data
HOLDING: The acquisition of D's cell phone location data was a Fourth Amendment search.

After the FBI identified cell phone numbers of several robbery suspects, prosecutors obtained the suspects' cell phone records under the Stored Communications Act. Wireless carriers produced location data for D's phone, and the Government was able to obtain 12,898 location points that catalogued D's movements over 127 days - an average of 101 data points per day. D was charged with robbery. He moved to suppress the data, arguing that seizure of the records without a warrant violated the Fourth Amendment. The District Court denied the motion, and prosecutors used the records at trial to show that D's phone was near the robbery locations at the time those robberies occurred. D was convicted. The Sixth Circuit affirmed, holding that D lacked a reasonable expectation of privacy in the location information because he had shared that information with his wireless carriers.

Individuals have a reasonable expectation of privacy in their physical movements. Allowing government access to cell-site records—which “hold for many Americans the ‘privacies of life,’” Riley v. California, 134 S. Ct. 2473 (2014) — violates that expectation. In fact, cell-site records present even greater privacy concerns than the GPS monitoring considered in United States v. Jones, 132 S. Ct. 945 (2012); cell-site records give the Government near perfect surveillance and allow it to retrace a person's whereabouts, subject only to the five-year retention policies of most wireless carriers.

The third-party doctrine does not apply here. That doctrine partly stems from the idea that an individual has a reduced expectation of privacy in information knowingly shared with another. So, for instance, the Court has held that a person has no expectation of privacy in their bank records - United States v. Miller, 425 U.S. 435 (1976) - or in the phone numbers they have dialed - Smith v. Maryland, 442 U.S. 735 (1979). But cell-site location data is radically different; it is an exhaustive chronicle of location information casually collected by wireless carriers.

Here, the government did not get a warrant before acquiring D's cell-site records; instead, it acquired the records pursuant to a court order under the Stored Communications Act, which required the Government to show “reasonable grounds” that the records were “relevant and material” to an investigation. 18 U. S. C. §2703(d). This standard falls far short of the probable cause requirement for a warrant. Thus, an order issued under §2703(d) is not a permissible mechanism to access historical cell-site records.

This ruling is narrow. It does not question conventional surveillance techniques and tools, such as security cameras, and it does not address other business records that might incidentally reveal location information. It also does not foreclose that exigent circumstances may sometimes allow a warrantless search. Held, cert granted, 819 F. 3d 880, reversed, and remanded. ROBERTS, C. J., delivered the opinion of the Court, in which GINSBURG, BREYER, SOTOMAYOR, and KAGAN, JJ., joined. KENNEDY, J., filed a dissenting opinion, in which THOMAS and ALITO, JJ., joined. THOMAS, J., filed a dissenting opinion. ALITO, J., filed a dissenting opinion, in which THOMAS, J., joined. GORSUCH, J., filed a dissenting opinion.

TITLE: Ceroni v. State

INDEX NO.: Z.3.a.

CITE: (3d Dist. 9/12/90), Ind. App., 559 N.E.2d 372

SUBJECT: Search incident to arrest - scope; drawers & satchels

HOLDING: Search of satchel found in drawer in motel room was not permissible search incident to arrest of occupants after marijuana was observed on table. After police entered room, they observed loose marijuana & joint on table. Several officers controlled 4 occupants of room while at least 1 other officer searched drawers, bathroom, & under bed. In 1 drawer, black satchel was found, & on opening it, officer discovered drug paraphernalia & 56.8 grams of cocaine. D moved to suppress, & on appeal raises admission as error. State argues that this was valid search incident to arrest, under Chimel v. Calif. (1969), 395 U.S. 752, 89 S. Ct. 2034, 23 L.Ed.2d 685. Search must be "strictly tied to & justified by" circumstances that rendered its initiation permissible. Chimel, supra, quoting Terry v. Ohio (1968), 392 U.S. 1, 88 S. Ct. 1868, 20 L.Ed.2d 889. Assuming arguendo that warrantless entry into room was permissible & officers were justified in arresting occupants of room after observing marijuana, Ct. App. still finds that search of drawers & satchel was constitutionally impermissible. Chimel Ct. found ample justification for search of arrestee's person & area within his/her immediate control, so that he/she cannot reach out & obtain weapon or destroy evidence. Ct. found no comparable justification, however, for searching other rooms, or "for searching through all the desk drawers or other closed or concealed areas in that room [where arrest occurred] itself." Id. This search clearly fell outside parameters of Chimel, & Tr. Ct. improperly admitted fruits of search into evidence. Held, reversed & remanded for new trial.

RELATED CASES: Smith, App., 889 N.E.2d 836 (search of toilet tank in bathroom of motel where the D was being arrest exceeded the scope of a reasonable search incident to an arrest; the D was no longer a safety risk and the police only believed, based on a porcelain-to-porcelain sound they heard prior to entering the room, that the D hid, not destroyed, drugs)

TITLE: Commonwealth v. Robertson

INDEX NO.: Z.3.a.

CITE: 275 Va. 559, 659 S.E.2d 321 (Va. 2008)

SUBJECT: Post-arrest protective sweep violated Fourth Amendment

HOLDING: Virginia Supreme Court held law enforcement officers who had forcibly removed and arrested an armed man as he sat on a windowsill of his home during a standoff with police violated the Fourth Amendment by conducting a post-arrest protective sweep of the residence. No facts indicated that the officers had reason to believe that there was anyone else inside the home who posed a threat. Police were responding to a 911 call from D's live-in girlfriend who reported that D was drunk and talking about killing himself. While she was on the phone, she heard two gunshots and the dispatcher told her to wait outside the home until police arrived. Court, analyzing case under Maryland v. Buie, 494 U.S. 325 (1990), found that the officers lacked the facts needed to support a reasonable suspicion that someone in the house posed a danger to them. Given fact that D and his girlfriend had told the officers that there was no one in the house, and the fact that the officers' own observations during a standoff indicated the same thing, "there were no articulable facts to indicate that [D's] home harbored anyone posing a danger to the individuals present at the arrest scene." Court also found no exigent circumstances to justify the search.

TITLE: Commonwealth v. E.M.
INDEX NO.: Z.3.a.
CITE: 735 A.2d 654 (Pa. 1999)
SUBJECT: Swap of Cash for Unseen Object -- Reasonable Suspicion but not Probable Cause
HOLDING: Police officer in "high crime" area late at night who saw D with plastic baggie in his hand signal to two men, who then engaged in street side exchange of cash for unidentified small object, had reasonable suspicion for stop, but not probable cause for arrest and search incident to arrest.

TITLE: Covelli v. State

INDEX NO.: Z.3.a.

CITE: (3d Dist. 10/07/91), Ind. App., 579 N.E.2d 466

SUBJECT: Warrantless search incident to lawful arrest

HOLDING: Even though Ds had been secured by handcuffing, & bag was placed out of their reach, search of bag was still valid as being incident to area within immediate control of arrestee. During drug arrest in motel, one of Ds gave officer permission to search bag she was carrying for her I.D. During this search, officer found several items of drug paraphernalia in plain view, & that evidence was therefore admissible. Officer did not look inside enclosed black bag where cocaine was found, however, until after he had found D's I.D. Ct. accepted fact that officer had exceeded scope of permission to search when he searched after finding what he'd been given permission to search for. Ct. determined, however, that search was still valid because of exigencies of situation. Ct. found that such exigencies were not negated merely because suspects were secured, & that handcuffed arrestees may still be dangerous. Ct. also found that bag was in immediate control of arrestees even though officers had control of bag. Because search was not improper, D's claim of ineffective assistance of counsel for not objecting to admission of cocaine was rejected. Held, convictions affirmed.

RELATED CASES: Wilson, App., 754 N.E.2d 950 (Tr. Ct. properly admitted evidence seized from search of D's person which was within permissible scope of search incident to arrest); DeLong, App., 670 N.E.2d 56 (search of jacket after D was placed in police car was incidental to D's lawful arrest for battery); Culpepper, App., 662 N.E.2d 670 (warrantless search of bag incident to lawful arrest was proper in scope, where bag was within D's immediate control and officers had legitimate interest in protecting themselves and preventing destruction of evidence).

TITLE: Curry v. State
INDEX NO.: Z.3.a.
CITE: (12/22/2017), 90 N.E.3d 677 (Ind. Ct. App 2017)
SUBJECT: Dog alert alone insufficient probable cause to search vehicle's occupants
HOLDING: Following Thomas v. State, 81 N.E.3d 621 (Ind. 2017), Court held that something more than a canine sniff is needed to establish probable cause for an arrest and a search incident to arrest. Here, aside from the canine alert, D's behavior was suspicious. He repeated the officer's words and directions, sat shaking and staring ahead, did not exit vehicle promptly upon request, and appeared to enter a "fight or flight" mode. D was in constructive possession of drugs and the officer conducted a lawful search incident to arrest. Court also held that canine sniff of the vehicle did not materially increase the duration of the ten-minute traffic stop. Held, judgment affirmed.

TITLE: Edwards v. State

INDEX NO.: Z.3.a.

CITE: (12-18-01), Ind., 759 N.E.2d 626

SUBJECT: Warrantless strip searches of misdemeanor arrestees impermissible

HOLDING: Routine, warrantless strip searches of misdemeanor arrestees, even when incident to lawful arrests, are unreasonable & impermissible under Indiana & U.S. Constitutions. Before jail officials may conduct warrantless strip searches of misdemeanor arrestees detained awaiting posting of bond, those officials must have reasonable suspicion that arrestee is concealing weapons or contraband. Here, D was strip-searched when he was processed into jail several hours after his arrest. At that point D had not been charged with any criminal activity, & possible charges he faced were all for nonviolent misdemeanor offenses. There may be misdemeanor charges for which a body search is appropriate because of reasonable likelihood of discovery of evidence, but potential charge in this case (false informing), without more, is certainly not one of them. Irrespective of offense, circumstances surrounding arrest, rather than offense itself, may give rise to reasonable suspicion, & if so search is justified. To extent strip search is conducted on basis of jail security, indignity & personal invasion necessarily accompanying a strip search is simply not reasonable without reasonable suspicion that weapons or contraband may be introduced into jail. Because State did not carry its burden of proving that warrantless strip search of D fell within exception to warrant requirement, D's motion to suppress should have been granted. Held, transfer granted, Ct. App.' decision at 750 N.E.2d 377 vacated, judgment reversed & remanded.

RELATED CASES: Pitchford, 60 N.E.3d 1100 (Ind. Ct. App 2016) (Edwards did not establish a general exception for crimes of violence, and because that case was also based on Indiana Constitution, its holding still controls, notwithstanding subsequent U.S. Supreme Court opinion in Florence (below) which held that the 4th Amendment does not bar routine strip searches of arrestees; see full review, this section); White, 24 N.E.3d 535 (Ind. Ct. App 2015) (although underlying arrest constituted a misdemeanor, strip search at jail was justified because of officers' reasonable suspicion that weapons or contraband would be introduced into the jail due to the lingering odor of raw marijuana which engulfed D even after having been transported to the jail); Florence v. Bd. of Chosen Freeholders of Burlington County, 132 S. Ct. 1510 (S. Ct. 2012) (for arrestees committing minor offenses, strip searches during intake process are reasonable under 4th Amendment as correctional officials have significant interest in screening for drugs, weapons, contagious diseases, infections, lice, and concealed tattoos indicating gang membership; seriousness of offense is poor predictor of who has contraband; see full review, this section); Bryant, 959 N.E.2d 315 (Ind. Ct. App. 2011) (even though D was arrested for a misdemeanor, not a felony, the forced strip search of D was permissible because the circumstances surrounding an arrest, rather than the offense itself, may give rise to reasonable suspicion D was concealing contraband).

TITLE: Edwards v. State
INDEX NO.: Z.3.a.
CITE: (5-21-02), Ind. App., 768 N.E.2d 506
SUBJECT: Search of vehicle incident to arrest - improper where D not arrested while in vehicle or while in process of exiting vehicle
HOLDING: On rehearing, Ct. upheld its decision in Edwards v. State, 762 N.E.2d 128 (Ind. Ct. App. 2001). State's petition for rehearing was granted for limited purpose of addressing State's arguments that Ct. improperly considered absence of exigent circumstances to justify State's warrantless search of vehicle & that search incident to arrest exception to warrant requirement was misapplied. Stolen cigarettes were found in bag in bed of D's truck. Search was proper under plain view exception, but not under inventory search, vehicle search, & search incident to arrest. State points out that automobile exception has no separate exigency requirement because if there was probable cause to believe automobile contains contraband then inherent mobility of automobile justifies warrantless search.

Sebastain v. State, 726 N.E.2d 827 (Ind. Ct. App. 2000). Absence of exigent circumstances in Edwards was discussed because police impounded vehicle & was no longer inherently mobile. State further argued that Edwards overly limits search incident to arrest exception. State failed to acknowledge Gibson v. State, 733 N.E.2d 945 (Ind. Ct. App. 2000), which Ct. relied on in Edwards. There is factual & legal distinction explicitly recognized between person arrested while in vehicle or process of exiting vehicle & those who are outside vehicle. Held, judgment affirmed.

TITLE: Florence v. Bd. of Chosen Freeholders of Burlington County
INDEX NO.: Z.3.a.
CITE: (04-12-12), S. Ct., 132 S. Ct. 1510
SUBJECT: Suspicionless jail strip searches for minor offenses don't violate 4th amendment
HOLDING: Jail strip searches for even minor offenses do not require reasonable suspicion and thus do not violate the 4th Amendment, if the arrestee is being admitted into the general jail population.

Florence was strip searched at two county jails after he was arrested for failure to pay a fine, which he had actually paid but court records did not show this. He later sued under 42 U.S.C. 1983, claiming the county violated his rights under the 4th and 14th Amendments. The District Court granted Florence's motion for summary judgment, but the Third Circuit reversed. Correctional officials must have substantial discretion to devise reasonable solutions to problems with inmates. Regulations impinging on an inmate's constitutional rights must be upheld "if it is reasonably related to legitimate penological interests." Turner v. Safley, 482 U. S. 78, 89 (1987). Correctional officials have a significant interest in conducting a thorough search as part of the intake process. Admission of new inmates creates risks for staff, existing detainees, and new detainees themselves. This requires screening for wounds, contagious infections, lice, and concealed tattoos that may indicate gang affiliation. Correctional officials also need to detect weapons, drugs, alcohol, and other prohibited items. Exempting new detainees arrested for minor offenses from invasive searches unless they give officers a particular reason to suspect them of hiding contraband is unworkable. The seriousness of an offense is a poor predictor of who has contraband.

The dissent argued that strip searches should not be allowed for minor offense that do not involve violence or drugs because strip searches are a serious invasion of privacy. Held, Third Circuit affirmed, 5-4. Kennedy, J., joined in full by Roberts, C.J., Scalia and Alito, J.J., Thomas, J., joined in all but Part IV. Roberts, J., and Alito, J., filed concurring opinions; Breyer, J., dissented, joined by Justices Ginsburg, Sotomayor, and Kagan, J.J.

TITLE: Garcia v. State

INDEX NO.: Z.3.a.

CITE: (1/21/2016), 47 N.E.3d 1196 (Ind. S. Ct. 2016)

SUBJECT: Opening container found on arrestee during search incident to valid arrest was reasonable under Ind. Constitution

HOLDING: Opening a pill bottle found in D's pants pocket during a pat-down search incident to his arrest for driving without a valid license was reasonable under Art. 1, Sect. 11 of the Ind. Constitution. D argued that while the pill container found on his person during the pat-down search could be seized, a search incident to arrest under Art. 1, Sect. 11 does not permit the officer to open the container without a warrant or reasonable suspicion of illegal activity.

Considering the factors set forth in Litchfield v. State, 824 N.E.2d 356 (Ind. 2005) and federal precedent on this issue, Court disagreed, noting that the degree of suspicion surrounding the search of the container itself "is but one factor to be considered." No additional suspicion was needed to search the container found in D's pocket during the normal course of the pat-down search. See United States v. Robinson, 414 U.S. 218 (1973); Edwards v. State, 759 N.E.2d 626 (Ind. 2001). It is not a single aspect of the search that is considered, but the entirety of the search, which in this case "was brief and minimal."

Regarding the extent of law enforcement needs, Court noted that officer safety is a primary concern when taking an arrestee into custody, and the objective reasonableness of the search is controlling, not the officer's subjective views. See Riley v. California, 134 S. Ct. 2473, 2485 (2014) ("unknown physical objects may always pose risks, no matter how slight, during the tense atmosphere of a custodial arrest"). Held, transfer granted, Court of Appeals' opinion at 25 N.E.3d 786 vacated, denial of motion to suppress affirmed. Rucker, J., concurring in result only.

RELATED CASES: Crager, (10/25/2018), 113 N.E.3d 657 (Ind. Ct. App 2018) (search of D's backpack incident to his arrest was reasonable and did not violate D's rights under Article 1, § 11 of Ind. Constitution); See Ohio v. Clark, 135 S. Ct. 2173 (2015) and full review, this section.

TITLE: Guilmette v. State

INDEX NO: Z.3.a.

CITE: (8/13/2014), 14 N.E.3d 38 (Ind. 2014)

SUBJECT: Warrant not required to seize and test evidence unrelated to crime for which D is arrested

HOLDING: Art. 1, § 11 of Indiana Constitution permits police to examine and test evidence after properly seizing it pursuant to a lawful arrest. Here, police arrested D for theft but seized and tested his shoe to search for evidence of murder. They had strong suspicion that D had murdered victim because he lied about his activities during the relevant time period, stole victim's money and car keys, and had what appeared to be blood on his shoe. The intrusion on D's ordinary activities was minimal, as his clothing was seized pursuant to standard police procedure. And although there was no exigency requiring immediate testing of the blood on shoe, it would be extremely cumbersome to require law enforcement to apply for an independent warrant anytime they wish to examine or test a piece of evidence they have already lawfully seized.

It does not matter that the test revealed evidence of a different crime from that for which D was arrested. Farrie v. State, 255 Ind. 681, 266 N.E.2d 212 (1971). Thus, Tr. Ct. did not err by admitting DNA found on D's shoe into evidence against him. See also U.S. v. Edwards, 415 U.S. 800 (1974) (under Fourth Amendment, clothing or other belongings may be seized upon D's arrival at place of detention and later subjected to laboratory analysis). Held, transfer granted, Court of Appeals' opinion at 986 N.E.2d 335 vacated, judgment affirmed.

RELATED CASES: See Garcia v. State, 47N.E.3d1196 as in Guilmette, Ct. sees no basis "why an independent warrant should be required to search an item already lawfully seized"; see full review, this section.

TITLE: Illinois v. Lafayette

INDEX NO.: Z.3.a.

CITE: 462 U.S. 640, 103 S. Ct. 2605, 77 L.Ed.2d 65 (1983)

SUBJECT: Search incident to arrest - routine procedure

HOLDING: Justification for search of arrested person's personal effects as part of routine administrative procedure at police stationhouse incident to booking & jailing does not rest on probable cause. Therefore, absence of warrant is immaterial to search. It is not unreasonable for police, as part of routine procedure incident to incarcerating arresting person, to search any container or article in his possession, in accordance with established inventory procedures. Fact that less intrusive means existed, such as sealing bag, did not make search unreasonable. Held, judgment reversed & remanded. Marshall & Brennan, JJ. concurred.

TITLE: Johnson v. State

INDEX NO.: Z.3.a.

CITE: (2/28/2017), 70 N.E.3d 890 (Ind. Ct. App 2017)

SUBJECT: Post-arrest protective sweep violated Fourth Amendment

HOLDING: Trial court abused its discretion in admitting gun discovered during a protective sweep. Police officers were dispatched to Defendant's apartment after his girlfriend reported that he had threatened to shoot and kill her. Defendant was arrested just outside his apartment, and officers conducted a protective sweep of the entire apartment, including the back bedroom where they found a gun. A protective sweep incident to arrest occurring outside a residence may be valid if the police have articulable facts which support a reasonable belief that other persons may be inside the residence which may pose safety threats. Reed v. State, 582 N.E.2d 826 (Ind. Ct. App 1991). Distinguishing Reed, Court held that the protective sweep in this case was not warranted because Defendant was arrested outside his apartment, the door to the apartment was closed and locked at the time, and the officers had no reason to think there was anyone inside. The bedroom where the gun was found was not "a space immediately adjoining the place of arrest in the hallway of the apartment building from which an attack could immediately be launched," as is required for protective sweeps. See Maryland v. Buie, 494 U.S. 325, 334 (1990).

Instead, the bedroom was a back bedroom that could only be reached by opening another door, so the gun was not immediately visible. Held, conviction for possession of a firearm by a serious violent felon reversed.

TITLE: Knowles v. Iowa
INDEX NO.: Z.3.a.
CITE: 525 U.S. 113; 119 S. Ct. 484; 142 L.Ed.2d 492 (1998)
SUBJECT: Search Incident to Arrest Exception Does Not Extend to Mere Issuance of Traffic Citation
HOLDING: Search incident to arrest exception to requirement of search warrant does not justify search of car following issuing of traffic citation. There are two historical justifications for search incident to arrest exception, neither of which justify extending exception to cover traffic citation search. First, threat to officer safety during issuing of traffic citation is much less than in case of custodial arrest. Second, need to discover & preserve evidence is not as great, since all evidence necessary to prosecute traffic offense is obtained in course of issuing citation itself.

TITLE: Kyles v. State
INDEX NO.: Z.3.a.
CITE: (4th Dist., 06-19-08), Ind. App., 888 N.E.2d 809
SUBJECT: Warrantless search of vehicle incident to D's arrest for possession of paraphernalia
HOLDING: Police officer had probable cause to believe D committed possession of paraphernalia as a Class A misdemeanor in officer's presence. Thus, officer's warrantless arrest of D and the subsequent inventory search of D's vehicle did not violate Fourth Amendment, and Tr. Ct. properly admitted shotgun discovered during that search into evidence. Court rejected D's argument that officer's observation of crack pipe on driver's seat shortly after D exited vehicle did not constitute probable cause for a warrantless arrest because possession of paraphernalia can be classified as an infraction. Court has held there was sufficient evidence to support finding that D knowingly or intentionally possessed paraphernalia in violation of Ind. Code 35-48-4-8.3(b) under circumstances similar to circumstances in this case. See, e.g., Trigg v. State, 725 N.E.2d 446 (Ind. Ct. App 2000); Crabtree v. State, 479 N.E.2d 70 (Ind. Ct. App 1985). Court also noted that in Virginia v. Moore, 128 S. Ct. 1598 (2008), Court did not explicitly state what type of crime would authorize a warrantless arrest but suggested that "the threshold is fairly low." Held, judgment affirmed.

TITLE: Leitch v. State

INDEX NO.: Z.3.a.

CITE: (4th Dist.; 10-30-00), Ind. App., 736 N.E.2d 1284

SUBJECT: Search incident to arrest - arrests for traffic-related offenses

HOLDING: Regardless of whether D is arrested for traffic-related offense, police are authorized to search vehicle as incident to arrest. When policeman has made lawful custodial arrest of occupant of automobile, he may, as contemporaneous incident of that arrest, search passenger compartment of that automobile. However, search incident to traffic citation is not constitutionally permissible. Knowles v. Iowa, 525 U.S. 113, 119 S. Ct. 484 (1998). Here, although police initially stopped D for traffic infraction, during investigation, police eventually arrested D for being habitual traffic violator. After D was handcuffed & placed in police car, police conducted search of D's car. Fact that D was arrested for traffic-related offense does not change fact that D was still arrested for crime rather than cited for traffic infraction. Thus, Tr. Ct. did not err in denying D's motion to suppress marijuana & amphetamines discovered during search of his car. Held, judgment affirmed in part & reversed in part.

NOTE: Although Ct. did not specifically address issue of whether police can search car that is not within D's control, this case seems to implicitly be in opposition with Gibson, App., 733 N.E.2d 945 (where D was in parking lot, walking towards store when he was arrested, search of vehicle was not justified as incident to arrest because it was not within his control).

TITLE: Maryland v. Buie
INDEX NO.: Z.3.a.
CITE: 494 U.S. 325, 110 S. Ct. 1093, 108 L.Ed.2d 276 (1990)
SUBJECT: Standardized procedures - inventory search
HOLDING: "Protective sweep" is quick & limited search of premises, incident to arrest & conducted to protect safety of police officers & others. Here, D was arrested pursuant to warrant upon emerging from basement. Officer entered basement "in case there was someone else" there & seized running suit in plain view which was similar to one worn by robber. In determining reasonableness under 4th Amend., a court must balance intrusion of D's 4th Amend. interests against promotion of legitimate governmental interests. D's 4th Amend. interests in rooms not entered prior to arrest is not de minimus. However, protective sweep occurs as adjunct to serious step of taking person into custody for purposes of taking person into custody. In-home arrest puts officer at disadvantage of being on adversary's "turf." Ambush in such confined setting of unknown configuration is more fearful than it is in open, familiar surroundings. Held, police may incident to arrest look in closets & other spaces immediately adjoining place of arrest from which attack could be immediately launched as precautionary measure without warrant, probable cause or reasonable suspicion. Beyond that, there must be articulable facts which would warrant reasonable officer to believe area harbors individual posing danger to arrest scene. Sweep may last no longer than necessary to dispel reasonable suspicion of danger & in any event, no longer than it takes to complete arrest & depart premises. Stevens CONCURRING; Kennedy CONCURRING; Brennan, joined by Marshall, DISSENTING.

TITLE: Merchant v. State

INDEX NO.: Z.3.a.

CITE: (05-05-10), Ind. Ct. App, 926 N.E.2d 1058

SUBJECT: Search incident to arrest affirmed

HOLDING: In prosecution for unlawful possession of firearm by serious violent felon, Tr. Ct. did not abuse its discretion in admitting handgun found during warrantless search of D's car. As police investigated a residential disturbance, D jumped into his car to pursue a person in another car. Officer saw that D was not wearing a seatbelt and ordered him to stop. As officers questioned D, he kept "putting his right hand back, off to his right side, around the center console, in an area where [officer] could not see what that hand was reaching for." Officer repeatedly told D to put his hands up where he could see them, but D refused. Officer also heard police radio traffic from inside D's car and saw D remove something from the console area and throw it under the passenger seat. Officer searched under the seat and found a police scanner. However, D continued to reach back into the console area.

Court found that the search was legal under the Fourth Amendment because at the time of the search, D was arrested but unsecured (not handcuffed) and was within reaching distance of his car's passenger compartment. Arizona v. Gant, 129 S. Ct. 1710, 1719 (2009). The search was likewise lawful under article 1, section 11 of the Indiana Constitution because it was reasonable under the totality of circumstances. When officer initially spoke to D, his right hand was concealed as he reached around the console. Even after officer recovered the police scanner, D continued the same furtive gestures. After D exited his car, officer conducted a limited search in area around the console, where he found the gun. Held, judgment affirmed.

TITLE: Miller v. State

INDEX NO.: Z.3.a.

CITE: (2/9/2016), 51 N.E.3d 313 (Ind. Ct. App 2016)

SUBJECT: Search incident to arrest violated D's rights where police had no basis to order her to stop

HOLDING: In Gaddie v. State, 10 N.E.3d 1249 (Ind. 2014), Indiana Supreme Court held that a person cannot be prosecuted for resisting law enforcement by fleeing unless the officer has, at a minimum, the reasonable suspicion necessary to conduct a Terry stop. A report of a disturbance, without more, is not a sufficient basis upon which to conduct an investigatory stop. Id. at 1255.

Here, a police officer responding to a report of a disturbance at a convenience store saw D walking away from the store, and she continued walking to her apartment after an officer exited his cruiser and said, "Hey, I need to talk to you." Officers knocked on the apartment door and another woman answered, but eventually D appeared. When asked why she did not stop to speak with police, she said, "I didn't know what you wanted to talk to me about," at which point she was immediately placed under arrest for misdemeanor resisting law enforcement. Police discovered an ecstasy pill and Spice as a result of a pat-down search incident to D's arrest.

Following Gaddie, Court held that even if D had disobeyed a direct and unambiguous order from a police officer to stop, D could not be subjected to an arrest or a search based solely on her failure to obey the order. Thus, D's arrest violated D's well-established right to walk away, which "is rendered illusory if she is subjected to a criminal penalty for exercising that freedom." Held, denial of motion to suppress evidence reversed.

TITLE: Moffitt v. State

INDEX NO.: Z.3.a.

CITE: (2nd Dist., 9-23-04), Ind. App., 817 N.E.2d 239

SUBJECT: Search incident to arrest upheld

HOLDING: Tr. Ct. did not abuse its discretion in admitting cocaine & marijuana evidence discovered during a search incident to lawful arrest of D. An arrest occurs when a police officer interrupts freedom of accused & restricts his liberty of movement. Sears v. State, 668 N.E.2d 662 (Ind. 1996). Even where a police officer does not tell D that he or she is under arrest prior to search, that fact does not invalidate a search incident to an arrest as long as there is probable cause to make an arrest. Jackson v. State, 588 N.E.2d 588 (Ind. Ct. App 1992). Here, applying de novo standard of review, Ct. determined that officer had probable cause to arrest D for disorderly conduct based upon observing his involvement in multi-person altercation in middle of street. Prior to search in question, officer informed all of individuals involved in altercation that he intended to arrest them for disorderly conduct unless they were able to give him a reason not to. Fact that D was not formally placed under arrest at time of search does not alter Ct.'s finding of probable cause & did not invalidate search. Santana v. State, 679 N.E.2d 1355 (Ind. Ct. App 1997). Held, judgment affirmed.

RELATED CASES: Herron, 991 N.E.2d 165 (Ind. Ct. App 2013) (Tr. Ct. did not abuse its discretion when it admitted evidence seized during traffic stop, where police had probable cause at time D was removed from his car to arrest him for dealing cocaine; see full review at Z.7.a); Fentress, App., 863 N.E.2d 420 (although D was not told he was under arrest, search after probable cause arose was proper search incident to arrest).

TITLE: Paulino v. State

INDEX NO.: Z.3.a.

CITE: 924 A.2d 308 (Md. 207)

SUBJECT: Strip searches - butt search violated Fourth Amendment

HOLDING: Maryland Court of Appeals, the state's highest court, held that police officers who arrested D on the basis of a tip that he was carrying drugs between his buttocks violated the Fourth Amendment by searching the area of his buttocks at the scene of the arrest. Notwithstanding officers' authority to conduct a warrantless search incident to arrest, prosecutors failed to show that the intrusive search in this case took place in circumstances that assured D's privacy. Court analyzed case based on the four factors set out in the preeminent U.S. Supreme Court case on strip searches of pre-trial detainees, Bell v. Wolfish, 442 U.S. 520 (1979). That court made clear that authority to conduct a search does not give police carte blanche to conduct the search in an unreasonable manner, and it directed courts to determine reasonableness by weighing (1) the scope of the intrusion, (2) the manner in which it is conducted, (3) the justification for initiating it, and (4) the place in which it is conducted. A dissent was entered.

RELATED CASES: Powell, App., 898 N.E.2d 328 (cutting D's underwear in order to retrieve cocaine from pocket-type enclosure in the underwear during a search incident to arrest alongside the road in a non-residential area was reasonable); Hendricks, App., 897 N.E.2d 1208 (Court agrees that the area of one's buttocks would be considered private; however, in the totality of the circumstances of this case, pulling out D's waistband and subsequently removing a napkin full of cocaine protruding from his buttocks was reasonable under the Indiana Constitution).

TITLE: Perkins v. State
INDEX NO.: Z.3.a.
CITE: (2nd Dist., 5-28-98), Ind. App., 695 N.E.2d 612
SUBJECT: Unconstitutional search incident to arrest - timing of events unclear
HOLDING: Where record was unclear as to whether search which revealed marijuana was conducted before or after D provided information justifying arrest for carrying handgun without license, evidence supporting conviction for marijuana possession was obtained as result of unconstitutional search & should have been suppressed. Police may search person incident to valid arrest. Sears, 668 N.E.2d 662. However, as with many search cases & probable cause issues, timing of events & officer's knowledge are critical in determining validity of search. Id. D's actions in this case were sufficient to justify officers' concerns for their safety & Terry frisk, but subsequent warrantless search which discovered marijuana was unconstitutional because State did not meet its burden to justify search & record was entirely unclear as to precisely when marijuana was discovered. Held, conviction affirmed in part & reversed in part.

TITLE: Porter v. State

INDEX NO.: Z.3.a.

CITE: (8/22/2017), 82 N.E.3d 898 (Ind. Ct. App 2017)

SUBJECT: Unlawful invasive roadside search of D's person

HOLDING: Although initial pat-down search of passenger pulled over for routine traffic stop was permissible, subsequent roadside exploratory search inside her pants violated federal and state constitutions. During a traffic stop for a headlight violation, officer detected a strong odor of marijuana coming from D's person. An initial pat-down search revealed no contraband, so officer pulled waistband of D's jeans away from her body and inserted her hand inside the front, crotch area, between D's legs. After feeling what she believed to be a marijuana blunt, the officer then stuck her hand inside D's underwear, next to her genital area, and retrieved the contraband. When determining the reasonableness of a search under the Fourth Amendment, Court must consider the scope of the particular intrusion, the manner in which it is conducted, the justification for initiating it, and the place in which it is conducted. Bell v. Wolfish, 441 U.S. 520, 559 (1979). *Distinguishing Powell v. State*, 898 N.E.2d 328 (Ind. Ct. App. 2008) and applying the Bell factors, Court concluded that the search was unreasonable. State presented no evidence of any measures taken to protect D's privacy or any law enforcement need to conduct the search on the side of a public road. While there was probable cause to search D incident to arrest, officer went several steps further by inserting her hand into D's pants and then under her underwear, in a public place, with no voiced concerns about officer safety or destruction of evidence. The admission of evidence was likewise erroneous under Article I, Section 11 of the Indiana Constitution. Held, judgment reversed; Altice, J., concurring with separate opinion.

TITLE: Powell v. State
INDEX NO.: Z.3.a.
CITE: 898 N.E.2d 328 (Ind. Ct. App. 2008)
SUBJECT: Search incident to arrest - cutting D's underwear was reasonable
HOLDING: Tr. Ct. did not err by denying D's motion to suppress. When determining the reasonableness of a search under the Fourth Amendment, the courts must consider the scope of the particular intrusion, the manner in which it is conducted, the justification for initiating it, and the place in which it is conducted. Bell v. Wolfish, 441 U.S. 520, 559 (1979). The Bell factors do not apply just to strip searches. When determining the reasonableness of a search under Article I, Section 11 of the Indiana Constitution, the court must consider the totality of the circumstances and the interests of the individual affected and those of law enforcement.

Here, the police conducted a search incident to D's arrest for illegal possession of a gun, driving while suspended and resisting law enforcement. During the search, the officer felt a hard object in D's underwear, which were mostly exposed due to D's droopy pants. The officer used a pocketknife to remove an eight-inch section of D's underwear where he found cocaine in a pocket-type enclosure with materials on both sides. Because of the pocket-like enclosure, the officer was able to remove the cocaine without exposing any of D's skin. Moreover, this occurred around 9:00 p.m. in a non-residential area, thereby minimizing exposure to the public. The officer testified that no people walked by during the encounter. Given the scope of the search, the manner in which it was conducted, the justification for initiating it, and the place in which it was conducted, the search was reasonable under the Fourth Amendment and the Indiana Constitution. Held, judgment affirmed.

RELATED CASE: Hendricks, 897 N.E.2d 1208 (Ind. Ct. App, 2008) (Court agrees that the area of one's buttocks would be considered private; however, in the totality of the circumstances of this case, pulling out D's waistband and subsequently removing a napkin full of cocaine protruding from his buttocks was reasonable under the Indiana Constitution).

TITLE: Reed v. State

INDEX NO.: Z.3.a.

CITE: (1st Dist. 12/10/91), Ind. App., 582 N.E.2d 826

SUBJECT: Protective sweep search when D arrested outside home

HOLDING: Protective sweep incident to arrest occurring outside residence may be valid if police have articulable facts supporting reasonable belief that other persons may be inside who may pose safety threats. When police arrived at D's girlfriend's darkened home to serve arrest warrant, they heard toilet flush when they knocked & announced presence. They then broke down front door, grabbed D, pulled him outside & arrested him. While D was being arrested, officer entered house & asked if anyone else was inside. Girlfriend answered but did not come out. Officers then began protective sweep of house & saw bag of cocaine floating in toilet. This contraband in plain view furnished probable cause for later search warrant which revealed additional evidence.

Ct. found situation fit into second alternative for protective sweep search announced in Maryland v. Buie, 494 U.S. 325, 110 S. Ct. 1093, 108 L.Ed.2d 276, & followed in Smith, Ind., 565 N.E.2d 1059, i.e., that there were articulable facts justifying reasonable belief that sweep area harbored someone posing danger to those on arrest scene. Although Buie & Smith both dealt with arrests occurring inside building searched, Ct. noted search after arrest in doorway of home was upheld in Williams, App., 397 N.E.2d 1088, & that it was consistent with Buie's holding. Ct. also relied on decisions from other jurisdictions upholding protective sweep incident to arrest outside home. Held, conviction affirmed.

RELATED CASES: Johnson, 70 N.E.3d 890 (Ind. Ct. App 2017) (distinguishing Reed and finding protective sweep improper where D was arrested outside his apartment, the door to the apartment was closed/locked, and the officers had no reason to think there was anyone inside); J.K., 8 N.E.3d 222 (Ind. Ct. App 2014) (disagreeing with Rush (below) to the extent it implies that underage drinking is an exigent circumstance in and of itself to justify warrantless home entry); Rush, App., 881 N.E.2d 46 (after officer's consensual entry into house, search & protective sweep to gather suspected underage drinkers and missing persons was justified).

TITLE: Rhodes v. State
INDEX NO.: Z.3.a.
CITE: (10/18/2013), 996 N.E.2d 450 (Ind. Ct. App 2013)
SUBJECT: Search incident to arrest - D found near scene of crime matched description given by witness
HOLDING: Tr. Ct. did not abuse its discretion by admitting into evidence a cell phone and a credit card found in D's pocket during a patdown by police. Officer came across D, who matched the description of person who had been breaking into parked cars in a nearby hotel parking lot. D gave his name, said he had no ID, and told officer he was on parole for a narcotics offense. Officer saw a bulge in D's pocket and decided to perform a patdown feel for "officer safety." Officer reached into the pocket and found a cell phone and credit card bearing the name of one of the parking lot victims. At trial, when the State offered the cell phone and credit card into evidence, D stated, "No objection." Tr. Ct. then specifically asked, "No objection?" D confirmed he had no objection. Thus, the issue was waived for appeal.

Waiver notwithstanding, Court concluded there was no error because evidence was properly seized pursuant to a search incident to arrest. Police relied on the eyewitness's (hotel employee's) description of suspect, and D matched the description, giving police probable cause to search him. See e.g., Slaton v. State, 510 N.E.2d 1343 (Ind. 1987). Thus, Tr. Ct. did not err by admitting the cell phone and credit card into evidence. Held, judgment affirmed.

TITLE: Richard v. State
INDEX NO.: Z.3.a.
CITE: (4/23/2014), 7 N.E.3d 347 (Ind. Ct. App 2014)
SUBJECT: Search of passenger after K9 alert on vehicle
HOLDING: After police dog's positive alert to the presence of narcotics in vehicle, police officer had probable cause to arrest passenger. D was passenger in vehicle whose driver was arrested on an outstanding warrant. Police officer walked his dog around the car and he alerted at the driver's door, which provided probable cause to believe there were drugs in the vehicle. Under Maryland v. Pringle, 540 U.S. 366 (2003), there was probable cause to believe any of vehicle's passengers had at least constructive possession of drugs. And there was no indication that only the driver was involved in narcotics activity.

Court likewise found no violation of Article 1, Section 11 of the Indiana Constitution, given the minimal nature of the search, the high degree of suspicion that D actually or constructively possessed illegal drugs, and because the extent of law enforcement needs was significant. Held, judgment affirmed.

RELATED CASES: I.G., 177 N.E.3d 75 (Ind. Ct. App.75) (police did not have probable cause to arrest D for possession of marijuana based solely on the odor of raw and burnt marijuana in a car with three occupants); Thomas, 81 N.E.3d 621 (Ind. 2017) (departing from Richard regarding amount of evidence needed to establish probable cause, Ct. suggested that a single canine alert to presence of drugs, followed by fruitless search of vehicle, would not provide probable cause necessary to conduct alawful arrest; see full review, this section).

TITLE: Riley v. California
INDEX NO: Z.3.a.
CITE: (6/25/2014), 134 S. Ct. 2473 (U.S. S. Ct. 2014)
SUBJECT: Warrant required to search contents of cell phone
HOLDING: Police may not search the digital contents of cell phone without a warrant. As explained in Chimel v. California, 395 U.S. 752, 762-63 (1969), when making a valid arrest, officers may conduct a warrantless search of a person and the areas within their immediate control, where such a search is justified by concerns about officer safety or destruction of evidence. These concerns do not exist with digital cell phone data, so the Chimel rationale for a warrantless search does not apply. Further, the intrusiveness of such a search is great because of the volume and personal nature of the data stored in cell phones. Thus, searching a cell phone's digital data without a warrant violates the Fourth Amendment. Cf. Smith v. State, 713 N.E.2d 338 (Ind. Ct. App. 1999) and Kirk v. State, 974 N.E.2d 1059 (Ind. Ct. App. 2012). Held, cert. granted, judgment of California Court on Appeal reversed. Roberts, C.J., joined by Scalia, Kennedy, Thomas, Ginsburg, Breyer, Sotomayor, and Kagan, JJ; Alito, J., concurring in part and concurring in judgment.

TITLE: Robinson v. State

INDEX NO.: Z.3.a.

CITE: (5th Dist., 06-27-08), Ind. App., 888 N.E.2d 1267

SUBJECT: Search incident to arrest upheld - probable cause from face-to-face informant

HOLDING: Tr. Ct. did not abuse its discretion in admitting evidence of cocaine seized after D's arrest, which was supported by probable cause provided almost entirely by informant's statements and actions. Informant initiated face-to-face contact with police, and her declarations were clearly against her penal interest when she told police she had been smoking crack cocaine with D. At very least, informant's statements, as well as act of giving crack cocaine pipe to police, subjected her to charges for Class B felony cocaine possession and Class A misdemeanor paraphernalia possession. These potential crimes would almost certainly have gone undetected otherwise, thus informant's admissions carried their own indicia of credibility sufficient at least to support a finding of probable cause under State v. Spillers, 847 N.E.2d 949 (Ind. 2006). Court found it even more compelling that D herself initiated contact with police, rather than making her declarations after being arrested or confronted for some other reason. Moreover, face-to-face nature of informant's tip tended to establish its reliability because: 1) officers were able to judge informant's credibility first-hand; and 2) face-to-face tipster surrendered her anonymity, making herself accountable for lodging false complaint. See United States v. Christmas, 222 F.3d 141, 144 (4th Cir. 2000).

Due to informant's statements and actions against her penal interest and face-to-face nature of her tip, her statements had sufficient indicia of reliability to support finding of probable cause to arrest D. Held, judgment affirmed.

TITLE: Shelton v. United States

INDEX NO.: Z.3.a.

CITE: 929 A.2d 420 (D.C. 2007)

SUBJECT: Hand-to-hand transaction did not provide probable cause for search

HOLDING: District of Columbia Court of Appeals held a police officer's observation of a hand-to-hand transaction in which a motorist stopped and handed a pedestrian cash in exchange for a small object of some sort did not, by itself, give the officer probable cause to arrest and search the motorist immediately thereafter. Court noted that officer's observations of a two-way transaction have been held to give rise to probable cause in certain other situations. However, there were "additional contextual factors" in those other cases beyond the transactions themselves that could have led reasonable officers to believe they were witnessing a crime. Here, "the observed transaction is capable of numerous innocent circumstances" and Court held that crack cocaine found on the motorist in the wake of his arrest should have been suppressed.

TITLE: Shepherd v. State
INDEX NO.: Z.3.a.
CITE: (5th Dist., 12-29-97), Ind. App., 690 N.E.2d 318
SUBJECT: Emergency searches - failure to prove emergency
HOLDING: Because search of D's car performed at wreck yard few hours after accident constituted illegal search, evidence obtained from search should have been suppressed. Where it is practicable to obtain search warrant, it is unreasonable to conduct warrantless search of automobile. Green, App., 647 N.E.2d 694. It is erroneous to admit evidence at trial which was illegally obtained; however, erroneous admission of evidence is not reversible unless it constitutes prejudice against D. Davis, 520 N.E.2d 1271. Here, officer could have obtained search warrant because Cts. were open & judges were available on day that car was searched & condition of car after accident was such that there was very little danger of car being moved after it had been impounded at wreck yard. In addition, because accident investigator concluded from blood samples found on driver's side of car during search that D was driver, D was prejudiced by erroneous admission of blood samples. Thus, Tr. Ct.'s error in denying D's motion to suppress blood samples obtained from search of car warranted reversal. Held, conviction reversed.

TITLE: Smith v. Ohio

INDEX NO.: Z.3.a.

CITE: 494 U.S. 541, 110 S. Ct. 1288, 108 L.Ed.2d 464 (1990)

SUBJECT: Arrest must precede search incident to arrest

HOLDING: PER CURIAM. Search incident to arrest may not precede arrest & serve as part of justification for arrest. [Citations omitted.] Here, police approached D, who was unknown to police, in parking lot as D exited residence carrying brown paper sack. When Police I.D.'ed selves D threw sack onto his car & turned to face officers. D did not respond to police inquiry regarding contents of sack. Police searched sack, found drug paraphernalia & arrested D. No claim made that search of sack was for protective purposes. Terry v. Ohio (1968), 392 U.S. 1, 88 S. Ct. 1868, 20 L.Ed.2d 889. Search incident to arrest exception does not permit police to search citizen without warrant nor probable cause even where arrest immediately follows. Held, search of sack unconstitutional. Marshall, DISSENTING (summary disposition inappropriate method for disposition of cases in U.S. Supreme Court.

TITLE: Smith v. State

INDEX NO: Z.3.a.

CITE: (01/25/91), Ind., 565 N.E.2d 1059

SUBJECT: Search incident to arrest - locked room

HOLDING: Evidence obtained through officer's search of locked storage room was illegally obtained & must be excluded, because there was no search warrant, search did not fall within "protective sweep" exception to warrant, & such error was not harmless. Evidence showed that officers had warrant to arrest D & entered home to do so. D let them in & they conducted "protective sweep" of entire house, finding locked storage room that they could not see in. After some discussion, officers unlocked room & inside found large amount of drying marijuana in plain view. On search of entire room, cocaine was also found in closed container. D filed Motion to Suppress & Tr. Ct. ruled that marijuana in plain view in the storage room was admissible. Ind. S. Ct. examined in light of Maryland v. Buie (1990), 494 U.S. ___, 110 S. Ct. 1093, & held warrantless search of locked storage room was not justified by circumstances because there was no evidence room immediately adjoined place of arrest from which an attack on officers could be launched, & no specific & articulable facts demonstrating any reasonable suspicion of danger existed. State also argued that if admission of marijuana was error, it was harmless because D admitted charged conduct & charges weren't based on disputed marijuana. Ct. found that because D claimed defense of entrapment, such defense could be impaired by admission of evidence of large quantities of marijuana on issue of predisposition to deal, & therefore could not say beyond a reasonable doubt that error in admitting evidence was harmless. Held, judgment reversed & remanded for new trial.

RELATED CASES: Johnson, 70 N.E.3d 890 (Ind. Ct. App 2017) (protective sweep improper where D was arrested outside his apartment, the door to the apartment was closed/locked, and the officers had no reason to think there was anyone inside); Kirk, 974 N.E.2d 1059 (Ind. Ct. App 2012) (although officer was within his rights to confiscate cell phone during search incident to arrest, there was no real law enforcement need to open the cell phone, press a button to access the inbox, and read six to eight text messages; search violated article I, section 11 of the Indiana Constitution).

TITLE: State v. Bauder

INDEX NO.: Z.3.a.

CITE: 924 A.2d 38 (Vt. 2007)

SUBJECT: Vermont rejects *Belton* under state constitution

HOLDING: Vermont Supreme Court held Vermont Constitution's provision on searches and seizures prohibits law enforcement from routinely searching a motor vehicle without a warrant after its occupant has been arrested, handcuffed, and secured in a police vehicle, absent a reasonable need to protect the officers' safety or preserve evidence of a crime. Court rejected the bright-line Fourth Amendment rule set forth in Belton v. New York, 453 U.S. 454 (1981).

TITLE: State v. Estep

INDEX NO.: Z.3.a.

CITE: (7-10-01), Ind. App., 753 N.E.2d 22

SUBJECT: Improper protective sweep incident to arrest

HOLDING: Search incident to arrest was improper where D stated no one was in residence & arrest occurred at front door. Protective sweep should be cursory of spaces where persons may be found & should last no longer than necessary to complete arrest & depart premises. Maryland v. Buie, 494 U.S. 325 (1990). Furthermore, protective sweep is authorized of rooms immediately adjoining place of arrest & other areas only if there is articulable suspicion. Here, there was no articulable suspicion due to D's denial of another's presence in home & officers failed to provide additional testimony to support claim that protective sweep was necessary. Even if contraband was only found in adjoining areas, this does not save evidence, because sweep was too extensive, it exceeded spirit of limited grant to search, & took much longer than it would have taken to complete arrest & depart premises. Held, judgment granting D's motion to suppress affirmed.

RELATED CASES: Weddle, 989 N.E.2d 371 (Ind. Ct. App 2013) (protective sweep of D's residence was justified because officers searched only adjoining rooms from which an attack could immediately occur; moreover, officers had specific and articulable facts that an individual, who could jeopardize their safety, was hiding in the back of the house); Hannibal, App., 804 N.E.2d 206 (police officer's protective sweep of apartment where D was staying did not violate Fourth Amendment, & police did not exceed scope of their protective sweep when they discovered marijuana in upstairs toilet pursuant to D's arrest).

TITLE: State v. Garcia-Cantu

INDEX NO.: Z.3.a.

CITE: 253 S.W.3d 236 (Tex. Crim. App. 2008)

SUBJECT: Occupants of vehicle seized where officer flashed spotlight on them

HOLDING: Texas Court of Criminal Appeals held a police officer seized the occupants of a vehicle, for purposes of the Fourth Amendment's reasonable-suspicion requirement, when he trained his patrol car's spotlight on them. The officer put the spotlight on D and a companion who were sitting in a car parked on a dead-end street, in an area plagued with drug trafficking, after parking behind D's vehicle. The officer then walked up to the car carrying a flashlight with both hands. Analyzing case under Florida v. Bostick, 501 U.S. 429 (1991), Court noted police are as free as any other citizen to approach citizens in their cars and to ask for information or cooperation, but when an officer "engages in conduct which a reasonable man would view as threatening or offensive even if performed by another private citizen" that such an encounter becomes a seizure. Court agreed that use of a spotlight may indicate to a reasonable person that the officer is merely carrying out his community-caretaking function and "the use of a spotlight, by itself, is not a circumstance that necessarily converts a consensual encounter into a Fourth Amendment detention." Majority, giving deference to the trial judge's implicit finding that the officer used his vehicle to box in D's car and the officer's videotape supported a finding that the officer used an authoritative tone when he asked D "What are you doing here?", found based on the totality of the circumstances that D was seized. Three judges dissented.

TITLE: State v. McGrane
INDEX NO.: Z.3.a.
CITE: 733 N.W.2d 671 (Iowa 2007)
SUBJECT: Search of upstairs unconstitutional after D called down for arrest
HOLDING: Iowa Supreme Court held police officers who called a suspect downstairs from the second story of a residence to arrest him pursuant to a warrant had no basis under either the search-incident-to-arrest doctrine or the protective sweep exception to the Fourth Amendment's warrant requirement to then go upstairs and look around. A legitimate search incident to the arrest could not extend that far, and a sweep was unjustified because nothing about the situation would have indicated to reasonably prudent officers that someone who might pose a danger to them was lurking above. Court held that the search-incident-to-arrest exception established in Chimel v. California, 395 U.S. 752 (1969) did not apply. The search-incident exception applies only to searches that are substantially contemporaneous with and confined to the immediate vicinity of an arrest. Court also found that the search did not conform to the limitations imposed on the scope of a search in Maryland v. Buie, 494 U.S. 325 (1990).

TITLE: State v. Parrott
INDEX NO.: Z.3.a.
CITE: (2/6/2017), 69 N.E.3d 535 (Ind. Ct. App 2017)
SUBJECT: Odor of raw marijuana in vehicle gave police probable cause to search Defendant's person

HOLDING: Warrantless search of Defendant's person based on strong odor of raw marijuana emanating from his vehicle did not violate Fourth Amendment or Article 1, Section 11 of the Indiana Constitution. A police officer pulled Defendant over for running a stop sign. The officer detected the odor of raw marijuana coming from the vehicle but did not smell marijuana on Defendant after he exited the vehicle. The officer handcuffed Defendant (who was sole occupant of the vehicle), searched him, and discovered crack cocaine, pills, and marijuana. Officers also searched vehicle but did not find any contraband.

Court reversed trial court's grant of Defendant's motion to suppress because the odor of raw marijuana in the vehicle gave probable cause to arrest Defendant and search his person. The smell of raw marijuana "makes it more likely that [Defendant] was presently in possession of marijuana. Butler v. United States, 102 A.2d 736, 742 (D.C. 2014). Defendant cited no authority for his suggestion that the officer was required to search the vehicle before he could search Defendant's person. Held, suppression order reversed and remanded.

RELATED CASES: I.G., 177 N.E.3d 75 (Ind. Ct. App. 2021) (police did not have probable cause to arrest D for possession of marijuana based solely on the odor of raw and burnt marijuana in a car with three occupants).

TITLE: State v. Pitchford

INDEX NO.: Z.3.a.

CITE: (7/29/2016), 60 N.E.3d 1100 (Ind. Ct. App 2016)

SUBJECT: Warrantless strip search violated Indiana Constitution

HOLDING: Under Article 1, Section 11 of the Indiana Constitution, the warrantless strip search of misdemeanor arrestees is impermissible unless, given totality of circumstances, the officer has reasonable suspicion that the arrestee is concealing weapons or contraband. Edwards v. State, 759 N.E.2d 626 (Ind. 2001). Here, D who had been arrested for battery was uncooperative during a strip search at the jail, and officers found a plastic bag with drugs “extruding” from his buttocks. Following Edwards, Court of Appeals affirmed the Tr. Ct.'s grant of D's motion to suppress. In so holding, Court rejected State's reliance on Florence v. Board of Chosen Freeholders of Burlington County, 132 S. Ct. 1510 (2012), which subsequently held that the Fourth Amendment does not bar routine strip searches of arrestees. Because Edwards was also based on the Indiana Constitution, its holding still controls. Edwards did not establish a general exception for crimes of violence; it required reasonable suspicion for strip searches of arrestees. The good faith exception to the exclusionary rule does not apply to warrantless searches. Held, judgment affirmed.

TITLE: State v. Wells
INDEX NO.: Z.3.a.
CITE: 928 P.2d 386 (Utah Ct. App. 1996)
SUBJECT: Warrantless Search of Jacket Found in Home After Arrest Held Invalid
HOLDING: Utah Court of Appeals holds that warrantless seizure of cocaine from lining of jacket found in residence after occupant's arrest was not justified under either exigent circumstances or search incident to arrest doctrines. Because occupant had already been handcuffed before jacket was searched and there was no indication that there was anyone else in residence to take cocaine away, exigent circumstances do not apply. Further, because occupant was handcuffed and evidence was not clear that he could even reach jacket, let alone retrieve cocaine from lining, search incident to arrest doctrine does not apply.

TITLE: State v. Williams

INDEX NO.: Z.3.a.

CITE: 887 A.2d 190 (N.J. Super. Ct. App. Div. 2005); *overruled* in part by State v. Crawley, 901 A.2d 924

SUBJECT: Flight from Illegal Stop Does Not Support Arrest and Resulting Search

HOLDING: The New Jersey Superior Court, Appellate Division, has held that a person who flees from officers conducting an investigative detention without reasonable suspicion may not be arrested for obstruction on the basis of that flight alone, unless others are endangered. To hold otherwise, the Court held, would be to criminalize the peaceful exercise of the 4th Amendment right to be free from unreasonable searches and seizures. Acting on an anonymous tip that a "black male wearing a black jacket" was dealing drugs in a part of town where drug-dealing was common, two officers stopped the D, who fit that general description. When the officers told him to put his hands on top of his head, he took off on foot, and the officers pursued him, caught him, patted him down, and found a handgun in his waistband. The Court held that, because the anonymous tip did not provide enough for the officers to rely on, the stop was illegal, that the D's peaceful flight from the officer's illegal stop could not constitute the offense of obstruction, and that his improper arrest on that charge did not justify the ensuing search. See also, Polk v. State, 739 N.E.2d 666 (Ind. App.).

TITLE: Thomas v. State

INDEX NO.: Z.3.a.

CITE: (12/21/2016), 65 N.E.3d 1096 (Ind. Ct. App 2017)

SUBJECT: Dog alert did not give probable cause to detain and transport D to police station

HOLDING: Tr. Ct. did not abuse its discretion in admitting heroin recovered from D after a warrantless arrest following a traffic stop. Police stopped the van D was riding in after observing a lane change without signaling. Officers had been watching the vehicle based on a reliable confidential informant's tip. Once the traffic stop was initiated, both D and driver told officers they were visiting family, but neither man could identify where in Indiana their respective family members lived. Officers ran a trained canine simultaneous to the lawful stop, which initially resulted in an alert to the presence of narcotics, but the dog no longer detected the narcotics after the suspects were removed from the vehicle. Police then obtained permission to search the vehicle but did not find contraband in the van. After the driver was arrested for having a suspended license, he consented to a strip search, but D declined. Police took him to the station and placed him in an interview room. When officers saw D remove something from his jacket and place it in his mouth, they forced him to open his mouth and discovered a plastic baggie containing heroin. Under the totality of circumstances-- including tip from a reliable informant, inconsistent answers D and driver provided about why they were in Indiana, and the positive canine alert when they were inside vehicle-- Court held that a reasonable person could believe at least one of the men still possessed the drugs when he exited the vehicle. Thus, the officers met the probable cause threshold necessary to detain D and transport him to police station. Held, transfer granted, Court of Appeals' opinion at 65 N.E.3d 1096 vacated, Class A felony dealing in a narcotic drug conviction affirmed.

TITLE: Thompson v. State

INDEX NO.: Z.3.a.

CITE: (5th Dist., 04-07-05), Ind. App., 824 N.E.2d 1265

SUBJECT: Unreasonable strip search incident to arrest - civilian filming or photographing

HOLDING: Tr. Ct. abused its discretion in admitting cocaine recovered from D's buttocks into evidence. Officers had probable cause to arrest D for attempting to deal cocaine & were authorized to search him in motel room incident to his arrest. In addition, it was more than reasonable for officers to believe that D had cocaine somewhere on his person. However, strip search in this case was unreasonable because a civilian camerawoman with no affiliation with law enforcement was present during & filmed the strip search, zooming in on D's bare buttocks. D was required to bend over with his bare buttocks exposed & raised in the air, while officers allowed the camerawoman to observe & film him in that position, for a program to be aired on national television.

In Wilson v. Layne, 526 U.S. 603 (1999), U.S. S. Ct. held that it is a violation of Fourth Amendment for police to bring members of media or other third parties into a home during execution of a warrant when presence of third parties in home was not in aid of execution of warrant. Although Wilson & other cases are distinguishable on their facts, Ct. held that under totality of circumstances the strip search in this case was unreasonable under Fourth Amendment. Where, as here, search occurs in a private place & police are in complete control of circumstances surrounding search, there is no justification for law enforcement to allow a civilian to film or photograph strip search of a suspect naked below the waist. Ct. noted that such conduct "demeans the suspect, who is presumed innocent until a trier of fact finds otherwise & degrades the entire legal process." Ct. also rejected State's suggestion to apply the good faith exception to exclusionary rule, which should not be applied to invalid warrantless searches. Held, judgment reversed & remanded.

TITLE: Tigner v. State

INDEX NO.: Z.3.a.

CITE: (3/18/20), Ind. Ct. App., 142 N.E.3d 1064

SUBJECT: Police lacked probable cause to arrest visitor in an apartment where marijuana was found; resulting search incident to arrest unconstitutional

HOLDING: Presence alone, without more, in a house where drugs are found, does not provide sufficient probable cause to arrest a person for visiting a common nuisance. Here, police conducted a home visit at a community corrections supervisee's apartment. When the supervisee opened the door, police smelled burnt marijuana and saw raw marijuana on a table. Upon entering the apartment, Defendant was in a bedroom, and police asked him to come into the living room. Defendant was a visitor to the apartment. Police found a gun in a kitchen cabinet and saw raw marijuana on the dining room table. Based on the gun and marijuana, police obtained a search warrant, leading to the discovery of several hundred grams of marijuana in a duffel bag in a closet, pills not prescribed to the apartment resident, scales, and marijuana roaches. Defendant was arrested and searched incident to arrest. In Defendant's pocket police found one thousand dollars, pills, and two key fobs. Police went to the apartment landing and hit the key fob button which activated the lights and horn of a minivan in the parking lot. A drug detection dog sniffed the van and alerted to the presence of drugs. The police obtained a search warrant for the van where marijuana, synthetic marijuana, crack cocaine, heroin, scales, and plastic sandwich bags were discovered. Defendant filed a motion to suppress which the trial court denied. The Court of Appeals found the police did not have probable cause to arrest Defendant for visiting a common nuisance because there was no evidence the apartment was a place where "continuous or recurrent prohibited activity took place." Police did not have probable cause to arrest Defendant for possession of marijuana because mere presence where drugs were located or association with persons who possess drugs is not alone sufficient to support a finding of constructive possession. The Court of Appeals reversed the denial of the motion to suppress, finding the police lacked probable to arrest Defendant and therefore the search incident to arrest was unconstitutional. The items discovered from the van were fruit of the poisonous tree and therefore suppressed.

TITLE: Townsend v. State

INDEX NO.: Z.3.a.

CITE: (3/5/84), Ind., 460 N.E.2d 139

SUBJECT: Search incident to arrest

HOLDING: Tr. Ct. did not err in denying motion to suppress evidence seized prior to & following D's arrest. Here, police went to D's home to question him concerning armed robbery. When D opened door, police immediately removed knife attached to D's belt. Police subsequently arrested D & searched his person & found money. Warrant requirement has exceptions. Police may search a person prior to questioning to remove weapons which could be used against officer or to escape. Chimel v. CA (1969), 395 U.S. 752, 89 S. Ct. 2034, 23 L.Ed.2d 685; Elliott, App., 435 N.E.2d 302. Police may search incident to lawful arrest. Such search must be substantially contemporaneous with arrest & confined to immediate vicinity of arrest. Murrell 421 N.E.2d 638. Ct. finds police had probable cause to question D & arrest was lawful. Held, no error.

RELATED CASES: Gonser, App., 843 N.E.2d 947 (search incident to arrest exception did not apply because search of D's vehicle did not occur contemporaneously in both time & place with his arrest); Stevens, App., 701 N.E.2d 277 (subjective belief of police officer that he did not have probable cause to arrest D when he handcuffed her has no legal effect; nor did officer's failure to tell D that she was under arrest invalidate search); Sears, 668 N.E.2d 662; Tata 486 N.E.2d 1025 (bloodied clothes found in closed laundry hamper when officer opened louvered doors to laundry area should not have been admitted/were not incident to arrest because D had been removed from apartment; held, harmless error; Prentice DISSENTS, finding exigent circumstances justified search); Bowman, App., 468 N.E.2d 1064 (search limited to arrestee's body is exception to 4th Amend warrant requirements when arrest itself is lawful); Jones, App., 467 N.E.2d 1236.

TITLE: U.S. v. Colbert

INDEX NO.: Z.3.a.

CITE: 76 F.3d 773 (6th Cir. 1996)

SUBJECT: Protective Sweep of Apartment - Arrest Outside

HOLDING: Circumstances surrounding arrest of murder suspect who had come out of apartment and was arrested nearly 50 feet away did not justify warrantless entry of apartment and protective sweep. Under Maryland v. Buie, 494 U.S. 325 (1990), protective sweep of area is justified if facts and circumstances lead reasonably prudent officer to believe that area to be swept harbors individual(s) posing danger to those on arrest scene. Circumstances of arrest outside residence might justify protective sweep of residence but did not do so here. Here, arrestee's girlfriend had come out of apartment and yelled at officers, but they had no knowledge whether anyone else was inside apartment. Lack of knowledge cannot justify sweep. State argued that dangerousness of arrestee justified sweep, but danger posed by arrestee himself is irrelevant to issue of whether someone else inside apartment might pose danger.

TITLE: U.S. v. Conner

INDEX NO.: Z.3.a.

CITE: 127 F.3d 663 (8th Cir. 1997)

SUBJECT: Vigorous Knocking, Order to Open Up Vitiates Consent

HOLDING: Police officers who knocked vigorously on motel room door, announced their presence as police, and yelled "open up" should have sought search warrant before doing so. State argued that when occupant opened door after above-described activity, he did so consensually, and consented as well to exposure of stolen items viewed through open door. State also argued that officers had probable cause and exigent circumstances, based on anonymous tip that perpetrators of burglary were driving particular type of vehicle and staying at particular motel, and discovery of matching vehicle parked in front of motel room door. The Court rejected this argument.

TITLE: Vanpelt v. State

INDEX NO.: Z.3.a.

CITE: (4th Dist., 12-28-01), Ind. App., 760 N.E.2d 218

SUBJECT: Search incident to arrest valid where D's arrest is postponed following search

HOLDING: Search incident to arrest exception, which typically applies when search & arrest are contemporaneous, also applies where, as here, law enforcement conducts lawful search but merely delays an otherwise valid arrest until after consultation with prosecutor. Critical issue is not when arrest occurs but whether there was probable cause to arrest at time of search. As long as probable cause exists to make arrest, fact that suspect was not formally placed under arrest at time of search incident thereto will not invalidate search. Sebastian v. State, App., 726 N.E.2d 827. Here, officers had probable cause to arrest D prior to search of his person. After officers observed D driving in erratic manner, they approached him & asked to see his driver's license. Police smelled strong odor of burnt marijuana coming from D's person while they were talking to him, & they observed that his eyes were bloodshot. In addition, D failed two field sobriety tests. These facts & circumstances would have warranted man of reasonable caution to believe that D had committed criminal act & provided probable cause for his arrest. Because officers had probable cause to arrest, their pat down search of D's person was proper. Ct. also held that Miranda advisement was not required in this case because D's admission that he had smoked marijuana earlier that evening was voluntary. Held, denial of motion to suppress affirmed.

TITLE: Virginia v. Moore

INDEX NO.: Z.3.a.

CITE: (4/23/2008), U.S., 553 U.S. 164; 06B1082,

SUBJECT: Fourth Amendment not violated where arrest prohibited by state law

HOLDING: Court held the police did not violate the Fourth Amendment when they made an arrest that was based on probable cause but prohibited by state law, or when they performed a search incident to the arrest. Virginia statutory law required police to issue a summons for the misdemeanor of driving on a suspended license. Court determined that the founding era's statutes and common law did not support D's view that the Fourth Amendment was intended to incorporate statutes, as no case provides a clear answer that existed in 1791 and has been generally adhered to by the traditions of our society ever since. Court noted that where history provides no conclusive answer it analyzes a search or seizure in light of traditional reasonableness standards by assessing the degree to which it intrudes upon an individual's privacy to the degree to which it is needed for the promotion of legitimate governmental interests. Applying that analysis, Court has held that when an officer has probable cause to believe a person has committed even a minor crime, the arrest is constitutionally reasonable and Court's decisions counsel against changing the calculus when a State chooses to protect privacy beyond the level required by the Fourth Amendment. Court adhered to the approach because an arrest based on probable cause serves interests that justify seizure. Ginsburg, J., filed a concurrence.

RELATED CASES: Whitt, 91 N.E.3d 1082 (Ind. Ct. App 2018) (irrelevant whether Indiana officers lacked authority under Kentucky law to stop and search D after pursuing him from Indiana to Kentucky; a violation of state law is usually irrelevant under 4th Amendment; see full review, this section).

TITLE: Warren v. State

INDEX NO.: Z.3.a.

CITE: (3/30/2017), 73/203 (Ind. Ct. App 2017)

SUBJECT: Officers' repeated knock and talk did not render D's consent invalid

HOLDING: D's consent to search of his residence was not rendered invalid by repeated and prolonged "knock and talk" by officers investigating D for manufacturing methamphetamine.

Officers, acting on a tip, conducted a knock and talk at D's mobile home. He did not answer. The officers noticed a chemical odor and continued to knock and yell. The officers spoke to D's mother who owned the mobile home. Both she and D then gave written consent to search the home. Once inside, the officers found, inter alia, methamphetamine. The Tr. Ct. denied D's motion to suppress evidence found in the home. D was convicted of Dealing in Methamphetamine, a B felony, and Possession of Reagents/Precursors, a D felony.

The officers' continued knocking and yelling did not transform a consensual encounter between the officers and D into a seizure and render D's subsequent consent invalid. True, once a knock is not answered, police generally must leave the premises and obtain a warrant. Hardister v. State, 849 N.E.2d 563, 570 (Ind. 2006). However, a belief that a residence contains a methamphetamine laboratory, based on odors emanating from the home, presents exigent circumstances permitting a warrantless search for the occupants' safety. Holder v. State, 847 N.E.2d 930, 939 (Ind. 2006). Here, the officers had reasonable suspicion to broaden their investigation once they smelled the chemical odor. The officers complied with the Fourth Amendment standard of reasonableness and of their actions constituted a reasonable response to the situation. Thus, D's subsequent consent to search was not rendered invalid by the officers' preceding actions. Held, judgment affirmed.

RELATED CASES: Warren, 73 N.E.3d 203 (Ind. Ct. App 2017) (D's consent to search of his residence was not rendered invalid by repeated and prolonged "knock and talk"); Peters, App., 888 N.E.2d 274 (smell of ether, along with other indicia of methamphetamine manufacturing, justified a warrantless search of the D's car under the exigent circumstances exception to the warrant requirement).

TITLE: Whitt v. State
INDEX NO.: Z.3.a.
CITE: (2/13/2018), 91 N.E.3d 1082 (Ind. Ct. App 2018)
SUBJECT: Potential violation of Kentucky law irrelevant under 4th Amendment
HOLDING: It was irrelevant whether Indiana officers lacked authority under Kentucky law to stop and search D after pursuing him from Indiana to Kentucky, because a violation of state law is generally irrelevant under the 4th Amendment.

D fatally shot victim on Crystal Beach, a park nestled on the shores of the Ohio River, in Madison, Indiana. D and two others fled to Kentucky, followed by Madison police, who stopped D in Milton, Kentucky. The officers found incriminating evidence, which D sought to suppress, contending the stop and seizure were illegal because the Indiana officers lacked authority in Kentucky. However, the Tr. Ct. found otherwise and admitted the evidence. The jury found D guilty of murder and other offenses.

The officers had authority to cross state lines and detain D under the Kentucky common law doctrine of “fresh pursuit,” but even if they did not, the stop, search, and arrest were still permissible under the Fourth Amendment. “[W]hether or not a search is reasonable within the meaning of the Fourth Amendment . . . has never depend[ed] on” state law. *Virginia v. Moore*, 553 U.S. 164, 172 (2008). For example, officers acted reasonably in stopping a car even though they violated regulations limiting the authority of plainclothes officers in unmarked vehicles. *See id.*, at 168. Were the law otherwise, incorporating state law into the federal constitution would produce an unpredictable regime that would be “only as easy to apply as the underlying state law, and state law can be complicated indeed.” *Id.* at 175. Held, judgment affirmed.

TITLE: Winebrenner v. State

INDEX NO.: Z.3.a.

CITE: (3rd Dist., 7-1-03), Ind. App., 790 N.E.2d 1037

SUBJECT: Search incident to arrest - violation of protective order

HOLDING: Tr. Ct. did not err in denying D's motion to suppress evidence of marijuana & methamphetamines found on his person during search incident to his arrest. During valid traffic stop, police officer saw D in front passenger seat & 16-year-old minor in back seat. At time of stop, officer was aware that minor's parents had obtained a protective order barring D from "abusing, harassing, or disturbing the peace" of minor "by either direct or indirect contact." Officer saw protective order just hours before he encountered D & minor. D acknowledged that he was violating protective order but stated that he had called driver of car for ride because his car had broken down & minor just happened to be in car when it arrived to assist him. From these facts & circumstances, a person of reasonable caution would be warranted in believing that D was violating protective order & thus was committing offense of invasion of privacy. Thus, warrantless search of D's person was conducted incident to lawful arrest. Held, judgment affirmed; Sullivan, J., dissenting, argued that protective order did not bar D from being within physical presence or proximity of minor & there is no inference that contact between D & minor was such as to constitute abuse, harassment, or disturbing of minor's peace in violation of protective order.

Z. SEARCH AND SEIZURE

Z.3. Exceptions to search warrant requirement

Z.3.b. Private persons

TITLE: Hutchinson v. State

INDEX NO.: Z.3.b.

CITE: (5/7/85), Ind., 477 N.E.2d 850

SUBJECT: Searches by private persons

HOLDING: Tr. Ct. did not err in admitting letters given to police by recipient's mother. Here, D argues 4th Amend violation. Constitutional prohibition against unreasonable searches & seizures provide protection from such acts by government agents. State & federal constitutional provisions do not apply to unauthorized acts of private citizens. Burdeau v. McDowell (1921), 256 U.S. 456; 41 S. Ct. 574, 65 L.Ed.2d 1048; Torres 442 N.E.2d 1021; Zupp 283 N.E.2d 540; Gunter 275 N.E.2d 810. Held, no error.

RELATED CASES: Sizemore, 483 N.E.2d 56 (see card at Z.6.d).

TITLE: United States v. Shahid

INDEX NO.: Z.3.b.

CITE: 117 F.3d 322 (7th Cir. 1997)

SUBJECT: Private actors - mall security

HOLDING: Shopping mall security officers are not government agents covered by the Fourth Amendment. Here, D entered jewelry store in mall and switched a diamond ring with a fake. Security was secretly notified. D switched ring back after mall security officer arrived at store. D was not detained by security as he left store. Store manager called security chief and asked him to have D detained. D was stopped by security officers in mall parking lot. Security officers detained D until police arrived. Mall officers were acting only to protect mall's private interests (preventing shoplifting and providing security for mall patrons). Security officers were not acting as government agents therefore, Fourth Amendment did not apply to their actions. Held, judgment affirmed.

RELATED CASES: Clanton, 977 N.E. 2d 1018 (Ind. Ct. App 2012) (Fourth Amendment does not categorically fail to apply to off-duty police officers working as security officers on private property; officers in this case were in full uniform and used department-issued equipment and techniques that would have been unavailable to civilian security guards); Scott, App., 855 N.E.2d 1068 (off duty officers working for the housing authority were not government actors); U.S. v Dansberry, 500 F. Supp. 140 (N.D. Ill. 1980) (by detaining an searching D, policemen who was working as part-time private security guard for department store was using authority conferred upon him by State law to further not only his employer's interest in preventing retail theft but also the state interest in apprehending a criminal; his actions were sufficient connected with official law enforcement to fall within the scope of Fourth Amendment).

TITLE: Sloane v. State

INDEX NO.: Z.3.b.

CITE: (4th Dist., 10-7-97), Ind. App., 686 N.E.2d 1287

SUBJECT: Search - private actor

HOLDING: Search of D's residence & seizure of items therein made by investigator who was hired by D's insurance company were not subject to 4th Amend. restrictions. Search of burned premises conducted by investigator for insurance company is not governed by 4th Amend. where, though accompanied by representatives of fire & police departments, insurance company investigator clearly initiated search. Maciejack, 404 N.E.2d 7. Although investigator may have been accompanied by fire chief during search, investigator was conducting search on behalf of insurance company only, & thus investigator was not governmental actor. Held, conviction affirmed.

RELATED CASES: Bone, App., 771 N.E.2d 710 (computer technician whom D hired to repair his computer was not an instrument or agent of government, & his opening & viewing of computer files did not violate D's Fourth Amendment rights).

Z. SEARCH AND SEIZURE

Z.3. Exceptions to search warrant requirement

Z.3.d. Consent

TITLE: Atkins v. State

INDEX NO.: Z.3.d.

CITE: (4/3/20), Ind. Ct. App., 143 N.E.3d 1025

SUBJECT: Suppression of evidence resulting from Pirtle and Miranda violation

HOLDING: Trial court abused its discretion in denying Defendant's motion to suppress evidence resulting from a search of his backpack and his statements to police officers. After locating an armed robbery suspect, officers began questioning Defendant and asked to search his backpack for weapons. When Defendant complied, the officers found three laptops inside, one of which was later discovered to belong to the man who reported the robbery. As Defendant continued to deny involvement, the officers again asked to see his laptops, and he continued to ask why the officers needed to go through his personal items.

There is no bright line rule to determine whether Defendant was merely subjected to a Terry stop or whether he was in custody. Considering the totality of the circumstances and factors identified in State v. Ruiz, 123 N.E.3d 675 (Ind. 2019) and Meredith v. State, 906 N.E.2d 867 (Ind. 2009), Court concluded that the interaction between police and Defendant went from a Terry stop to a custodial situation. Defendant was entitled to receive a Pirtle warning before police searched the laptop in his backpack and did not explicitly waive his right to counsel prior to the search. When the officer first asked to search the backpack, he informed Defendant that "[y]ou can say no, request a warrant, or ask for a lawyer if you want." But Defendant was not in custody at that time, and even if this statement applies to the later search of his backpack, officer's statement fails to explicitly inform Defendant that he was entitled to the presence and advice of counsel prior to consenting to the search, and the statement fails to comply with the Pirtle advisement requirement for a person in custody.

Lastly, Court determined that because Defendant was in custody, he was entitled to an advisement of his Miranda rights prior to police questioning him. Thus, trial court erred by granting the State's motion to correct error and reversing the earlier grant of Defendant's motion to suppress his statements to the police.

RELATED CASES: Posso, 180 N.E.3d 326 (Ind. Ct. App. 2021) (D was not adequately advised of his right to the presence and advice of counsel before he consented to the searches of his motel room, van, and cell phone, which is a "weighty intrusion" under Pirtle, which specifically places the burden on the State to show that D's waiver of the right to counsel was explicit).

TITLE: Buckley v. State

INDEX NO.: Z.3.d.

CITE: (2nd Dist., 10-24-03), Ind. App., 797 N.E.2d 845

SUBJECT: Search exceeded scope of consent

HOLDING: Police officer's search of small tin box exceeded scope of consent to search house given by residents, & thus violated the Fourth Amendment. Police responded to activated residential alarm at D's house. When they knocked, occupants acted in startled manner, with one person grabbing the tin from table & taking it into kitchen. D identified himself as a renter of the property who had accidentally set off the alarm. Police asked to search house for officer safety to make sure that no one else was in house, & D purportedly responded that they could check "anything they wanted." Officer went to kitchen & found 19 grams of cocaine inside tin as well as a stolen gun on refrigerator.

Ct. held that consent for officer safety to look for a "person" would not allow officer to search the tin. An objectively reasonable person hearing the conversation between the officer & D would have understood that consent did not allow police to search any container in the house. D's failure to object & his later signing of a consent form did not extend the consent, as argued by the State, since D did not have a reasonable opportunity to object to the officer opening the tin in another room & the written consent was signed after the unlawful search by police. Thus, admission of cocaine into evidence violated D's constitutional rights against unreasonable search & seizure under Fourth Amendment. Smith v. State, 713 N.E.2d 338 (Ind. Ct. App 1999). Held, judgment reversed & remanded; Barnes, J. concurring, noted that "police cannot & are not constitutionally empowered to look for an elephant in an ice cube tray."

RELATED CASES: Smith, App., 889 N.E.2d 836 (consent for police entry into motel room did not include consent to search).

TITLE: Casillas v. State

INDEX NO.: Z.3.d.

CITE: (7/11/2022), Ind. Ct. App., 190 N.E.3d 1005

SUBJECT: Substantial police presence at knock and talk does not in and of itself render a person's consent involuntary. Gaps in police body camera footage erodes public confidence in police action.

HOLDING: After receiving a tip that Defendant was selling heroin from his home, two detectives went to the home to conduct a "knock and talk" investigation. The detectives, accompanied by other officers, did not have a search warrant, nor did they advise Defendant of his Miranda rights when he answered his front door. Instead, the law enforcement personnel talked to Defendant on his front porch then entered the house, where they saw drugs and a digital scale. The officers then obtained a search warrant. On appeal, Defendant challenged the constitutionality of the police entry into his home. He claimed he never consented, but when he answered his front door, he discovered five or six officers on his front porch. Defendant pointed to the officers' admission that their purpose was to lead him down that road to cooperate. He argued an average person in that situation would feel intimidated, so he simply acquiesced after the officers brandished their power and influence. The Court of Appeals found Defendant's constitutional rights were not violated and that he validly consented to the search. Weighing towards consent was that Defendant was not physically restrained before or while police entered his home and that a substantial police presence does not in and of itself render a person's consent involuntary. Police did not threaten Defendant or brandish their weapons. In an extended footnote, the Court called attention to the lack of body camera footage. The two detectives told the trial court they were operating as Drug Enforcement Agency task force officers when they knocked on Defendant's door and, as such, they were prohibited from utilizing body cameras. The Court of Appeals called the policy, which has since been reversed, "particularly unwise." Although a copy of the purported policy was not provided, the Court concluded the policy did not excuse the failure of all the officers on the scene to record the interaction with Defendant on his porch and that gaps in body camera footage erode public confidence in police action. The Court rejected the State's argument that Defendant waived his objection to the evidence by failing to timely object at trial.

TITLE: Ferguson v. Charleston
INDEX NO.: Z.3.d.
CITE: 532 U.S. 67, 121 S. Ct. 1281, 149 L.Ed.2d 205 (2001)
SUBJECT: Consent to search, drug urine testing, pregnancy
HOLDING: The Fourth Amendment's prohibition against unreasonable searches and seizures applies to a public hospital's policy of obtaining drug tests from pregnant patients who are suspected of using cocaine. The drug testing policy was designed to obtain evidence of criminal conduct so that the tested patients could be prosecuted. The Fourth Amendment's general prohibition against warrantless and suspicionless searches applies, and the policy was unreasonable unless the searches were consensual. Case remanded for the lower courts to determine whether the searches were consensual.

TITLE: Florida v. Jimeno

INDEX NO.: Z.3.d.

CITE: 500 U.S. 248, 111 S. Ct. 1801 (1991)

SUBJECT: Scope of consent - closed containers

HOLDING: Touchstone of 4th Amend. is reasonableness. Consensual searches approved because it is reasonable for police to conduct search once police have been permitted to do so. [Citation omitted.] Standard for measuring scope of suspect's consent is objective reasonableness - what would typical reasonable person have understood by exchange between officer & suspect? Illinois v. Rodriguez (1990), U.S., 110 S. Ct. 2793, 111 L.Ed.2d 148 [other citations omitted]. Here, D stopped for traffic violation. Officer advised that the D was suspected of carrying narcotics in car & requested permission to search car. D stated he had nothing to hide & gave permission to search car. Officer found folded, brown paper bag on floorboard which contained cocaine. Scope of search generally defined by its expressed object. U.S. v. Ross (1982), 456 U.S. 798, 102 S. Ct. 2157, 72 L.Ed.2d 572. D consented to search without stating any limitations. Officer informed D that he would be looking for narcotics & reasonable person would know narcotics generally carried in some sort of container. Held, authorization/consent extended beyond surface of car's interior to paper bag lying on floor. Court distinguishes state case wherein state court held consent did not extend to locked briefcase found in trunk. Suspect may explicitly limit consent, but such limitation did not occur here. Marshall, joined by Stevens, DISSENTING.

RELATED CASES: Sallee, App., 785 N.E.2d 645 (D gave officer permission to search her vehicle, but State failed to show that D consented to search of her purse); Pinkney, App., 742 N.E.2d 956 (officer's searching D's back pocket did not exceed D's scope of consent to check him for weapons & drugs).

TITLE: Halsema v. State
INDEX NO.: Z.3.d.
CITE: (03-09-05), Ind., 823 N.E.2d 668
SUBJECT: Invalid third-party consent - dresser in bedroom where D slept
HOLDING: Tr. Ct. erred in admitting into evidence methamphetamine seized from residence where D had been staying several days. Third party-sole lessee of house gave police written permission to search house, & during search police seized methamphetamine from a dresser drawer in bedroom where D had been staying. Because D enjoyed exclusive use of at least one of dresser drawers in lessee's bedroom & because lessee specifically advised officers of that fact, lessee did not have actual authority to consent to a search of drawer where methamphetamine was found, nor could an officer reasonably believe that she had such authority. Thus, lessee had neither actual nor apparent authority to consent to search of the dresser drawer & warrantless search of drawer without D's consent violated his Fourth Amendment right against unreasonable search & seizure. Held, judgment affirmed in part & reversed in part; Shepard, C.J., & Dickson, J., dissenting on this issue.

TITLE: Hammond v. State

INDEX NO.: Z.3.d.

CITE: (8/17/2017), 82 N.E.3d 880 (Ind. Ct. App 2017)

SUBJECT: Passenger subject to non-custodial seizure during traffic stop not entitled to Pirtle advisement

HOLDING: Because D was not in police custody at the time he consented to search, he was not entitled to advisement of his right to counsel as required by Pirtle v. State, 323 N.E.2d 634 (Ind. 1975). Thus, D validly consented to the search and Tr. Ct. did not abuse its discretion in admitting marijuana police seized during the search. D was seized during a traffic stop, but police officer did not use any of the persuasive or coercive techniques exhibited in Sellmer v. State, 842 N.E.2d 358 (Ind. 2006) to imply to D that he was under arrest or not free to resist officer's request to search him. At the point when officer questioned D, he had not given Miranda warnings or implied that there would be adverse consequences if D refused his request to search his pockets. In addition, while officer handcuffed D in order to actually perform his search, he had not restrained D in any way when he requested to search him or implied that D would be restrained. It was only when D volunteered that he had marijuana that officer handcuffed him. Held, judgment affirmed.

TITLE: Jones v. State

INDEX NO.: Z.3.d.

CITE: (8-29-95), Ind., 655 N.E.2d 49

SUBJECT: Consent to vehicle search valid - D not in custody

HOLDING: Where D was neither arrested nor in police custody during initial traffic stop & at time he consented to automobile search, right to receive warning about consultation with counsel did not attach; thus, seizure & admission of cocaine was proper. Police received tip from confidential informant that D was carrying cocaine in gas cap. After observing D commit traffic infraction, police officer turned on lights & spotlight, & directed D to exit vehicle. Another officer arrived & partially blocked D's vehicle. First officer confirmed that vehicle & its contents belonged to D. Although no advisement of right to counsel was made, first officer sought & was granted consent for warrantless search. D rescinded his consent after second officer found drugs.

Person in police custody must be informed of right to consult with counsel about possibility of consenting to search before valid consent can be given. Sims, 413 N.E.2d 556; Pirtle, 323 N.E.2d 634. Neither Federal nor Ind. constitutional jurisprudence has developed a "bright line" test for determining when investigatory detention becomes an arrest or custodial interrogation. Objective test asks whether reasonable person under same circumstances would believe that she was under arrest or not free to resist entreaties of police. Florida v. Bostick (1991), 111 S. Ct 2382. Here, despite unusually high number of officers present for traffic stop, Ct. held that D was not "in care & control of police," & was not interrogated in manner implicating Fifth Amendment. Officers did not touch or physically restrain D's freedom of movement before moment of consent, & D was not asked incriminating questions. Fact that D rescinded consent does not affect constitutionality of search because rescission was made too late. Held, judgment affirmed, Dickson, J., dissenting.

RELATED CASES: Cohee, 945 N.E.2d 748 (Ind. Ct. App 2011) (Pirtle right to consult with counsel before consenting to a search does not apply when person is deciding whether to submit to implied consent test because such a person is not in custody); Clarke, 868 N.E.2d 1114 (as in Jones, there was no Pirtle violation because D was not seized and not in custody at time he consented to search; see full review at Z.7.a); Miller, App., 846 N.E.2d 1077 (D, who was handcuffed at time police officer asked for consent to search his vehicle, was in custody at time he consented to search & was entitled to be informed of his right to consult with counsel before consenting to search; however, invalid consent did not require reversal because police had probable cause to search D's vehicle); Sellmer, 842 N.E.2d 358 (distinguishing Jones, Ct. held D was in custody & entitled to Pirtle advisement, which officer did not provide; see full review, this section); Joyner, 736 N.E.2d 232 (right to receive advisement did not attach, even though officer gave D Miranda warnings, because D arrived at police station on his own, was never detained, & was free to leave); Torres, 673 N.E.2d 472 (D's consent to search house was invalid because police failed to advise D of right to consult with counsel; D was handcuffed, police had read him Miranda rights, & informed him that he was suspect in stabbing).

TITLE: Krise v. State

INDEX NO.: Z.3.d.

CITE: (5-9-01), Ind., 746 N.E.2d 957

SUBJECT: Consent to search house did not extend to housemate's purse

HOLDING: Tr. Ct. erred in denying D's motion to suppress evidence of drugs found inside closed container in her purse. Police officer relied on housemate's consent to warrantless search of home he shared with D. Scope of consent search is measured by objective reasonableness, express object to be searched, & suspect's-imposed limitations. Individuals have higher expectation of privacy in containers & their contents which are located inside sanctity of their own home -- where privacy interests are paramount -- than in their vehicles where privacy interests are diminished. Inspection of closed containers that normally hold highly personal items requires consent of owner or third party who has authority -- actual or apparent -- to give consent to search of container itself. Type of container is of great importance in reviewing third-party consent to search cases to determine whether third party possessed requisite authority to consent to its search.

Here, valid warrantless search of D's purse required showing of housemate's mutual use of & joint access to premises as well as purse. However, housemate testified that he did not have access to D's purse, & D did not give housemate permission to have access to her purse in any way. D had legitimate expectation of privacy in her home & her purse & its contents. Because housemate clearly lacked any privacy interests in D's purse, & officer knew handbag was purse & that D was only woman living in house, Ct. concluded that housemate had neither actual nor apparent authority to consent to search of D's purse. Mere fact that purse was located in common area of house (bathroom) did not render reasonable a belief that housemate had requisite authority to consent to search of purse. Held, transfer granted, opinion of Ct. App.' at 718 N.E.2d 1136 vacated, judgment of Tr. Ct. reversed.

RELATED CASES: Godby, 949 N.E.2d 416 (Ind. Ct. App 2011) (wife's consent to search house did not extend to absent husband's locked wooden box, which fits into category of closed containers that normally hold highly personal items); Best, App., 821 N.E.2d 419 (*distinguishing Krise*, Ct. held that homeowner's consent to search home for drugs could encompass cigarette packs, even though D claimed ownership of them).

TITLE: McCoy v. State

INDEX NO.: Z.3.d.

CITE: (8/29/2022), 193 N.E.3d 387, (Ind. 2022)

SUBJECT: Defendant who was both victim and suspect in robbery entitled to Pirtle warnings before he could consent to search

HOLDING: Police responded a tip about a robbery in progress. The tip described the suspect and identified the victim's residence, adding that the victim himself, McCoy, had an outstanding warrant for his arrest. The first officer who responded "immediately" placed McCoy under arrest. After he was handcuffed, McCoy reported that several items from his residence had been stolen and that the robber had driven away just as the officer had arrived. A woman approached the scene and informed the officer that she had seen methamphetamine in McCoy's house the night before and that McCoy had offered her the drug in exchange for sex. She reported that the alleged robber was upset about the illicit offer and that was the motive for the robbery. McCoy, still handcuffed, then agreed to escort the officer inside the house to document the missing items. While inside, the officer noticed drug related items about the home and contacted the prosecutor to apply for a search warrant. At trial, McCoy moved to suppress the evidence, arguing the search was unlawful because, despite his detention, the officer failed to give Pirtle warnings before asking for McCoy's consent to search the home. The trial court denied the motion. On appeal to the Supreme Court, the Court held that this case was a clear cut violation of Pirtle's protections regardless of whether the officer subjectively viewed McCoy as a victim or suspect. The record here clearly showed that the officer knew McCoy's house potentially contained drugs before asking his permission to go inside and look around. Therefore, the trial court abused its discretion by admitting the evidence obtained during the search. The Court also emphasized its holding should not be viewed as a requirement that Pirtle warnings must be given for permission to enter a crime victim's home for investigative purposes, so long as that victim has not been detained.

TITLE: Scott v. State
INDEX NO.: Z.3.d.
CITE: (03-26-10), 924 N.E.2d 169, (Ind. Ct. App 2010)
SUBJECT: Consent to search home - scope of search; no custody
HOLDING: Tr. Ct. did not abuse discretion by admitting derringer and D=s statement describing where officers could find derringer and nine-millimeter gun. A well-recognized exception to the warrant requirement is a voluntary and knowing consent to search. Here, later in the same evening that D allegedly was involved in a confrontation at a bar, a detective and five uniformed officers went to D's house. D invited the detective inside, but they remained outside. The detective was concerned others were in residence, so he asked and obtained permission to search house. Search uncovered derringer in box spring underneath a mattress. During search, D told the detective the location of derringer and a nine-millimeter gun.

D waived argument against admission of derringer by failing to object at trial. But even if D had objected, derringer was still admissible because D consented to search of home. Even though D did not explicitly authorize search of box spring, his consent encompassed search of box spring because: a) officers testified persons sometimes hid in hollowed-out box springs and b) under reasonable person standard, D would understand police officers' knowledge of potential hiding places is based on training and experience and consent would include use of that knowledge. Further, D's statement that derringer was in box spring and nine-millimeter gun was under couch were admissible because D was not in custody and thus, Miranda and Pirtle warnings were not required. Even though D was aware of presence of two or three armed uniformed officers and one plain clothes detective, his statements about location of guns was not product of involuntary consent. Neither officers nor detective drew or pointed weapon at D, and no one threatened him. D initially invited detective into house and was familiar with law enforcement and criminal justice. Encounter lasted only seventeen minutes. Held, judgment affirmed.

TITLE: Smith v. State

INDEX NO.: Z.3.d.

CITE: (2nd Dist.; 6-28-99), Ind. App., 713 N.E.2d 338

SUBJECT: Exceeding scope of consent - accessing memory of cellular phone

HOLDING: Although D voluntarily consented to search of car for drugs, money or illegal contraband, police exceeded scope of consent by accessing computer memory of phone to retrieve its electronic contents. Information, *i.e.*, intangible items, may be seized within meaning of Fourth Amendment. Berger v. New York, 388 U.S. 41, 87 S. Ct. 1873, 18 L.Ed.2d 1040 (1967). Here, D gave police permission to search his vehicle & containers therein which might reasonably contain expressed items of search: guns, drugs, money, or illegal contraband. However, when police found two cellular phones in car, officer took phones back to police car & performed short out technique on phones to retrieve their electronic contents which would reveal that phones were modified such that, when in use, charges would be billed to another's active cellular phone number. Because officers' search was limited for guns, drugs, money or illegal contraband, officers had to limit their activity to that which was necessary to search for such items. Reasonable person would not believe that procedure used on phone would be included in search for these items. In addition, D did not consent to the search of phones by failing to object to procedure because D had no way of knowing what officer was doing with phones in officer's car. Held, conviction reversed.

Note: Ct. also held that initial stop of D because license plate of car matched car of same make but different color was constitutional.

RELATED CASES: United States v. Uribe, 709 F.3d 646 (7th Cir. 2013) (disagreeing with Smith, , Court held that a color discrepancy between the registration and the actual car is, alone, insufficient to give rise to reasonable suspicion of criminal activity justifying a traffic stop; however, Court did not address whether the police can stop based on a color discrepancy to investigate possible violation of Ind. Code 9-18-2-27(a), prohibiting driving with a registration number belonging to a different vehicle); Johnson, App., 831 N.E.2d 163 (police were searching pursuant to arrest, not consent, & had probable cause to believe information in pager would be useful in solving identity of cocaine dealer).

TITLE: Sellmer v. State

INDEX NO.: Z.3.d.

CITE: (02-16-06), Ind., 842 N.E.2d 358

SUBJECT: Invalid consent to search vehicle - D in custody

HOLDING: A person in custody must be informed of the right to consult with counsel about the possibility of consenting to a search before a valid consent can be given. Pirtle v. State, 323 N.E.2d 634 (Ind. 1975); Sims v. State, 413 N.E.2d 556 (Ind. 1980). Distinguishing Jones v. State, 655 N.E.2d 49 (Ind. 1995), Court held that under totality of circumstances, a reasonable person under same circumstances as those in which D found herself would believe either that she was under arrest or, at least, that she was not free to resist the entreaties of police. Police officer asked D for permission to search her car between three & five times before securing her consent. Officer told D that she would be allowed to go on her way if she permitted police to search her car & no contraband was discovered. A reasonable person, asked the same question over & over & over again, might well conclude that she was not free to give police a negative answer & not free to go until a search was conducted. Unlike in Jones, D was asked repeatedly if she knew why police received a report of a large amount of illegal drugs in her car. Further, a reasonable person, after asking police about the person's rights & being told that it would be in the person's "best interest" not to require the police to "jump through a bunch of hoops," might well conclude that consequence of denying police permission to search her car might be arrest or, at least, detention during whatever time it would take for police to jump through the hoops. Under totality of circumstances test, D was entitled to a Pirtle advisement, which officer did not provide. Thus, Tr. Ct. should have granted D's motion to suppress evidence seized in search of her car. Held, transfer granted, Ct. App.' opinion at 800 N.E.2d 671 vacated, denial of motion to suppress reversed & remanded; Shepard, C.J. & Dickson, J., dissenting, noted that majority elected not to credit testimony trial judge found most compelling, but the version favorable to suppression.

RELATED CASES: Peel, App., 868 N.E.2d 569 (D was in custody where five police officers & canine unit were present at motel & D was not "free to wander off"); Friend, App., 858 N.E.2d 646 (D was clearly in custody when asked to consent to search & was not informed of his right to counsel before his consent was obtained).

TITLE: Smith v. State
INDEX NO.: Z.3.d.
CITE: (2d Dist. 3/18/87), Ind. App., 505 N.E.2d 81
SUBJECT: Consent - when D is in police custody
HOLDING: Tr. Ct. did not err in denying D's motion to suppress evidence found in bedroom after he had been arrested (drug sale) by police outside in vehicle & asked to be allowed to retrieve his jacket from home. Although D did not orally consent to officer's initial entry, officer had authority to maintain control over D as arrested person. See WA v. Crisman (1982), 455 U.S. 1, 102 S. Ct. 812, 70 L.Ed.2d 778. Ct. also finds officer's presence was impliedly consented to by D. Conduct may constitute an invitation to enter. Jones, App., 409 N.E.2d 1254. Ct. finds no evidence indicating that implied consent was initiated by improper police conduct. Because officers were lawfully in D's bedroom when they inadvertently discovered marijuana in plain view, Tr. Ct. properly admitted this evidence. Held, conviction affirmed.

TITLE: State v. Bailey
INDEX NO.: Z.3.d.
CITE: (3/4/2010), Me. S. Ct., 09-152,
SUBJECT: Scope of Consensual Search -- Consent Obtained Through Deception
HOLDING: Where officer obtained consent to search D's computer by lying to him about the purpose of the search, proper scope of search was limited to the purpose stated, Maine Supreme Court holds. Here, the officer told D that his neighbor's computer had been accessed remotely, and that he was searching neighborhood computers for a file that would indicate that the same thing had occurred with them. D consented and helped the officer log on to his computer. Officer proceeded to search D's computer for all video files, and to search these files for child pornography, which he found. This search exceeded the scope of the search described by the officer, and the evidence obtained was properly suppressed.

TITLE: State v. Carty

INDEX NO.: Z.3.d.

CITE: 790 A.2d 903 (N.J. 2002), modified by 806 A.2d 798

SUBJECT: Consent Search - stop for traffic violation

HOLDING: New Jersey Supreme Court holds that under its state constitution, an officer may not request consent to search a vehicle following a routine stop for a traffic violation unless there is articulable suspicion that the search will uncover evidence of a crime. Although the opinion does not mention racial profiling specifically, this holding is intended as a response to this and other "problems caused by standardless requests for consent searches of motor vehicles stopped for minor traffic violations." The majority reasoned that roadside consent searches are generally not voluntary because people feel compelled to comply, or not reasonable because of the detention involved associated with obtaining the consent and conducting the search. The majority further reasoned that such searches are similar to traffic stops involving a detention, which require articulable suspicion, and thus it opted to apply the same standard.

TITLE: State v. Cunningham

INDEX NO.: Z.3.d.

CITE: (3/2/2015), 26 N.E.3d 21 (Ind. 2015)

SUBJECT: Valid consent to pat-down despite officer's ultimatum to D

HOLDING: It is not inherently coercive for police to give conditional permission to step out of a vehicle during a traffic stop, subject to the motorist's consent to a pat-down search. Here, after police officer properly stopped D's vehicle for having only one red tail lamp, D asked officer if he could get out of the car to look at it. Officer said yes, but if he got out of the car, the officer would pat him down. D said "that was fine." After feeling a pill bottle during pat-down, officer asked D what was in the bottle before removing it, and D told him it contained marijuana. When the officer asked if there was anything else on D's person, D told him there was a pipe in his truck and offered to go get it.

Court found that giving D the choice between remaining in the car unsearched or being patted down as a condition of getting out was not inherently coercive. D having a truly free choice also defeats his related argument that his consent was not valid because police never told him he could refuse consent. Finally, officer's question about pill bottle's contents did not coerce D into expanding the scope of consent he initially gave. The expansion resulted from information D volunteered, without coercion from (or even leading by) the investigating officer. Held, transfer granted, Court of Appeals' opinion at 4 N.E.3d 800 vacated, grant of motion to suppress reversed and remanded for further proceedings. Rucker, J. dissenting, believes the State failed to establish D's purported consent to the pat-down was constitutionally valid. Although police can order motorist to either stay in or exit the vehicle during a traffic stop, "it goes too far to permit a police officer to be able to barter an individual's constitutional right to be free from warrantless, unreasonable searches in exchange for the individual to verify he in fact was committing a minor traffic infraction as the officer alleged."

TITLE: State v. Elders

INDEX NO.: Z.3.d.

CITE: 927 A.2d 1250 (N.J. 2007)

SUBJECT: Reasonable suspicion needed to seek consent to search disabled vehicle

HOLDING: New Jersey Supreme Court held that the New Jersey Constitution bars a law enforcement officer who comes upon a disabled vehicle on the roadside from requesting an occupant's consent to search the car unless the officer has an articulable basis to reasonably suspect that a search will turn up evidence of a crime. The case represents an extension of a prior holding by Court that requires the police to have reasonable suspicion in order to seek permission to search an automobile stopped for a traffic infraction. See State v. Carty, 806 A.2d 798 (N.J. 2002). The State urged Court to limit Carty to its facts and to distinguish between a traffic stop and a situation in which a police officer is rendering aid to a disabled vehicle as part of his community caretaking duty, arguing that a stranded driver of a disabled car is not as vulnerable to coercion of consent as a driver of a car stopped for a violation. Court disagreed. "Clearly, in the case of a disabled vehicle, if the police are fulfilling a caretaker function, the consent search of a car for evidence of criminality is hardly in keeping with that that mission. The driver of a disabled car facing police officers whose offer of assistance quickly turns into a 'fishing expedition' based on a 'hunch' that criminal activity is afoot is subject to no less compulsion to accede to a consent search than the driver subject to a typical motor vehicle stop."

TITLE: State v. Friedel

INDEX NO.: Z.3.d.

CITE: (5th Dist.; 8-17-99), Ind. App., 714 N.E.2d 1231

SUBJECT: Driver's consent to search car did not extend to passenger's purse

HOLDING: Tr. Ct. properly granted D's motion to suppress because it was unreasonable for officers to believe that driver had authority to consent to search of purse of D who was passenger in car being searched. Although officers with probable cause to search car may inspect passengers' belongings found in car that are capable of concealing object of search, Wyoming v. Houghton, 119 S. Ct. 1297 (1999), officers who obtain consent to search car must either receive actual or apparent consent to search containers within car. Valid consent may be given by third party who possesses common authority over property at issue. Moreover, under apparent authority doctrine, search is valid if government proves that officers who conducted it reasonably believed that person from whom they obtained consent had actual authority to grant consent. Here, driver did not have actual authority to consent to search of D's purse because there was no evidence that driver jointly owned, used, possessed, or controlled D's purse. Also, driver did not have apparent authority to consent to search of purse because officers knew D was only woman in car, officers found purse on floor in back seat where D had been sitting, & purse is generally not object for which two or more persons share common use or authority. Lastly, D did not implicitly consent to search of purse by leaving purse in car because consent may not reasonably be implied from passenger's silence or failure to object where officer did not expressly or impliedly ask passenger for consent to search. Thus, driver's consent to search car did not extend to search of passenger's purse, & thus, warrantless search of purse was unconstitutional. Held, judgment affirmed.

RELATED CASES: Polk, App., 822 N.E.2d 239 (unlike Friedel, D was aware that 3rd party gave police consent to search her car, & it was objectively reasonable for officers to infer that D was asserting ownership interest in bag he took out of car & renouncing any ownership interest in bag he left); Norris, App., 732 N.E.2d 186 (driver's consent to search of his car did not extend to passenger's backpack; officer should have ascertained who owned backpack before opening & searching it).

TITLE: State v. Fugate

INDEX NO.: Z.3.d.

CITE: 210 Ore. App. 8, 150 P.3d 409 (Ore. Ct. App. 2006)

SUBJECT: Consent to see item did not allow officer to open it

HOLDING: The Oregon Court of Appeals held that D did not consent to a police officer's opening of a small tin foil packet by handing it to the officer in response to the officer's request to "see" it. During an investigation of another matter, the officer asked about the tin foil packet and what was in it. D said he did not know but handed it to the officer who discovered methamphetamine residue used to convict D of a drug offense. Court noted that the officer in the case did not reveal that he was looking for drugs, but that D did not place any limits on what the officer could do with it after he handed it over. Court also pointed out in none of the verbal exchanges that preceded the search did the officer ask for permission to look inside anything. "Thus, the critical issue in this case is whether the D consented to the search of the tin foil's contents when he handed it" to the officer. Under the totality of the circumstances, Court concluded a reasonable person would have understood that, by handing the folded tin foil to the officer in response to a request to "see it," D was consenting to an examination of the tin foil itself, not to its opening and the examination of its contents. The fact that the officer asked about the contents of the packet before he opened it suggested that the officer did not believe D's consent included permission to open the packet. This suggests that a reasonable person would have reached the same conclusion about the scope of the consent. Court also noted there was no evidence that the D had "a meaningful opportunity to object or, for that matter, that it would have availed him to do so."

TITLE: State v. Eisfeldt

INDEX NO.: Z.3.b.

CITE: 163 Wash.2d 628, 185 P.3d 580 (Wash. 2008)

SUBJECT: Private-search doctrine rejected under Washington's state constitution

HOLDING: Washington Supreme Court, based on its state constitution, rejected a Fourth

Amendment doctrine that relieves law enforcement officers of the need to obtain a search warrant to look at evidence already observed by a private informer. Although police do not need a warrant to seize evidence turned over to them by a private actor, they do need a search warrant before entering residential premises to examine evidence an informer left in place. The private informer in this case was a repairman called by D's landlord who observed marijuana and other items in D's house. Under the Fourth Amendment as interpreted in Walter v. United States, 447 U.S. 649 (1980), and United States v. Jacobsen, 466 U.S. 109 (1984), lawful intrusions by a private actor destroy an individual's reasonable expectation of privacy in an area and permit a later warrantless government search that is no more intrusive or extensive than the earlier private search. A lower reviewing court in Washington had previously applied the private-search doctrine under both the federal and state constitutions. State's highest court decided to "reject the private-search doctrine and adopt a bright line rule holding it inapplicable under article I, section 7 of the Washington Constitution."

TITLE: State v. Janes
INDEX NO.: Z.3.d.
CITE: (5/10/2018), 102 N.E.3d 314 (Ind. Ct. App 2018)
SUBJECT: Custodial seizure during traffic stop required Pirtle advisement - invalid consent to search vehicle
HOLDING: Tr. Ct., which was in best position to weigh evidence and judge witness credibility, found that D was in police custody when he was asked to consent to a search of his vehicle. As a result, D was entitled to an advisement of his right to counsel as required by Pirtle v. State, 323 N.E.2d 634 (Ind. 1975), which he did not receive. Accordingly, Tr. Ct. did not err in suppressing evidence of methamphetamine and paraphernalia found in the search.

In distinguishing between custodial encounters, where Pirtle applies, and non-custodial encounters, where it does not, the ultimate inquiry is whether there was a formal arrest or a restraint on freedom of movement of the degree associated with a formal arrest. Meredith v. State, 906 N.E.2d 867 (Ind. 2009). Although motorists detained during traffic stops are at least temporarily not free to leave, that does not necessarily mean that the traffic stop is custodial. Id. (quoting Jones v. State, 655 N.E.2d 49, 55 (Ind. 1995)).

Here, three uniformed officers in separate police cars with flashing lights came to a traffic stop for a minor traffic violation on a rural highway in the middle of the night. When one of the officers returned D's license to him, he stood on the vehicle's driver's side while another officer stood on the passenger's side. After giving D a verbal warning for failure to dim his headlights, the officer asked D incriminating questions about alcohol consumption, illegal items, and weapons. Considering the totality of circumstances, a reasonable person would not feel free to deny police permission to search his car and leave the scene. Held, judgment affirmed.

TITLE: State v. Jorgensen

INDEX NO.: Z.3.d.

CITE: (1st Dist. 8/9/88), Ind. App., 526 N.E.2d 1004

SUBJECT: Consent - mere acquiescence insufficient

HOLDING: Tr. Ct. properly suppressed evidence found during 4-hour search of D's home. D called in laws on night her husband was killed, & after they arrived at D's home, D helped them call police. Police suggested D go to in laws' home & wait for police to interview her. Deputy explained police would be searching area, & D did not object. Police did not ask D's permission to search, nor did they ask D's father-in-law's permission. During 4-hour search, police found gun, ammunition & notes written by D indicating her intent to divorce her husband. D filed suppression motion which Tr. Ct. granted. State files interlocutory appeal, alleging that D consented to search by her failure to object. Circumstances surrounding search may demonstrate implied consent, by word or deed. Harper 474 N.E.2d 508. See also Lewis v. State (Md. 1979), 404 A.2d 1073; State v. Fredette (Me. 1979), 411 A.2d 65. In cases cited, party involved cooperated in some way with officers conducting search. Here, D was not present & in no way assisted with search; she merely acquiesced. Mere acquiescence to claim of lawful authority is not consent. Bumper v. NC (1968), 391 U.S. 543, 88 S. Ct. 1788, 20 L.Ed.2d 797. Although police did not expressly claim such authority, it was implicit when, instead of asking permission, they merely told D they were going to search her home. Held, suppression upheld.

RELATED CASES: Nowling, 955 N.E.2d 854 (Ind. Ct. App 2011) (fact that roommate invited police into his home and, in response to officer's question, told them where D's room was located did not constitute consent to search); LaMunion, App., 740 N.E.2d 576 (neither D nor his girlfriend manifested consent to search before it was performed; neither person was present & did not assist in search; fact they asked neighbor to call 911 can hardly be acquiescence or consent to full search of their home).

TITLE: State v. Stone

INDEX NO.: Z.3.d.

CITE: 362 N.C. 50, 653 S.E.2d 414 (N.C. 2007)

SUBJECT: Scope of consent exceeded by pulling back waistband of pants

HOLDING: North Carolina Supreme Court held a passenger in a vehicle who voluntarily consented to a police search of his person for drugs had his Fourth Amendment rights violated when officers pulled open the waistbands of his sweatpants and underwear and peered inside with a flashlight. Under Florida v. Jimeno, 500 U.S. 248 (1991), Court determining the scope of a suspect's consent to search is to ask itself, "What would the typical reasonable person have understood by the exchange between the officer and the suspect?" Court concluded, "A reasonable person in D's circumstances would not have understood that his general consent to search included allowing the law enforcement officer to pull his pants and underwear away from his body and shine a flashlight on his genitals." This conclusion was confirmed by the fact that the D objected when the police looked in his pants.

TITLE: State v. Williams

INDEX NO.: Z.3.d.

CITE: (3d Dist. 4/27/83), Ind. App., 448 N.E.2d 54

SUBJECT: Consent - ownership disclaimed

HOLDING: Tr. Ct. erred in granting D's motion to suppress evidence where D had no personal, proprietary, or possessory interest in the briefcase searched by police. Mendelwitz, App., 416 N.E.2d 1270; Ross, App., 360 N.E.2d 1015. Here, police stopped D's car (which was moving slowly with lights off across gas station lot where officer knew criminal activity had previously occurred). Officer observed 3 passengers & a stack of business equipment in car. D told officer they had found equipment by side of the road, had stopped at pay phone in gas station lot to report find to police. D consented to search of her car. Officer opened briefcase lying on top of equipment & found advertising pamphlets for cemetery. Troopers dispatched to cemetery found evidence of a burglary & removal of office equipment. D was arrested & charged with assisting a criminal. Tr. Ct. ruled that search of closed briefcase found in D's car was unconstitutional. On appeal, Ct. holds D consented to search of car. D disclaimed ownership in business equipment located in her car; thus, police could open briefcase to discover rightful owner. Held, Tr. Ct.'s grant of D's suppression motion reversed.

TITLE: U.S. v. Osage
INDEX NO.: Z.3.d.
CITE: 235 F.3d 518 (10th Cir. 2000)
SUBJECT: Consent to Search Area Does Not Extend to Destruction of Container
HOLDING: General consent to search an area does not extend to a container within the area if the container would have to be destroyed or rendered useless to affect the search. Fact that person who gave consent did not object as container was being destroyed does not render this aspect of search consensual. Before an officer may destroy or render completely useless a container which would otherwise be within the scope of a consensual search, the officer must obtain explicit consent to the destruction or have some other lawful basis upon which to proceed.

TITLE: U.S. v. Jerez and Solis

INDEX NO.: Z.3.d.

CITE: 108 F.3d 684 (7th Cir. 1997)

SUBJECT: Seizure -- Persistent Late-Night Knocking at Motel Room Door

HOLDING: Law enforcement officers who persistently knocked on door and window of motel room late at night until occupants opened door effected a "seizure" within meaning of 4th Amendment. As a general rule, police may knock at anyone's door, nighttime encounters at dwellings are especially intrusive. Knocking here occurred in middle of night, lasted for three full minutes, and was accompanied by an officer shining flashlight through small opening in drapes into face of one person inside the room as he lay in bed. A reasonable person inside would have concluded that police would not go away until door was opened to them, and that they were not free to decline officer's request or otherwise terminate encounter. Because police did not have reasonable suspicion to support seizure, subsequent consent to search was tainted, and evidence should have been suppressed.

TITLE: U.S. v. Elliott

INDEX NO.: Z.3.d.

CITE: 107 F.3d 810 (10th Cir. 1997)

SUBJECT: Consent to Search -- Qualifying Language in Request Limited Scope

HOLDING: Where officer asked for permission to search trunk of car but told driver that he didn't "want to look through each item," but just wanted to see how things were "packed" or "packaged," scope of driver's consent did not extend to opening suitcase found in trunk. Had officer simply asked to look through trunk, driver's consent would have permitted search of contents, including opening of closed containers. Because officer added qualifying statement, however, reasonable person in D's position would have concluded that officer was not interested in looking inside containers. Drugs found in suitcase should have been suppressed.

TITLE: Williams v. State
INDEX NO.: Z.3.d.
CITE: 204 N.E.3d 279 (Ind. Ct. App.) 2/7/23
SUBJECT: Using "medical emergency" ruse to gain entry into motel room did not make consent to enter involuntary
HOLDING: Officers investigating possible human trafficking used a ruse to make contact with Defendant and get permission to enter his motel room by telling him a young woman who claimed he was her "cousin or uncle" had been taken away in an ambulance and asked officers to notify him. Once inside the motel room, officers observed two cell phones that, along with the statements given by the complaining witness (C.W.), amounted to probable cause to arrest Defendant. The officers also seized the cell phones and placed them in airplane mode to prevent a possible remote wiping while they waited for a judicial officer to approve a search warrant, which happened within a few hours. Once they searched the phones, officers discovered evidence of Defendant's trafficking of C.W. and he was charged and convicted of Level 3 felony promotion of child sexual trafficking.

The Court of Appeals found the officers' "medical emergency" ruse did not render Defendant's consent to entry involuntary, noting that a deceptive law enforcement tactic is not itself dispositive regarding whether an authorized person voluntarily consented, but that the "totality of the circumstances" must be considered. The Court noted the facts in United States v. Montes-Reyes, 547 F. Supp. 2d 281 (S.D.N.Y. 2008), where officers pretended a very young child was missing, allowing the target of their deception to believe that his failure to consent would hinder the resolution of what appeared to be a serious emergency. Instead, the officers here pretended the emergency was simple dehydration with his acquaintance in the care of medical providers. Under the totality of the circumstances, the ruse did not deprive Defendant of the ability to make a fair assessment as to whether he could deny entry into his motel room and his consent was voluntary.

The Court also found that the officers did not violate Defendant's rights under either the 4th Amendment or Article 1, section 11 when they seized his cell phones and put them into airplane mode while they waited for a warrant. Held: affirmed.

Z. SEARCH AND SEIZURE

Z.3. Exceptions to search warrant requirement

Z.3.d.1. Warnings required

TITLE: Ackerman v. State

INDEX NO.: Z.3.d.1.

CITE: (2nd Dist., 9-12-02), Ind. App., 774 N.E.2d 970

SUBJECT: Pirtle warnings do not apply to field sobriety tests (FSTs)

HOLDING: Although FSTs are searches governed by Article I, Section II of Indiana Constitution, police are not required to advise a person in custody that she may consult with attorney before administering FSTs. A person in custody must be informed of right to consult with counsel about possibility of consenting to a search before valid consent can be given. Jones v. State, 655 N.E.2d 49 (Ind. 1995); Pirtle v. State, 263 Ind. 16, 323 N.E.2d 634 (1975). In this case, D admitted to police officer to leaving scene of accident & drinking & driving. Ct. concluded that D was in custody after police officer advised her of her Miranda rights at collision scene. Ct. further concluded that FSTs are clearly searches governed by Section 11 because they are designed to uncover hidden evidence of impairment that an operating while intoxicated suspect seeks to conceal.

Purpose of Pirtle doctrine is to ensure that no person in custody consents to an unlimited search unless she is fully informed of constitutional rights she is waiving. Ct. held that FSTs are qualitatively different from general, unlimited searches that concerned Pirtle. FSTs are non-invasive & take little time to administer. More importantly, FSTs are narrow in scope & are unlikely to reveal any incriminating evidence other than impairment. Because probable cause is not required to administer FSTs, constitutional concerns expressed by Pirtle simply are not relevant. Ct. concluded that it would not serve purpose of Pirtle doctrine to extend it to apply to field sobriety testing. Thus, police are not required to advise a person in custody of Pirtle warnings before administering FSTs, & Tr. Ct. did not abuse its discretion in overruling D's objection to admission of evidence of FSTs. Held, judgment affirmed.

RELATED CASES: Brown, 118 N.E.3d 763 (Ind. Ct. App. 2019) (Pirtle advisement unnecessary when police have warrant to open safe); Garcia-Torres, 949 N.E.2d 1229 (Ind. 2011) (the Pirtle advisement only applies to the weightiest intrusions, such as a search of a home or vehicle; because the intrusion caused by a buccal swab is slight, Pirtle does not apply); Cohee, 945 N.E.2d 748 (Ind. Ct. App. 2011) (Pirtle right to consult with counsel before consenting to a search does not apply when person is deciding whether to submit to implied consent test because such a person is not in custody); Wilkerson, 933 N.E.2d 891 (Ind. Ct. App. 2010) (Pirtle advisement is not required before D can consent to pat down search); Datzak, App., 838 N.E.2d 1149; Schmidt, App., 816 N.E.2d 925 (as in Ackerman, Ct. concluded that purpose of Pirtle doctrine would not be served by extending that doctrine to apply to chemical breath testing); Necessary, App., 800 N.E.2d 667 (for same reasons that persuaded Ct. in Ackerman, 774 N.E.2d 970, that a D does not need to be told of his right to an attorney before taking FSTs, Ct. held that none of the Miranda warnings must be given to a D before police administer FSTs).

TITLE: Cox v. State

INDEX NO.: Z.3.d.1.

CITE: (12/21/2020), 160 N.E.3d 557 (Ind. Ct. App. 2020)

SUBJECT: No custody or Pirtle violation despite officer's request to search after the purpose of traffic stop was complete.

HOLDING: Defendant was a passenger in a vehicle that was stopped by police. Police found the vehicle to be unsafe, informed the occupants it would be towed and that they were free to leave. However, the driver and passengers all agreed to wait for a ride, which prompted the officer's request to search them for officer safety. Defendant gave his consent to search, resulting in the discovery of a small socket containing marijuana. Three other officers arrived on the scene. Defendant was given a summons and charged, tried and convicted of misdemeanor possession of paraphernalia. Defendant argued the purpose of the traffic stop had been fulfilled when he was detained and asked for consent to search, rendering his consent invalid. The Court of Appeals concluded that Defendant was never detained or in custody and was not coerced into providing consent to search. Thus, the Pirtle requirement to advise him he had the right to consult with an attorney before consenting to a search of his person was not triggered. The totality of the circumstances indicates Defendant's consent to search was knowing and voluntary and his Fourth Amendment rights were not violated. Held, denial of motion to suppress affirmed.

TITLE: Dycus v. State

INDEX NO.: Z.3.d.1.

CITE: (10/3/2018), 108 N.E.3d 301 (Ind. 2018)

SUBJECT: Pirtle advisement not required prior to obtaining consent to drug recognition exam

HOLDING: Under the Indiana Constitution, a person in police custody must be advised of the right to consult with counsel before being able to validly consent to a search. See Pirtle v. State, 323 N.E.2d 634 (Ind. 1975). The Pirtle advisement is required in circumstances involving great risk of involuntary consent and where there is a likelihood that police will come across inculpatory evidence beyond what they specifically seek. A drug recognition evaluation (DRE) is not that type of search-- it is specific enough to eliminate the risk of involuntary consent.

Components of the evaluation are narrow in scope, there's no concern that the person in custody "will fail to appreciate the magnitude of the rights they forego when consenting to a DRE," and officers are "only going to find evidence of ...intoxication—nothing more." Intrusiveness of the search or expectation of privacy are not the salient factors-- it is the risk of involuntary consent. Held, transfer granted, Court of Appeals' opinion at 90 N.E.3d 1215 vacated, judgment affirmed.

TITLE: Martin v. State

INDEX NO.: Z.3.d.1.

CITE: (3/26/86), Ind., 490 N.E.2d 309

SUBJECT: Consent - warnings required

HOLDING: A subject in custody who waives right to consult counsel before talking with police has right to be informed a second time of right to consult counsel prior to being asked to consent to search. Sims, 413 N.E.2d 556. Here, Ct. finds D was adequately advised of right to consult counsel. Held, no error.

TITLE: Maynard v. State

INDEX NO.: Z.3.d.1.

CITE: (1st Dist. 6/17/87), Ind. App., 508 N.E.2d 1346

SUBJECT: Consent - government status of invitee

HOLDING: Tr. Ct. did not err in denying D's motion to suppress evidence seized during search.

Here, citizen assisted police in uncovering chop-shop operation, entered premises, & purchased engine. D argues citizen was agent of state & information he gathered was used to secure search warrant. D was unaware of citizen's status as agent. Agent's misrepresentation of his/her identity does not vitiate consent. Lewis v. US, (1966), 385 U.S. 206, 87 S. Ct. 424, 17 L.Ed.2d 312 (Ct. determined when home is converted into commercial center to which outsiders are invited for purposes of transacting unlawful business, that business is entitled to no greater sanctity than if carried out in store/garage/car/on street). Held, no error.

TITLE: Ohio v. Robinette

INDEX NO.: Z.3.d.1.

CITE: 519 U.S. 33, 117 S. Ct. 417; 136 L.Ed.2d 347 (1996)

SUBJECT: Consent to Search -- Detained Motorist

HOLDING: There is no bright-line rule under 4th Amend. requiring a "you are free to go" warning before lawfully detained motorist may be asked for consent to search of vehicle. D was stopped, while going 69 mph in a 45-mph zone, by an officer on "drug interdiction duty." Officer ran computer check, found nothing, and gave D warning to watch his speed. He then said, "One question before you get gone," and asked D whether he had any weapons or drugs in his car. When D replied that he did not, the officer asked if he could search D's car, and D consented. The officer found a small amount of marijuana and one capsule containing a controlled substance. The Ohio S. Ct. held that the search was illegal and established a "bright- line" requirement that, in order for a consensual search to be found voluntary, where a motorist is lawfully detained, the officer must inform them that they are free to go before requesting consent to search their vehicle. Because the Ohio Ct. did not clearly indicate that its holding was based on independent state grounds, the U.S. S. Ct. reviews and reverses its holding, finding that the U.S. Constitution does not require such a warning in order for a consensual search to be voluntary. Although this traffic stop may have been pretextual, it was lawful under the Ct.'s 1996 decision, Whren v. U.S., 116 S. Ct. 1769 (as long as there is legal basis for stop, officer's subjective intent in making it is irrelevant). As to bright-line requirement of advisement that motorist is free to go before consent to search can be voluntarily given, U.S. S. Ct. has generally rejected bright-line rules and focused instead on the totality of circumstances surrounding the encounter. Ct. finds it would be "unrealistic to require police officers to always inform detainees that they are free to go before a consent to search may be deemed voluntary." Because the Ohio Ct. imposed bright-line rule, rather than employing totality of circumstances analysis, its holding is reversed. Ginsburg, J., CONCURS, and Stevens, J., DISSENTS, both writing to note that Ct.'s holding does not question wisdom of the rule that the Ohio Ct. imposed, or a state's right to impose it, but that 4th Amend. to U.S. Const. does not require it.

TITLE: People v. Brownlee
INDEX NO.: Z.3.d.1.
CITE: 186 Ill.2d 501, 713 N.E.2d 556 (Ill. 1999)
SUBJECT: Short Pause at End of Traffic Stop --Illegal Detention
HOLDING: Police officers who had completed traffic stop and then stood silently for a "couple of minutes" next to car door before asking for consent to search car, illegally detained the occupants of the car. This illegal seizure tainted the driver's consent to search car. Court distinguishes Ohio v. Robinette, 519 U.S. 33 (1996), in which U.S. S. Ct. held that 4th Amendment does not require officer to inform driver that he is free to go before asking for consent to search car at end of traffic stop. Here, Court reasoned, officers standing next to car for two minutes constituted show of authority such that reasonable person would conclude that he or she was not free to leave. Robinette does not stand for proposition that officers may detain motorists without reasonable suspicion of any illegal activity, so long as they ultimately request permission to search car. Illegal detention tainted driver's consent to search, and fruits of search must be suppressed.

TITLE: Smith v. State

INDEX NO.: Z.3.d.1.

CITE: 753 So.2d 713 (Fla. Ct. App. 2000)

SUBJECT: Specific Consent for Search of Mouth

HOLDING: Florida Court of Appeals calls for its supreme court to adopt bright-line requirement of specific consent before officer may search subject's mouth. Under this rule, general consent to search should not be enough to permit officer to look in subject's mouth. Here, subject opened mouth refused to move his tongue as instructed by officer. Through this conduct, it is clear that subject denied or withdrew consent for mouth search. Further, officer's actions forcing subject to remain with mouth open for prolonged period was evidence that officer was seeking compliance, not requesting consent to search. Bright line rule requiring specific consent for mouth search would be particularly helpful because individuals who cooperate with police and consent to search may not know how to end it when it has become too intrusive.

TITLE: State v. Scheibelhut

INDEX NO.: Z.3.d.1.

CITE: (2nd Dist., 12-9-96), Ind. App., 673 N.E.2d 821

SUBJECT: Consent to search - advisement of right to refuse consent

HOLDING: Tr. Ct. erred in granting D's motion to suppress solely upon basis that D was not advised of his right to refuse consent. Knowledge of right to refuse is only one factor in determining voluntariness of consent to search. Thurman, App., 602 N.E.2d 548. As indicated in Thurman, Tr. Ct. should consider totality of circumstances in determining whether consent given in particular case was valid. In determining whether consent to search was voluntary, "totality of circumstances" includes, but is not limited to, following considerations: 1) Whether D was advised of his Miranda rights prior to request to search; 2) D's degree of education & intelligence; 3) whether D was advised of his right not to consent; 4) whether police officer made any express or implied claims of authority to search vehicle without consent; 5) whether officer was engaged in any illegal action prior to request; 6) whether D previously was cooperative; & 7) whether officer was deceptive as to his true identity or purpose of his search. Held, judgment reversed & remanded.

RELATED CASES: Callahan, App., 719 N.E.2d 430 (Ct. did not address D's claim that Art. I, § 11 of Ind. Const. imposes bright-line requirement that voluntary consent requires advisement of right to refuse consent to search; specific advisements which D advocates were in fact given to him).

Z. SEARCH AND SEIZURE

Z.3. Exceptions to search warrant requirement

Z.3.d.2. Voluntariness

TITLE: Bauman v. State

INDEX NO.: Z.3.d.2.

CITE: (4-19-23), Ind. Ct. App., 207 N.E.3d 20

SUBJECT: Consent to blood draw was voluntary despite unlawful detention and request to consult with counsel

HOLDING: In a trial for aggravated battery and operating while intoxicated causing serious bodily injury, trial court did not abuse its discretion in admitting the results of a warrantless blood draw, resulting from Defendant's voluntary consent. After striking a motorcyclist, Defendant was placed in a police vehicle, read his Miranda rights, handcuffed, and read the implied consent law. Officers denied his request to phone his attorney and told Defendant he didn't have the right to an attorney because he wasn't under arrest. Defendant eventually consented to a blood draw, which revealed the presence of methamphetamine. On appeal, Defendant argued that his consent was not valid because it was a result of (1) an unconstitutional ultimatum; (2) a violation of his right to counsel; and (3) an illegal detention. But the Court of Appeals disagreed, holding that the illegality of the circumstances that contributed to a person's consent to a search has no bearing on the voluntariness of the consent. "Potential deficiencies with [Defendant's] detention, and the fact he was not allowed to speak with his attorney may be probative of the reasonableness of the search, but they have little impact, in our view, on the question of whether [Defendant's] consent was voluntarily given. That impact is insufficient to alter our conclusion that the totality of the circumstances reveals valid consent..." Finding harmless error, the Court also rejected Defendant's argument that the trial court erred by allowing a lay witness to testify to his opinions regarding the drivers' intent. "Such testimony would be probative of the *mens rea* associated with the aggravated battery charge, but [Defendant] was acquitted on that count. Thus, he suffered no prejudice due to the lay witness testimony." Held, judgment affirmed.

TITLE: Camp v. State

INDEX NO.: Z.3.d.2.

CITE: (2nd Dist., 6-20-01), Ind. App., 751 N.E.2d 299

SUBJECT: Consent to search voluntary despite inadequate justification for search

HOLDING: Driver's consent to search is not per se involuntary solely because officer who made valid traffic stop might have had additional motives for stopping driver. Ct. agreed that after pretextual stop was made in this case, police officer had nothing more to justify search than inchoate suspicions or hunches, & that officer improperly conducted search because of neighborhood's reputation as high crime area. However, inadequacy of officer's justification for search was not dispositive because D consented to search of his car. Ct. rejected D's claims that his consent was not voluntary because officer was deceptive as to his motives for traffic stop, because of illegal activity by police prior to search request, & because his consent was stale. Tr. Ct. did not err in denying motion to suppress. Held, judgment affirmed.

RELATED CASES: Meyers, App., 790 N.E.2d 169 (D freely & voluntarily consented to search of his car after he was stopped for traffic violation).

TITLE: Daniel v. State

INDEX NO.: Z.3.d.2.

CITE: (12/10/91), Ind., 582 N.E.2d 364

SUBJECT: Voluntariness of consent to be fingerprinted

HOLDING: D's consent to be fingerprinted was not rendered involuntary by officer's statements about obtaining search warrant. D first came to attention of police after high school officials compiled list of past & present students who fit profile from composite drawing of perpetrator by victim. D was interviewed along with eleven other juveniles, waived his rights, & was fingerprinted. Later, latent fingerprints found on safe at school were found to match D's. At hearing on D's motion to suppress, his mother testified that when officer originally asked her to bring son to station to be interviewed, he told her that "I can get his fingerprints if you don't cooperate. I can get his fingerprints." She also stated that when she asked officer how many parents of children he sought to fingerprint had cooperated, "he said 'most of them did, but it didn't make any difference anyway,' he could get a Ct. order." She further testified that they did not feel they had any choice but to comply, because officer would only get a Ct. order. Officer testified that he told D & his parents "that eventually I would have to probably get a search warrant for his fingerprints some way, someplace down the road, if [they] objected, which would be fine with me, one way or the other, but it would save me a lot of paperwork." D argued that consent to be fingerprinted was illusory because of officer's assertion that a warrant would be issued if he didn't consent, & that Ind. Code 31-6-8-1.5(c) & federal case law allow fingerprinting without consent only if officer has probable cause to believe latent prints found in investigation belong to that juvenile. Ct. noted that whether advisement that search warrant will be obtained, as opposed to will be sought, constitutes coercion to render consent illusory, was issue of first impression in Indiana. Ct. did not reach this decision, however, instead finding that question of voluntariness is matter of Tr. Ct. discretion. Ct. then found that officer's testimony was that warrant would be sought, rather than routinely obtained, & that it was therefore sufficient to allow Tr. Ct. to find consent to fingerprinting was voluntary & valid. Held, conviction affirmed, DeBruler, J., & Dickson, J., dissenting, primarily on other issue.

RELATED CASES: Mcllquham 10 N.E.3d 506 (Ind. 2014) (D's consent to search his home was voluntary despite police officer's representation that he would probably get DCS involved and that he needed to go back to D's apartment to make sure it was suitable for his toddler who was found half-naked wondering around a retention pond).

TITLE: Galvin v. State

INDEX NO.: Z.3.d.2.

CITE: (5th Dist. 12/09/91), Ind. App., 582 N.E.2d 421

SUBJECT: Illegal search & seizure renders consent involuntary

HOLDING: In undercover operation to purchase cocaine, trooper made deal to buy from man named Casey. Officer gave him money, dropped him off in town & waited for him to return. Buy money was dusted with phosphorescent powder. Surveillance aircraft observed Casey & another man drive to another city, where he made 2 stops at D's home & one at Village Pantry. It was not known how Casey returned to first city, because aircraft lost contact for 20-30 minutes, but when he returned, he had cocaine. Casey was arrested, & officer ordered others to secure D's home while he went to get search warrant; however, Ct. refused to issue warrant. In meantime, 6 to 10 officers went to D's home & secured it by entering screened front porch & going into living room via open door. They couldn't remember whether they knocked first, & Ds testified that they heard no knock & did not invite officers into house. Once inside, officers detained D & 2 others, & when Ds asked about search warrant, they were told one was on way. One D asked to call his lawyer, but no one was allowed to use phone, take shower, or answer phone when it rang. Before first trooper arrived, & after getting consent, officer ran black light over Ds hands to see whether they'd touched buy money, & all tests were negative. First officer then arrived & explained situation & asked consent to search without advising that warrant had been denied or advising them of right to attorney before consenting to search. D eventually consented but did not read or sign consent form. Search produced cocaine, marijuana, drug paraphernalia, & cash including marked by money. Tr. Ct. denied Ds' motion to suppress.

Ct. found officers did not have search warrant or probable cause to search, & no exigent circumstances existed, *citing* similarity to US v. Howard (9th Cir., 1987), 828 F.2d 552. State conceded that entry into home was unreasonable but argued that consent was product of independent source & not tainted by entry. Ct. rejected this argument, distinguishing Snellgrove, Ind., 569 N.E.2d 337. Within hour after unlawful entry, & with all officers still present, D's consent was requested without being told warrant had been denied by Ct. There were no intervening circumstances between time officers entered home & request for consent. D was not advised of her right to speak to attorney, even though detained for over hour, & nothing else justified warrantless search. Under facts & circumstances, Ct. could not say consent was voluntary & independent of illegal entry. Held, convictions reversed, Rucker, J., dissenting.

RELATED CASES: Ware, App., 782 N.E.2d 478 (D's consent to search was not given voluntarily & independent of illegal entry & was therefore invalid); Ransom, App., 741 N.E.2d 419 (given short passage of time between unlawful stop & search & causal connection between stop & search, Ct. could not say that D's consent to search purged taint of officer's unlawful stop).

TITLE: Gutenstein v. State

INDEX NO.: Z.3.d.2.

CITE: (8/31/2016), (Ind. Ct. App 2015)

SUBJECT: D consented to blood draw

HOLDING: Tr. Ct. properly denied D's motion to suppress his blood draw results because his consent was valid under both the federal and state constitutions. As to the Fourth Amendment, the fact that D was in handcuffed and placed in a police car did not vitiate his consent. See Garcia-Torres v. State, 949 N.E.2d 1229, 1237 (Ind. 2011) (*citing* United States v. Watson, 96 S. Ct. 820 (1976)). While D was in the car, officer read D his Miranda rights and the implied consent warning. D said he understood both advisements. At the hospital, before the blood was drawn, the officer gave the warnings again. D acknowledged he understood his rights and consented to the blood draw. He was not handcuffed during the blood draw and did not voice any objection. His consent was genuine.

Under the Indiana Constitution, the first factor is the degree of concern that a violation has occurred, and the concern here was high. See Litchfield v. State, 824 N.E.2d 356, 361 (Ind. 2005). When officer arrived on the scene, he found a three-vehicle accident where one of the drivers was seriously injured, nearing death. Officer learned that D had been driving erratically; he weaved through traffic, slowed to 25 mph, and eventually stopped in the right lane of the interstate. D had the tell-tale signs of drinking alcohol: confusion, blood shot eyes, slurred speech, smell of alcohol, and a ponderous gait. The degree of intrusion – the second factor under Litchfield – was slight. Officer informed D of his rights under Miranda and the implied consent law. Litchfield, 824 N.E.2d at 361. D said he understood, and he did not object to the blood draw. Third, the extent of law enforcement needs was high. Id. Law enforcement has a strong interest in preventing crashes involving alcohol-impaired drivers. Held, judgment affirmed.

TITLE: Krause v. Commonwealth

INDEX NO.: Z.3.d.2.

CITE: 206 S.W.3d 922 (Ky. 2006)

SUBJECT: Police ruse leaves consent involuntary

HOLDING: Kentucky Supreme Court held that police officers who duped a suspected drug dealer into letting them into his home without a search warrant by falsely stating that a young girl had reported being raped there and that they merely wanted to check on the accuracy of her description of the home violated the Fourth Amendment's prohibition of unreasonable searches and seizures. The officer's ruse rendered the D's consent involuntary and therefore drugs seized in plain view were suppressed. Under Schneckloth v. Bustamonte, 412 U.S. 218 (1973), consent for a warrantless search may not be coerced either explicitly or implicitly, "no matter how subtly the coercion was applied." The Court noted here that, "What distinguishes this case most, perhaps, from the bulk of other ruse cases is the fact that [the officer] exploited a citizen's civic desire to assist police in their official duties for the express purpose of incriminating that citizen. The use of this particular ruse simply crossed the line of civilized notions of justice and cannot be sanctioned without vitiating the long-established trust and accord our society has placed with law enforcement."

Court emphasized D and his roommate were particularly vulnerable when asked for consent, having been accosted by the officer at an "alarming hour" with "unnerving news." Court stressed that it was not ruling out the use of police ruses to gain entry but expressed concern that police actions here would discourage citizens from aiding law enforcement in the future because, in the language of *Schneckloth*, they would have "no way of knowing whether their assistance was being called upon for the public good or for the purpose of incriminating them." The widespread use of such tactics could quickly undermine the public's faith in law enforcement. Court distinguished case from another in its jurisdiction where officer posed as a pizza deliveryman to execute a valid search warrant, noting that ruse was employed primarily for safety reasons and to avoid destruction of evidence where the officers had a warrant. Two justices dissented finding that case not distinguishable enough from others where ruses were allowed and accusing majority of impermissibly substituting its own version of the facts for that of the Tr. Ct.

TITLE: Martin v. State

INDEX NO.: Z.3.d.2.

CITE: (3/26/86), Ind., 490 N.E.2d 309

SUBJECT: Consent (C) - voluntariness

HOLDING: C to search car was voluntary despite fact D was handcuffed & under control of 5 officers when asked to C. Voluntariness of C to search is question of fact to be determined from totality of circumstances. Schneckloth v. Bustamonte (1973), 412 U.S. 218, 93 S. Ct. 2041, 36 L.Ed.2d 854. C to search is valid except when procured by fraud/duress/fear/intimidation/when merely a submission to supremacy of law. Darnell 435 N.E.2d 250. Knowledge of right to refuse search is one factor which indicates voluntariness. Schneckloth. Here, Ct. finds D has not shown how his C was anything but product of exercise of free/unfettered will. Larkin 393 N.E.2d 180. Ct. notes subject in custody who waives right to consult counsel before talking with police has right to be informed a second time of right to consult counsel prior to being asked to C to search. Sims 413 N.E.2d 556. D was read & signed C form to search of apartment. Afterwards, D orally Ced & signed second form allowing police to search car. Police did not read D second form. Ct. finds proximity of time involved in 2 acts indicates D was adequately informed of right to counsel before giving second C. Held, no error.

RELATED CASES: Spikes 501 N.E.2d 423 (Ct. accepts Tr. Ct.'s factual determination that D consented to accompany police to station for fingerprinting); Earls 489 N.E.2d 516 (where D voluntarily Cs to search, search may not be contested as illegal at later time, *citing* Burris 465 N.E.2d 171; held, search of car proper); Broadus 487 N.E.2d 1298 (Ct. rejects D's contention that C to search car, given at road block where police guns were drawn, was coerced; search was proper with or without C based upon MI v. Long (1983), 463 U.S. 1032, 103 S. Ct. 3469, 77 L.Ed.2d 1201, which held officers may search passenger compartment if possess reasonable belief suspect is dangerous/may gain control of weapons); Barnett, App., 493 N.E.2d 1286 (where D objected at trial that C was not voluntary, on appeal he cannot challenge C based upon lack of waiver of right to counsel); Zimmerman, App., 469 N.E.2d 11 (Ct. finds D voluntarily Ced to drawing of blood sample at hospital by signing C form [set forth in opinion], *citing* Clark, App., 372 N.E.2d 185; Ct. notes D impliedly Ced to taking of sample by driving car on IN highway, *citing* Ind. Code 9-4-4.5-1 [now Ind. Code 9-11-4-1], Pollard, App., 439 N.E.2d 177 & Schultz, App., 417 N.E.2d 1127 [see also K.9.e on this point]).

TITLE: People v. Anthony
INDEX NO.: Z.3.d.2.
CITE: 198 Ill.2d 194, 761 N.E.2d 1188 (Ill. 2001)
SUBJECT: Assuming Frisk Position Too Ambiguous to Constitute Consent
HOLDING: A D's silent assumption of the "frisk" position in response to officer's request to search was too ambiguous to constitute consent. This wordless gesture could just as likely have meant acquiescence to a show of authority. A nonverbal waiver of constitutional right must be very clear to be accepted.

TITLE: People v. Reyes

INDEX NO.: Z.3.d.2.

CITE: 83 Cal. App. 4th 7 (Cal. Ct. App. 2000)

SUBJECT: Officer's Use of Ruse Vitiates Consent to Search

HOLDING: Officers' use of ruse to lure Dt outside home vitiated consent to search of his person.

Officer in street clothes knocked on D's door and asked whether he was owner of pickup truck parked out front. When D acknowledged ownership, officer told him, falsely, that he had hit the truck, and D went outside to check damage. Three uniformed officers then surrounded D and asked whether he was on parole or probation, whether he had any narcotics, and whether he would consent to be searched. Court finds consent was spoiled, and fruits of search should be suppressed. The law will tolerate trickery and deception "as long as it is not accompanied by inappropriate inducements or pressure. Here, because the lure would have appealed to almost anyone, including law-abiding citizens, Court finds that police went too far.

TITLE: Reitinger v. Commonwealth

INDEX NO.: Z.3.d.2.

CITE: 532 S.E.2d 25 (Va. 2000)

SUBJECT: Repeated Requests for Consent to Search Amount to Seizure

HOLDING: A law enforcement officer seized a D for 4th Amendment purposes when, after completing a lawful traffic stop, he asked three times for consent to search the D's vehicle. The stop took place in a rural area, two officers positioned themselves on either side of D's vehicle, and one officer repeated his request for consent to search three times. Even though the D had been told he was free to go, the subsequent events would suggest to a reasonable person that that was not the case.

TITLE: State v. Berrios

INDEX NO.: Z.3.d.2.

CITE: 235 S.W.3d 99 (Tenn. 2007)

SUBJECT: "Frisk and sit" made subsequent vehicle search unconstitutional

HOLDING: Tennessee Supreme Court held frisking a motorist and placing him in the back of a patrol car during a routine traffic stop, without any suspicion that he is armed and dangerous, violates the Fourth Amendment's prohibition of unreasonable searches and seizures, as well as its counterpart in the state constitution. Officer had probable cause to stop D's vehicle for speeding. However, before checking D's license or issuing him a citation, the officer ordered D out of car, frisked him, and placed him in the back seat of the patrol car. Officer then requested, and was granted, permission to search the vehicle, finding a package of cocaine that led to the filing of drug charges. Court said the "frisk and sit" was "more akin to a full-scale arrest than the brief detention generally incident to an ordinary traffic stop." Usually, a D involved in a routine traffic stop can expect to receive either a warning or a citation and be allowed to continue on his way. A frisk-and-sit is far more intrusive, with Court noting that a person placed in the back seat of a patrol car generally does not feel free to leave.

TITLE: State v. Gorup

INDEX NO.: Z.3.d.2.

CITE: 782 N.W.2d 16 (5/14/2010), Neb. S. Ct.

SUBJECT: Consent tainted by prior illegal search

HOLDING: Where D consented to search of his apartment after illegal "protective sweep" of his apartment, his consent was tainted by that search despite fact that police did not show him what they found, Nebraska Supreme Court holds. Police approached D's apartment to ask for consent to search for illegal drug activity, even though they knew he had recently refused a consent request from another officer. D was outside his front door, and officers arrested and handcuffed him on an outstanding warrant, then went inside his apartment to conduct a "protective sweep." They found several small bags of suspected drugs and left them inside while they went out to ask D for consent to search, which he gave them. The Tr. Ct. found that the "sweep" was illegal but found that the sweep and the consent were sufficiently attenuated because the officers did not show him the suspected drugs they had found. On appeal, the Neb. S. Ct. reverses. The Court looks at factors like those identified in Brown v. Illinois, 422 U.S. 590 (1975), and determines that under the circumstances, the consent was too closely tied to the illegal sweep to be considered an "independent act of free will."

TITLE: State v. Hall

INDEX NO.: Z.3.d.2.

CITE: 115 P.3d 908 (Ore. 2005)

SUBJECT: Consent Search Following Illegal Stop

HOLDING: Oregon S. Ct. holds that its state constitution may require exclusion of evidence from otherwise valid consent search that follows illegal stop. Oregon's exclusionary rule, the Court writes, is "a [state] constitutionally mandated rule that serves to vindicate a D's personal rights," and the focus of the inquiry is to restore a D to the same position as if "the government's officers had stayed within the law... A causal connection requiring suppression ... may exist because the unlawful police conduct, even if not overcoming the D's free will, significantly affected the D's decision to consent."

TITLE: State v. Barker

INDEX NO.: Z.3.d.2.

CITE: (3rd Dist., 8-30-00), Ind. App., 734 N.E.2d 671

SUBJECT: Illusory consent to warrantless search

HOLDING: Under totality of circumstances, Tr. Ct.'s grant of D's motion to suppress evidence from warrantless search was not clearly erroneous. Responding to anonymous tip that sixty-one-year-old D was growing marijuana in her home, officers knocked on front door, asked D if they could enter house & told D that they could get search warrant if she refused them entrance. D cooperated, & once inside, officer smelled odor of marijuana coming from basement. D eventually allowed officer to unlock door in basement, which revealed ten marijuana plants, potting soil & lights. After search & seizure, officers presented D "Permit to Search" form that D signed.

When State seeks to rely upon consent to justify lawfulness of search, it has burden of proving consent was, in fact, freely & voluntarily given. Bumper v. North Carolina, 391 U.S. 543 (1968). Here, Ct. agreed with Tr. Ct. that consent was illusory & not freely & voluntarily given. Search preceded execution of police department's form & waiver of rights & consent to search. While execution of consent form prior to warrantless search is not required to show voluntariness, Ct. noted that fact that officers presented D with form after search is "undoubtedly curious." More troubling than post-search "consent," however, was officers' statement they could go get search warrant if they were not allowed inside. Officer's advisement that search warrant will be obtained if consent is not given renders choice illusory & vitiates subsequent consent to search. Daniel, 582 N.E.2d 364 (Ind. 1991). D's age & her relative inexperience with police made officers' statement they would obtain warrant if not allowed inside even more coercive. Held, grant of motion to suppress affirmed.

RELATED CASES: Campos, 885 N.E.2d 590 (consent to search vehicle following officer's statement that the search was "necessary" was invalid; subsequent consent of passenger, who had borrowed the car from his brother, was also invalid in that it was based on the officer's representation that driver had consented); Barker, App., 739 N.E.2d 192 (on reh'g Ct. *clarified* that officer claiming he could obtain warrant invalidated consent; situation is different than where officer claims he would seek warrant; Roehling, App., 776 N.E.2d 961 (state failed to justify vehicle search where officers incorrectly represented that they already had search warrant; D's post-Miranda admissions were involuntary & could not be used to establish probable cause for search).

TITLE: State v. Munroe
INDEX NO.: Z.3.d.2.
CITE: 630 N.W.2d 223 (Wis. 2001)
SUBJECT: Consent -- Officer's Illegal Conduct Renders Consent Involuntary
HOLDING: Police officers who were admitted into a drug suspect's motel room after they claimed to be investigating violation of a local ordinance were not entitled to rely on suspect's consent to search given after investigation of ordinance violation was completed. After investigation was completed, officers could not lawfully remain in motel room questioning the suspect and twice asking him for consent to search, and this illegal conduct vitiated voluntariness of his consent to search.

TITLE: U.S. v. Guapi
INDEX NO.: Z.3.d.2.
CITE: 144 F.3d 1393 (11th Cir. 1998) *overruled* in part by U.S. v. Drayton, 536 U.S. 194 (2002)
SUBJECT: Bus Search -- Officer's Conduct Vitiates Consent
HOLDING: Officer's conduct in search of bus passengers' luggage was so coercive as to vitiate consent to search. At scheduled stop, driver told passengers they would have to leave bus. Before they could do so, two officers entered the bus, identified themselves as drug interdiction officers, and said, "With your cooperation, I'd like to check on-board cargo for illegal contraband, such as alcohol, narcotics, weapons, or explosives...With your consent and cooperation, I'd like to ask you to bring down your on-board luggage...and have it open so I can do a quick on-board search." One officer then remained in the doorway of the bus while the other officer walked down the aisle inspecting luggage. Court of Appeals ruled that brick of cocaine found in D's suitcase should have been suppressed, because his consent to search was not voluntary. Although officers used expression, "With your consent," they did not indicate that passengers were free to withhold consent. By standing in doorway, second officer gave passengers impression that they were not free to leave without cooperating. At suppression hearing, defense investigator testified that bus driver had told him that he did not believe passengers were free to leave without participating in search, and one officer testified that in conducting two dozen or more such searches per week, he had been refused consent by only a few passengers.

TITLE: State v. Robinette
INDEX NO.: Z.3.d.2.
CITE: 80 OhioSt.3d 234; 685 N.E.2d 762 (Ohio 1997)
SUBJECT: Request for consent to search -- traffic stop
HOLDING: On remand from U.S. Supreme Court, Ohio Supreme Court holds that consent to search vehicle, obtained at end of traffic stop, was not voluntary. Court had originally held that consent is per se involuntary under such circumstances unless officer advises driver that he/she is free to go. U.S. Supreme Court held that no such bright line rule is required by 4th Amendment but remanded for Ohio Court to determine whether the consent was voluntary. Ohio Court indicates that it will be difficult to show that consent was voluntarily obtained absent such a "free to go" advisement. Although the Court was interpreting its state constitution, it relied on caselaw interpreting the Fourth Amendment in reaching its conclusion.

TITLE: Thurman v. State
INDEX NO.: Z.3.d.2.
CITE: (5th Dist., 11-10-92), Ind. App., 602 N.E.2d 548
SUBJECT: Consent illusory, but evidence was in "open view"
HOLDING: Although D's consent to search glove compartment was illusory, marijuana in car was in "open view" & therefore D's arrest & subsequent inventory search were proper & Tr. Ct. did not err in denying motion to suppress evidence. After initial stop, occupants of car were ordered out & patted down by 5 or 6 officers who blocked their exit. D & others were forced to keep their hands-on car while each was patted down. When D was unable to produce driver's license, officer asked if paperwork for car was in glove compartment & was told it was. Officer then asked D for permission to get paperwork, & after D gave permission, officer approached car & observed, through open passenger side window, two bags of marijuana in ashtray. D was placed under arrest for possession & inventory search of car found additional drugs.

Although D was not under arrest at time of "consent," he was "seized" for purposes of 4th Amend. analysis. Prior to consent, D was not given Miranda rights, nor informed he could refuse search request. Given intimidating atmosphere, D's consent was merely "submission to the supremacy of the law rather than a voluntary relinquishment of a known right." At most D's consent was nothing more than "passive submission," & could not be used to justify search.

Although consent was illusory & could not justify subsequent actions by police, officer's observation of marijuana in ashtray was proper & did justify arrest & subsequent search. Officer testified he always looked in cars before entering to make sure no one is inside, & when he looked in D's car, he saw marijuana in ashtray through open passenger side window. Because car was in public parking lot & marijuana visible to anyone who passed by passenger side, it was in open view, there was no search into constitutionally protected area.

RELATED CASES: Ammons, 770 N.E.2d 927 (consent was valid rather than submission to authority where show of force consisted of flashing lights, two officers, a request for license and registration followed by request that D exit vehicle & give identifying information).

TITLE: United States v. Watson

INDEX NO.: Z.3.d.2.

CITE: 423 U.S. 411, 96 S. Ct. 820, 46 L.Ed.2d 598 (1975)

SUBJECT: Exceptions to search warrant requirement - consent; voluntariness

HOLDING: D's arrest, based on probable cause & made by postal officers acting in strict compliance with governing statute & regulations, did not violate the Fourth Amendment. D's consent to search of car was given while he was in custody in public street after valid arrest. D was given Miranda warnings. Police further cautioned D that results of search could be used against him. Search was not result of any overt act or threat of force against D. There were no indications D was newcomer to law, mentally deficient, or unable in face of custodial arrest to exercise free choice. D's consent to search of his car was not result of illegal arrest but was voluntary & valid. Held, judgment reversed. Powell & Stewart, JJ., concurred. Marshall & Brennan, JJ., dissented.

RELATED CASES: Peterson, Ind., 514 N.E.2d 265 (D's consent to search not rendered invalid on ground it was accompanied by waiver of counsel; D was not under arrest at time consent given.)

TITLE: Weaver v. State

INDEX NO.: Z.3.d.2.

CITE: (4th Dist. 8/2/90), Ind. App., 556 N.E.2d 1386

SUBJECT: Consent to search - voluntariness

HOLDING: Officer's statement that he would get warrant if D did not consent to search, where no representation was made that warrant would issue automatically, did not render consent to search involuntary. Test for voluntariness is whether D's will, was overborne by duress or coercion, express or implied. Schneckloth v. Bustamonte (1973), 42 U.S. 218, 93 S. Ct. 2041, 36 L.Ed.2d 854. Determination is to be made from totality of circumstances. Id. D argues that because officer did not explain that issuance of warrant was discretionary & that it could not automatically be obtained, his statement to D was coercive. D cites concurring opinion in US v. Faroulo (1974), 506 F.2d 490, which suggests that where individual is led to believe that warrant will be issued & only variable is whether he/she consents immediately or postpones search briefly while warrant is obtained, situation is as "instinct with coercion" as if officer represented that warrant had already been obtained. See Bumper v. North Carolina (1968), 391 U.S. 543, 88 S. Ct. 1788, 20 L.Ed.2d 797. However, concurring judge went on to say that he would not require police to explain discretionary nature of issuance of waivers but would merely forbid them from affirmatively conveying idea that no discretion exists. Here, officer merely stated that he would get warrant, & did not represent that it would be issued automatically. In light of all circumstances, Ct. App. finds D's consent to search voluntary. Held, affirmed.

RELATED CASES: Woolum, App., 818 N.E.2d 517 (even though D was informed that a search would only be conducted of common areas & son's bedroom, D nevertheless freely retrieved a bag of marijuana from his bedroom, which was excluded from scope of search; Ct. rejected argument that after D volunteered first bag of marijuana, police officer coerced him into consenting to a full search of residence); Melton, App., 705 N.E.2d 564 (D's contentions that she was intimidated & felt she could not leave her home or refuse search did not outweigh substantial evidence of voluntariness presented).

TITLE: U.S. v. Erwin
INDEX NO.: Z.3.d.2.
CITE: 71 F.3d 218; vacated en banc 78 F.3d 232 (1996)
SUBJECT: Continuing Stop After Suspicion Dissipated - Spoils Consent to Search
HOLDING: Police officers who stopped D on a report of drunk driving but saw no signs of intoxication exceeded scope of lawful investigative detention or Terry stop when they continued their detention and asked D for consent to search his car. Evidence discovered pursuant to this search should have been suppressed.

TITLE: U.S. v. Lee
INDEX NO.: Z.3.d.2.
CITE: 73 F.3d 1034 (10th Cir. 1996) *overruled* in part by U.S. v. Holt, 264 F.3d 1215 (2001)
SUBJECT: Continuing Stop After Justification Dissipated - Spoils Consent to Search
HOLDING: Objectively justifiable traffic stop became illegal detention after officer exhausted legitimate reasons for stop. Officer observed vehicle swerve over center line and stopped it to make sure that driver was not intoxicated or falling asleep at the wheel. Driver dispelled this suspicion, but officer prolonged stop for twenty minutes, at culmination of which he asked for and received consent to search car. Held, continued detention exceeded scope of proper Terry stop, and evidence must be suppressed.

Note: See also U.S. v. Erwin (6th Cir. 12/8/95), No. 94- 1766, 58 CrL 1280.

TITLE: Williams v. State

INDEX NO.: Z.3.d.2.

CITE: (4th Dist., 03-24-93), Ind. App., 611 N.E.2d 649

SUBJECT: Consent to search voluntary - D not in custody

HOLDING: Under following circumstances, D was not in custody & therefore his consent to search car & apartment, which ultimately led to another search revealing incriminating evidence, was not improper or violation of 4th Amend. rights. Officers went to D's house to question him about his girlfriend who had been found murdered. Officers, one of whom knew D personally, asked him to go to headquarters for further questioning, & he agreed. He was not in custody, was not given Miranda warnings, & was cooperative & spoke freely in private room. Officer then asked if D would consent to search of apartment & car & he agreed. When officers went to get written consent form, they were informed that D's tires appeared to match those found at murder scene, & that he was to be considered viable suspect & be given Miranda warnings. Officers returned to D's room & advised him of his rights, & he stated that he wanted attorney but would have to have one appointed. D volunteered, however, that officers could still search home & car, & signed written consent form. Officers did not continue interrogation after D asked for attorney, but he volunteered more explicit information about item's whereabouts. Even after searches were completed, D was not arrested, & he remained at police station talking with officer-friend for about 7 hours. Number of days later, officers obtained additional warrants, & D was charged with murder 21 days later. Ct. concluded that D's 4th & 5th amendment rights did not come into play until he was arrested three weeks later, because he was not in custody at time of consents. Held, conviction affirmed.

RELATED CASES: Hayes, App., 794 N.E.2d 492 (D's consent to search motel room as result of "knock & talk" investigation was voluntary; see full review at Z.7.b); Whipps, 685 N.E.2d 697 (Tr. Ct. was justified in viewing circumstances under which D handed officer his incriminating shoe as voluntary).

Z. SEARCH AND SEIZURE

Z.3. Exceptions to search warrant requirement

Z.3.d.3. Third party

TITLE: Bradley v. State

INDEX NO.: Z.3.d.3.

CITE: (7/7/2016), 54 N.E.3d 996 (Ind. 2015)

SUBJECT: Unlawful home entry based on unreasonable belief houseguest had authority to consent

HOLDING: State failed to prove that person answering door had actual or apparent authority to consent to police entry into D's home. Acting on an anonymous tip, police were watching people come and go from a suspected drug house. Officers saw one man, Beatty, approach the door and knock. Someone let him in. When officers approached the door and conducted a warrantless "knock and talk," Beatty opened the door. The police did not know who lived in the house or whether Beatty had any connection to it, but asked him to consent to their entry, which he did. Once inside the house, police smelled burnt marijuana, detained other people who were present and found drugs and other items as a result of a protective sweep. D arrived home during the police search and was arrested and charged with drug and other offenses.

Fact that Beatty had been to the home on one prior occasion and that he answered the door to the police was insufficient to meet State's burden to show he had joint access and control over the home. Mere "affiliation" with the home, based on having been seen there earlier, is not enough to establish apparent authority to consent. Held, transfer granted, Court of Appeals' opinion at 44 N.E.7 vacated, denial of motion to suppress reversed.

TITLE: Cinamon v. State
INDEX NO.: Z.3.d.3.
CITE: (10/25/2022), Ind. Ct. App., 197 N.E.3d 371
SUBJECT: Male homeowner's consent to search residence did not extend to female guest's purse
HOLDING: Defendant was visiting a house during the execution of a search warrant authorizing officers to enter and search for a resident of the home. Defendant and three other guests were asked to step outside of the residence during the search. Officers arrested the resident sought in the warrant and obtained her permission to search her bedroom as well as the homeowner's permission to search the rest of the residence. While searching the living room, an officer located a purse on the floor next to the couch. Inside the purse, he found a methamphetamine pipe as well as a debit card issued to Defendant.

The Court of Appeals first concluded that the bag searched, which was alternately described as either a zipper bag or a purse, was a container that can support a reasonable expectation of privacy. Next, noting that the homeowner was outside when officers arrived and that the guests were not asked to gather their personal belongings, the Court concluded the detective could not have reasonably concluded the homeowner had apparent authority to consent to the search of the purse he found next to the couch. The Court held the search of the purse violated Defendant's Fourth Amendment right to be free from unreasonable search and seizure.

In a separate analysis of the facts under Article I, Section 11 of the Indiana Constitution, the Court found the "degree of concern, suspicion, or knowledge that a violation has occurred" was low given that no illegal activity was observed when police entered the home and they located and arrested the wanted resident almost immediately and that the degree of intrusion in removing and unwrapping the contraband did not weigh in favor of the State. Finally, the Court found the extent of law enforcement needs was low given there was no immediate need to search Defendant's personal belongings or risk evidence would be destroyed. Based on the totality of the circumstances, the Court concluded the search was unreasonable and violated Defendant's rights under the Indiana Constitution. Held, denial of motion to suppress reversed.

TITLE: Deckard v. State
INDEX NO.: Z.3.d.3.
CITE: (1st. Dist., 9-8-81), Ind. App., 425 N.E.2d 256
SUBJECT: Third party consent to warrantless search - Minor; Scope of waiver
HOLDING: Minor's "Fourth Amendment waiver of rights as condition to probation" was defective because there was no proof minor's mother knowingly and intelligently waived minor's rights. Ind. Code 31-6-7-3 does not authorize minor to waive his own rights but permits waiver by either juvenile's counsel or his parent or guardian. Even if waiver had been properly executed, search exceeded scope of minor's waiver. Waiver authorized police to search minor's person or property for alcohol or drugs but did not authorize search for stolen weapons at D's trailer where minor was temporarily residing. Held, judgment reversed and remanded.

TITLE: Erickson v. State

INDEX NO.: Z.3.d.3.

CITE: (3/29/2017), 72 N.E.3d 965 (Ind. Ct. App 2017)

SUBJECT: CI had common authority to consent to search package

HOLDING: A confidential informant's (CI's) consent to search a package was valid because he shared common authority of the package with Defendant. The CI, who lived in Mexico City, told a DEA agent that a person in India was shipping him a package of drugs via another person in Evansville. At the DEA agent's request, the Louisville Post Office detained the package. After obtaining the CI's consent to search the package, the DEA agent had it sent to Evansville. The phone number on the package led the DEA agent to Defendant. The package contained Tramadol, and Schedule IV controlled substance.

Because the CI had common authority over the package, his consent to search it was valid. See United States v. Matlock, 415 U.S. 164 (1974). Common authority exists where there is "mutual use of the of the property . . . so that it is reasonable to recognize that any of the [joint parties] has the right to permit the inspection . . . [and] might permit the [effects] to be searched." See id., at 171. The CI's common authority was demonstrated by the fact that he negotiated the drug deal, instructed Defendant to ship him the pills, and supplied the tracking numbers of the package to the DEA agent. Held, judgment affirmed.

TITLE: Lee v. State
INDEX NO.: Z.3.d.3.
CITE: (06-29-06), Ind., 849 N.E.2d 602
SUBJECT: Consent to search house by co-inhabitant extended to viewing D's videotapes
HOLDING: Government inspection that exceeds the scope of prior search by private individual who discovers evidence violates the Fourth Amendment. Walter v. U.S., 477 U.S. 649 (1980); U.S. v. Jacobsen, 466 U.S. 109 (1984). However, a third party may consent to a search of another's premises or property if actual authority exists. But inspection of closed containers that normally hold highly personal items requires the consent of the owner or a third party who has authority- actual or apparent- to give consent to the search of the container itself. Krise v. State, 746 N.E.2d 957 (Ind. 2001). Here, D lived with his fiancée at a house owned by D's mother & operated a photography studio in basement. Fiancée noticed, in basement, five videocassette records in an open shipping box with several unlabeled VHS tapes nearby. Fiancée viewed two or three of the tapes & saw that they showed a woman changing clothing from different camera angles in the changing room at D's studio. She then found two hidden cameras in the room. Fiancée took sixteen videotapes, including the ones she viewed, to police, who also viewed tapes. She also consented to the search of the home for video equipment & electronic devices/computer disks located at basement studio & surrounding areas to include main floor area. Police found 369 additional tapes & three additional hidden cameras.

Because fiancée had actual authority to consent to the police viewing the sixteen tapes, she provided to them, police could exceed the scope of fiancée's viewing of the three tapes & view all tapes without a warrant. By living with his fiancée & taking no steps to deny her access to tapes, D assumed the risk that she would take the tapes to the police station. Further, fiancée's authority to consent to the search of the home extended to the viewing of the videotapes because the videotapes, unlike a woman's purse, were not "closed containers" that contain personal items closely identified with a given individual. Further, the viewing of the videotapes was constitutional under the Article I, Section 11 of the Indiana Constitution. Held, transfer granted, Ct. App.' opinion at 826 N.E.2d 131 vacated, judgment affirmed; Rucker, J., concurring in part & dissenting in part, believes that the videotapes were closed containers for which police needed consent of D to search by viewing & that the viewing of the tapes violated Article I, Section 11 of the Indiana Constitution because a warrant could have been obtained with ease.

TITLE: People v. Gonzalez
INDEX NO.: Z.3.d.3.
CITE: 88 N.Y.2d 289; 667 N.E.2d 323; 644 N.Y.S.2d 673 (1996)
SUBJECT: Consent to Search -- Guest's Hidden, Zipped Bag
HOLDING: Apartment dweller's authority to consent to search of premises, which she jointly occupied with brother, did not extend to closed and concealed duffle bag owned by guest who sometimes slept in apartment. Third party's authority to consent to search of property depends upon "common authority" and "mutual use of ... property by persons generally having joint access or control." Sister could consent to search of apartment, but she had neither actual nor apparent authority to consent to search of bag.

TITLE: Primus v. State

INDEX NO.: Z.3.d.3.

CITE: (2nd Dist., 8-11-04), Ind. App., 813 N.E.2d 370

SUBJECT: Third party consent - absent roommate's authority to consent

HOLDING: At a traffic stop, D's roommate indicated there was cocaine at the home where she & D lived. Based on the roommate's consent, officers searched the home & found cocaine. D argued that the search violated his right to be free from unreasonable search & seizure under the Fourth Amendment & Ind. Const. art. I, 11 because the roommate did not have authority to consent to the search & reasonable officers would not have believed she did. Ct. held that search was reasonable under totality of circumstances. The roommate informed the officers that the cocaine in her car & home belonged to D, with whom she & their child lived. The roommate gave the address to the residence, described it, & stated that she had lived there for the past several months, she paid the bills for it, & that she received mail there. She then gave officers a key. Under the circumstances, it was reasonable to search the house based on her consent. The roommate, as a resident of the house with common authority over it, had actual authority to consent, & the respective locations of the roommate & D were of no consequence. Held, denial of motion to suppress affirmed.

NOTE: The validity of this case is in question in light of Georgia v. Randolph, 547 U.S. 103 (2006) (when one occupant of a residence is physically present and refuses to consent to a police search of the premises, warrantless entry and search are unreasonable and invalid as to him, even though another occupant of the residence consents to the search).

RELATED CASES: Fernandez, 134 S. Ct. 1126 (U.S.S. Ct. 2013) (*distinguishing Georgia v. Randolph*, Court ruled D's on-the-scene objection to officers' request to search apartment he shared with his girlfriend did not matter; objection is relevant only when the objecting person is at the scene when other person consents to a search; girlfriend consented to search after D was arrested and removed from scene so his objection was of no consequence); Hill, App., 825 N.E.2d 432 (fact that D & his wife were separated & that wife sometimes stayed at her mother's house does not in & of itself undermine her actual or apparent authority over premises).

TITLE: R.B. v. State

INDEX NO.: Z.3.d.3.

CITE: (9/11/2015), 43 N.E.3d 648 (Ind. Ct. App 2015)

SUBJECT: Warrantless search of juvenile's bedroom upheld

HOLDING: Addressing a matter of first impression, Court held that it is reasonable under Fourth Amendment for an officer to rely on the voluntary consent of a minor's parent to search the minor's bedroom inside the parent's home. Georgia v. Randolph, 547 U.S. 103 (2006) recognized that people living together who fall within some recognized hierarchy, like a household of parent and child, might have a "societal understanding of superior and inferior" rights to use and enjoy property. That is the case with respect to minors in their parents' homes. The "widely shared social expectations" in such circumstances are that the parents have unilateral authority over and access to the home. Id. at 114. Accordingly, like numerous other jurisdictions, Court rejected R.B.'s argument that his mother's consent does not supersede his. Juvenile court did not abuse its discretion in admitting firearms seized from R.B.'s bedroom. Held, delinquency adjudication affirmed.

TITLE: Stallings v. State

INDEX NO.: Z.3.d.3.

CITE: (6/5/87), Ind., 508 N.E.2d 550

SUBJECT: Consent - third party

HOLDING: Tr. Ct. did not err in admitting evidence of search of D's residence where nonresident co-owner voluntarily consented to search. Consent to search given by third party having common authority with D over premises is sufficient to justify warrantless search of D's residence. Brooks 497 N.E.2d 210; Fisher 468 N.E.2d 1365; Bruce 375 N.E.2d 1042. Common authority is not to be implied from mere property interest third party has in property. Bruce. Authority which justifies third party consent rests on mutual use of property by persons generally having joint access or control for most purposes, including right to permit inspection. Bruce. Police relied on third person's ownership to validate consent to search. Facts show that person actually used house, maintaining right of entry to collect mail & to maintain premises. Held, consent was valid; conviction affirmed.

RELATED CASES: Krise, 746 N.E.2d 957 (mere fact that purse was located in common area of house (bathroom) did not render reasonable a belief that housemate had requisite authority to consent to search of purse); Brown, 691 N.E.2d 438 (issue is not whether third party had common authority over D's personal effects, but rather whether third party had common authority over home & bedroom); Caldwell 583 N.E.2d 122 (although D rented motel room in his name, he invited girlfriend to stay with him. By consenting to her access & use of the room, he created legitimate expectation of privacy in her, & gave her common authority in the room. Therefore, her consent to search room, which produced murder weapon, was valid).

TITLE: Starks v. State

INDEX NO: Z.3.d.3.

CITE: (2nd Dist., 04-27-06), Ind. App., 846 N.E.2d 673

SUBJECT: Valid consent to search residence

HOLDING: In dealing in cocaine prosecution, Tr. Ct. properly denied D's motion to suppress evidence. State presented sufficient evidence to prove that 83-year-old owner of home consented to search of residence. She told police officers that residence was very disruptive due to noise coming from basement. Homeowner stated that she & her grandson were only people living in house, that she knew of D but did not know he was inside her house. D argued that warrantless seizure of handgun & cocaine discovered in basement under a couch was unconstitutional because he had a reasonable expectation of privacy in his living quarters in basement & because he never consented to search. Based on facts available to officers, it was reasonable for them to believe that homeowner had actual or apparent authority to consent to search of residence, including D's living quarters in basement. In so holding, Ct. distinguished Georgia v. Randolph, 547 U.S. 103 (2006), which held that a warrantless search of shared dwelling for evidence over the express refusal of consent by a physically present resident cannot be justified as reasonable as to him on basis of consent given to police by another resident. At time homeowner consented to search of residence, D was not physically present in her bedroom, nor did he express his refusal to consent to search. Held, judgment affirmed.

RELATED CASES: Bulthuis, 17 N.E.3d 378 (Ind. Ct. App 2014) (police were not required to give D the opportunity to object to the search after he had been taken into custody in a police vehicle on an active warrant for his arrest); Fernandez, 134 S. Ct. 1126 (U.S.S. Ct. 2013) (*distinguishing Georgia v. Randolph*, Court ruled D's on-the-scene objection to officers' request to search apartment he shared with his girlfriend did not matter; objection is relevant only when the objecting person is at the scene when other person consents to a search; girlfriend consented to search after D was arrested and removed from scene so his objection was of no consequence).

TITLE: State v. Benson

INDEX NO.: Z.3.d.3.

CITE: 983 P.2d 225 (Idaho Ct. App. 1999)

SUBJECT: 3d-party Consent -- Resident of House Lacked Authority to Consent to Search of Garage Apartment

HOLDING: Resident of house had neither actual nor apparent authority to consent to search of detached garage occupied by her daughter and daughter's boyfriend and secured with lock to which only occupants had key. Because resident of house had no key to garage, she did not share common authority over garage. Information known to officers, including loud protests from occupants of garage, did not give them reasonable grounds to believe in apparent authority of house's resident to consent to search.

TITLE: State v. Foreman

INDEX NO.: Z.3.d.3.

CITE: (3-11-96), Ind., 662 N.E.2d 929

SUBJECT: Warrantless search invalid - no third-party consent

HOLDING: Tr. Ct. properly granted motion to suppress evidence obtained from warrantless search of illegal gambling operation, because valid consent to search locked room was not obtained & D had reasonable expectation of privacy in room. After stopping unauthorized bingo game in progress, lessor of building gave police unqualified written consent to search premises. During search, police found locked door, removed door from its hinges & entered room behind door without questioning or obtaining permission from lessor. Room was leased to D from lessor & contained several video gambling machines owned by D & generally accessible to patrons of bingo center. Relying on Illinois v. Rodriguez, 497 U.S. 177, 110 S. Ct. 2793 (1990), Ct. App. concluded that warrantless search was valid because police officers reasonably believed that lessor had common authority over leased room. S. Ct. rejected this analysis, noting that there was no evidence that lessor consented to search of locked room. Fact that officers reasonably believed lessor had common authority over leased room is irrelevant if it is not first clear that lessor actually consented to search of room. Id. There was sufficient evidence that lessor did not validly consent to search locked room in this case, in light of fact that police officers removed door off its hinges to gain access to room instead of merely asking lessor to unlock door. Held, transfer granted, Tr. Ct. affirmed, Ct. App. decision at 649 N.E.2d 120 vacated.

TITLE: State v. Grant

INDEX NO.: Z.3.d.3.

CITE: 614 N.W.2d 848 (Iowa Ct. App. 2000)

SUBJECT: Third-party Consent -- Guest's Effects

HOLDING: Apartment renter's permission for search of bedroom did not extend to pockets of guest's unworn jacket. Renter called police to tell them houseguest had hidden gun in his apartment, and he wanted police to remove it. Renter consented to search of bedroom, where police found nude man and woman. Police asked couple to dress and leave room. Officer then searched jacket found in room, which police later discovered belonged to guest. Renter did not have actual authority to consent to search of guest's jacket. As for question of apparent authority, under circumstances, given nudity of occupants of room, it was clear that they were guests of renter and that some items of clothing in room belonged to them, and consequently it was unreasonable to believe that renter had authority to consent to search of jacket.

TITLE: State v. Kieffer

INDEX NO.: Z.3.d.3.

CITE: (217 Wis.2d 531, 577 N.W.2d 352 (Wis. 1998))

SUBJECT: Third-party Consent to Search -- Father-in-Law's Consent to Search Garage Apartment

HOLDING: Officer's failure to ask pertinent questions about property owner's access to and use of loft-space over garage where daughter and son-in-law lived made it unreasonable for officers to rely on owner's "apparent authority" to consent to search. Officers told property owner they had information that a man staying with his daughter and son-in-law had sold psilocybin mushrooms. They ascertained that the father-in-law owned house and garage, that he had no formal rental agreement with D and daughter but that they sometimes helped with utility bills, and that loft had neither telephone nor plumbing. He told them that he usually knocked before entering loft. Owner then knocked on loft door, and after hearing no answer, opened unlocked door and escorted officers inside. Wisconsin S. Ct. finds that questions asked of owner did not give officers reason to believe that he had apparent authority to consent to search of loft. They could and should have asked the following: Did the couple have the right to exclude others from the loft? Was it the owner's normal practice to enter and leave whenever he felt like it? Did the owner make personal use of the loft? Did the loft have a lock on the door, and if so, did the owner have a key? State argued that there should be presumption of authority where child lives with parents, but Court rejected this, finding that familial relationship is merely one of many factors to consider when determining authority to consent.

TITLE: State v. Thomas

INDEX NO.: Z.3.d.3.

CITE: (1st Dist., 10-26-94), Ind. App., 642 N.E.2d 240

SUBJECT: Invalid, involuntary consent third party acting as agent of police¹

HOLDING: Tr. Ct. did not err in granting D's motion to suppress evidence obtained as result of State's covert, warrantless video surveillance. Ind. Department of Natural Resources (DNR) & D entered into lease & concession agreement to allow D to operate camp store located on land owned by State at state park. D agreed to pay DNR percentage of gross sales of business & State retained some authority over operations & management of camp store. After park official visited store & noticed questionable sales methods, conservation officers obtained key to camp store from DNR property manager, & after business hours installed & aimed video cameras over cash register. Videotapes allegedly showed that store had received significantly more revenue than D reported to State. Ct. rejected State's argument that there was valid, voluntary consent by owner (State) to search camp store. Consent to search by third party with common authority over place searched is invalid where third party is acting as instrument or agent of police, Coolidge v. New Hampshire, 91 S. Ct. 2022. Here, DNR exploited its dual role as licensor of concession & as law enforcement agency, & contract right did not confer upon DNR acting as law enforcement agency right to enter premises to install camera in attic to conduct covert surveillance. Held, grant of motion to suppress affirmed, Robertson, J., dissenting.

TITLE: State v. Young

INDEX NO.: Z.3.d.3.

CITE: 974 So.2d 601 (2008)

SUBJECT: 4th Amendment violated where church officials allowed search of pastor's computer

HOLDING: Florida District Court of Appeals held police officers who obtained permission from regional church officials to search the office and computer of a pastor violated the Fourth Amendment when they went forward with the searches without obtaining consent from the pastor himself. Employees retain a reasonable expectation of privacy in personal files they place on their office computers. Courts have reached different conclusions about whether individuals have an expectation of privacy in their workplace computers that is "reasonable" and, thus, protected by the Fourth Amendment. See United States v. Ziegler, 474 F.3d 1184 (9th Cir. 2007) (discussing division of authority and finding valid consent to search executive of company's computer). Court distinguished Ziegler and similar decisions on the grounds that D's computer was not part of a network and that the church hierarchy had no clear, disseminated policy regarding its access to its pastors' offices and computers. Affirming the suppression order, Court said, "All employees have supervisors, but many employees may still have a legitimate expectation that others will not examine their personal files, even if these files are brought into the workplace."

TITLE: Trulock v. Freeh
INDEX NO.: Z.3.d.3.
CITE: 275 F.3d 391 (4th Cir. 2001)
SUBJECT: Password-Protected Files on Jointly Used Computer
HOLDING: Password-protected files on shared computer are analogous to locked container in shared living space, so that third-party without knowledge of passwords cannot consent to search of files. However, agents who searched files have qualified immunity from civil suit because this was case of first impression and analogy was not obvious.

TITLE: United States v. Hudspeth
INDEX NO.: Z.3.d.3.
CITE: 459 F.3d 922 (8th Cir. 2006) vacated at 2007 U.S. App LEXIS 16854; reinstated in part at 513 F.3d 954
SUBJECT: Georgia v. Randolph applies even if cohabitant not at scene
HOLDING: The U.S. Court of Appeals for the Eighth Circuit held that a suspect's refusal to give police officers permission for a search or seizure will bar police from relying on a cohabitant's consent, regardless of whether the suspect is on the scene or somewhere else. Although the U.S. Supreme Court's recent decision in Georgia v. Randolph, 126 S. Ct. 1515 (2006) on third party consent spoke in terms of "a physically present" cohabitant's objection, the principles underlying the court's decision in that case would apply to off-site objectors as well. In the present case, police executing a warrant to search for drug-related evidence on D's office computer found child pornography instead. When they asked D for permission to search his home computer, he refused, and the officers called D's home obtaining his wife's permission to take the computer back to their office for a search.

TITLE: U.S. v. James
INDEX NO.: Z.3.d.3.
CITE: 353 F.3d 606 (8th Cir. 2003)
SUBJECT: Third-party Consent - Bailee
HOLDING: Third-party to whom D gave sealed envelope with instructions to safeguard and later to destroy did not have apparent authority over contents so as to consent to search. Third-party here was bailee and did not have true joint possession. Bailee may have potential physical access to concealed items inside container, but that type of access does not imply actual authority to examine contents or to consent to allow another to do so.

TITLE: U.S. v. Fultz

INDEX NO.: Z.3.d.3.

CITE: 146 F.3d 1102 (9th Cir. 1998)

SUBJECT: Third - party Consent -- Homeless Man's Cardboard Boxes and Garbage Bags

HOLDING: A homeless D who was storing cardboard boxes containing personal items in friend's garage enjoyed expectation of privacy in boxes and bags protected by 4th Amendment. Officers investigating robbery talked to owner of garage where boxes and bags were stored. Homeowner indicated that boxes and bags were D's and that none of her possessions were intermingled with D's. She then gave general permission to search garage. Court of Appeals likened these boxes and bags to any closed container containing personal items. The 4th Amendment protects such containers, not because of their cost or what they look like, but because of what they contain. Government argued that homeowner could validly consent, because she had mutual use and access to garage, but Court makes clear that what matters is whether she had joint access and mutual use of boxes and bags. Because she did not, and did not indicate that she did, she had neither actual nor apparent authority to consent to search.

TITLE: U.S. v. Jaras

INDEX NO.: Z.3.d.3.

CITE: 86 F.3d 383 (6th Cir. 1996)

SUBJECT: Driver's Consent to Search of Car Didn't Cover Suitcases Identified as Passenger's

HOLDING: Motorist's consent to search of car did not extend to suitcases, located in trunk, which motorist expressly identified as belonging to passenger. Nor could passenger's consent to search be implied from his silence when told of motorist's consent or failure to object to search of suitcases. Mere presence of suitcases in trunk did not demonstrate mutual use and control over them so as to give him actual authority to consent to their being searched. Neither did he have apparent authority to consent to search of the suitcases. His statement that suitcases belonged to passenger put officer on notice that he had no authority to consent and served to put them outside scope of his consent.

TITLE: United States v. Matlock
INDEX NO.: Z.3.d.3.
CITE: 415 U.S. 164, 94 S. Ct. 988, 39 L.Ed.2d 242 (1974)
SUBJECT: Exceptions to search warrant requirement - Consent - Third party
HOLDING: It is not essential for prosecution to show that consenting person knew of right to refuse consent in order to establish voluntary consent. Consent to warrantless search by one who possesses common authority or other sufficient relationship to premises or effect sought to be inspected is valid against absent, nonconsenting person with whom authority is shared. Common authority is not to be implied from mere property interest. Common authority rests on mutual use of property by persons generally having joint access or control for most purposes. Each person has right to permit inspection in his own right & so that others have assumed risks thereof. Relationship to premises or effect may be shown by hearsay. Held, judgment reversed & remanded. Douglas, Brennan, & Marshall JJ., dissented.

TITLE: United States v. Purcell

INDEX NO.: Z.3.d.3.

CITE: 526 F.3d 953 (6th Cir. 2008)

SUBJECT: Girlfriend's apparent authority to consent dissipated once men's clothing found in luggage

HOLDING: Sixth Circuit Court of Appeals held law enforcement officers should not have continued to rely on a woman's permission to search luggage after they searched the first bag and found that it contained only her boyfriend's clothes and effects. Their discovery of the men's clothing "dissipated" the girlfriend's apparent authority to consent, and the Fourth Amendment required the officers either to obtain a warrant or to clarify the girlfriend's authority over the bags. D had escaped from prison, and officers tracked him to a hotel room he was sharing with his girlfriend. The officers arrested him without incident and obtained the girlfriend's permission to search the room. The officers also asked the girlfriend whether there was anything dangerous in the room, and she said there was a handgun in one of the three pieces of luggage in the room but that she was not sure which one. While searching the first of three bags, the officers found men's clothing and effects and a bag of marijuana, but no gun. They continued their search of the luggage until they found a gun in a backpack. Sixth Circuit assumed, without resolving, that the evidence in the record supported the district court's finding that the girlfriend did not actually have the type of mutual use of the duffels and backpack that would have given her actual authority to consent to their search. Instead, Court focused and rejected the government's alternative argument that the officers reasonably relied on the girlfriend's apparent authority to give consent for a search of the backpack.

TITLE: Walker v. State

INDEX NO.: Z.3.d.3.

CITE: (4/18/2013), 986 N.E.2d 328 (Ind. Ct. App 2013)

SUBJECT: Co-occupant's consent - sufficient to justify search

HOLDING: Tr. Ct. did not abuse its discretion by admitting the fruits of a search of D's home to which D's mother and wife consented. A third party who has common authority over the property may give consent. However, when the consent is disputed by a present and objecting co-tenant, a warrant is needed. Georgia v. Randolph, 547 U.S. 103 (2006). Here, D lived with his wife and mother who suffered from Alzheimer's disease. When D's wife suspected that D was making methamphetamine, she took D's mother, left the house, and contacted the police. Both Wife and Mother gave the police consent to search the house. Although Mother suffered from Alzheimer's disease and D was her power of attorney, D failed to present any evidence of the progression of Mother's disease or her mental state. As such, she was presumed competent to consent to the search. Further, Wife also consented to the search. The fact that D did not object to the search when it occurred distinguishes this case from Georgia v. Randolph. Thus, the consent of both Wife and Mother justified the warrantless search of their home. Held, judgment affirmed.

Z. SEARCH AND SEIZURE

Z.3. Exceptions to search warrant requirement

Z.3.e. Emergency searches

TITLE: Caniglia v. Strom
INDEX NO.: Z.3.e.
CITE: (05/17/2021), 141 S. Ct. 1596 (U.S. 2021)
SUBJECT: "Community caretaking" exception cannot justify warrantless home entry and search
HOLDING: Law enforcement cannot legally enter homes without a warrant, exigency, or consent, even in cases when doing so may benefit the public interest under the "community caretaking" exception. Here, police acted unlawfully by entering Caniglia's home and removing his firearms without a warrant after he had expressed thoughts of suicide and was taken to the hospital for a psychiatric evaluation. Police entered the home under the "community caretaking" exception that allows entry in cases when doing so benefits the public interest, which has traditionally applied to incidents regarding vehicles but not in homes. Noting that "[w]hat is reasonable for vehicles is different from what is reasonable for homes," the Court held that the community caretaking exception could not be extended to the home without violating the Fourth Amendment. Kavanaugh, J., issued a concurring opinion to note that the Court's decision does not affect police officers' ability to take "reasonable steps to assist those who are inside a home and in need of aid" that are protected under a separate "exigent circumstances" doctrine, such as when an elderly person has fallen or to prevent a potential suicide. Alito, J., concurring, noted that the Court's ruling implicates but does not address "red flag" laws that allow police to seize guns pursuant to a court order to prevent harm to oneself or others.

TITLE: Carpenter v. State

INDEX NO.: Z.3.e.

CITE: (10/21/2014), 18 N.E.3d 998 (Ind. 2014)

SUBJECT: Warrantless entry - insufficient evidence of emergency

HOLDING: Tr. Ct. abused its discretion by admitting into evidence marijuana discovered during a warrantless search of D's home. Article I, Section 11 allows warrantless entry into a home when an officer has objectively reasonable grounds to believe immediate aid is needed inside. Van Winkle v. State, 764 N.E.2d 258, 266-67 (Ind. Ct. App 2002). Here, officers responded to a report of dogs fighting in D's backyard. When they arrived, there were three bloodied pit bulls running in and out of an open backdoor of the home and one more severely injured dog hiding under the deck. The officers jumped the fence and secured three of the four dogs. The fourth dog went inside the home. The officers knocked and yelled inside to see if someone was home and received no answer. They went into the home to retrieve the dog and check if there were any injured dogs or people inside. They saw a marijuana growing operation, upon which a search warrant was obtained. Although protection of the public is a legitimate and important law enforcement function, the officers had no knowledge that there were people in a dangerous situation inside the home. Any threat of danger to the outside public was slight in that the dog was confined in the fenced yard secured by a locked gate. Further, the police had D's cell number and could have called him. Thus, the officers' warrantless entry into the home was unreasonable and impermissible under Article I, Section 11 of the Indiana Constitution. Held, transfer granted, Court of Appeals' Opinion at 3 N.E.3d 1068 is vacated, judgment reversed.

TITLE: Cudworth v. State

INDEX NO.: Z.3.e.

CITE: (2nd Dist., 11-24-04), Ind. App., 818 N.E.2d 133

SUBJECT: Warrantless home entry & search - no exigent circumstances

HOLDING: Tr. Ct. abused its discretion in denying D's Motion to Suppress. State argued that exigent circumstances existed to search a house where police received an anonymous 911 call that an individual was being held at gunpoint in the house. Police had ordered everybody out of the house & upon arrival questioned those outside if anyone else was in the house, which was answered negatively. Ct. did not agree that exigent circumstances existed to search the house, finding that the Tr. Ct.'s reliance on Thacker v. City of Columbus, 328 F.3d 244 (6th Cir. 2003) was misplaced as the only similarity was that in both cases police responded to 911 calls. In Thacker, police immediately could corroborate facts from the 911 call; an individual at the site was intoxicated, belligerent & wouldn't explain his injuries; & police needed to secure the residence for the safety of paramedics. A genuine showing of an emergency is necessary prior to dispensing with a warrant, which was not present in this case. Moreover, while exigent circumstances justify dispensing with a search warrant, they do not eliminate need for probable cause, which did not exist here. Officer's testimony of a prior arrest of someone inside the house & a month-old encounter with a person with the name given as the man being held at gunpoint did not corroborate the anonymous 911 call. Relevant inquiry is whether State established the circumstances as they appear at the moment of entry would lead a reasonable, experienced officer to believe someone was in the house requiring immediate assistance. Further, entry was not justified by officer's subjective belief that he was being lied to, as objective evidence that a violent crime had or was about to occur was necessary. Held, judgment reversed & convictions vacated.

RELATED CASES: Trotter, 933 N.E.2d 572 (Ind. Ct. App. (2010) (fact that there may be an unaccounted-for shotgun on the premises created a possible unsafe situation, but did not establish an exigency to justify a warrantless intrusion into a private residence); Montgomery, App., 904 N.E.2d 374 (unlike situation in Cudworth, officers in this case obtained no information upon arrival at motel room that cast doubt on girlfriend's claims that D was in danger, thus officers acted reasonably in entering room).

TITLE: Davis v. State

INDEX NO.: Z.3.e.

CITE: (3rd Dist., 06-11-09), 907 N.E.2d 1043 (Ind. Ct. App. 2009)

SUBJECT: Warrantless entry & search - exigent circumstances

HOLDING: It is a reasonable extension of the logic in Trimble v. State, 842 N.E.2d 798 (Ind. 2006), that circumstances of animal cruelty may create exigent circumstances to permit a warrantless search of the curtilage. Here, the pervasive smell of rotting flesh and neighbor's statement of seeing emaciated dogs on property created probable cause along with exigent circumstances of threat to animal life to permit a warrantless search of D's curtilage. Once on the property, officer heard whimpering of dogs which further supported search of property, even into areas beyond that which encompassed areas open to view of public, to verify the well-being of the dogs. Although another officer's warrantless re-entry to curtilage of D's property violated Fourth Amendment, untainted observations by initial officer combined with other information (i.e., neighbors' observations) sufficiently established probable cause for search of premises for evidence of dog fighting and animal cruelty. Although some of the statements in the affidavit were overstatements, there was still a substantial basis supporting issuance of warrant, and warrant language sufficiently described items to be seized. Held, judgment affirmed.

TITLE: Govan v. State

INDEX NO.: Z.3.e.

CITE: (1/25/2019), 116 N.E.3d 1165 (Ind. Ct. App. 2019)

SUBJECT: Exigent circumstances permitted police to obtain D's real-time cellular phone location data

HOLDING: For purpose of both Fourth Amendment and Ind. Code § 35-33-5-12(a)(2), exigent circumstances existed to obtain D's real-time cell phone location data without first seeking a court order. Police had ample reason to believe D had committed violent felonies and presented an ongoing threat to the lives and safety of victims and their families and had further reason to believe that obtaining real-time data about location of D's cell phone would assist them in finding him and furthering their investigation. Officers filed their search warrant affidavit one day late, but their failure to comply with statutory mandates does not mandate suppression or exclusion of evidence, and the delay was harmless error. Based on information from other police officers, detective reasonably concluded D had committed felony confinement and battery, thus he had probable cause to arrest D. Warrantless arrest and search of D was likewise reasonable under the Indiana Constitution. Held, judgment affirmed.

HOLDING: McGhee, 192 N.E.3d 1009 (Ind. Ct. App. 2022) (totality of circumstances surrounding murder victim's disappearance created exigent circumstance that justified warrantless acquisition of D's cell-site location information records).

TITLE: Harless v. State

INDEX NO.: Z.3.e.

CITE: (1st Dist. 08/28/91), Ind. App., 577 N.E.2d 245

SUBJECT: Warrantless search - no exigent circumstances

HOLDING: Where evidence did not show anyone in home posed danger justifying protective sweep, & there were no facts which made officers certain that evidence was being destroyed, warrantless search of home was improper, & Tr. Ct. erred in denying D's motion to suppress. D's brother, who was acting as informant for police, told them cocaine was present in D's girlfriend's home, & D & others were smoking it. Informant had previously made police purchase from D at girlfriend's home, & on day of search had made aborted attempt to purchase, returning to police without all of "buy money." Without warrant, officers decided to raid home to recover "buy money" & cocaine. When officers entered, D was lying on sofa, & police removed rifle on floor beside him, patted him down, & recovered missing "buy money" in process. Police advised D of his rights, asked for consent to search home, & D signed consent & waiver of rights. Search disclosed cocaine, & Tr. Ct. denied D's motion to suppress.

Judicially issued warrant is required for valid search & seizure except for narrowly drawn exceptions where immediate response is necessary. Richard, App., 482 N.E.2d 282. Burden is on State to show such exception applies, & Ct.'s should take very hard line against search of person's home without warrant or consent. U.S. v. Salgado, (7th Cir. 1986), 807 F.2d 603. Exceptions include risk of bodily harm or death, aiding someone in need of assistance, protecting private property, & actual or imminent destruction or removal of evidence before warrant could be obtained. Ct. noted that exigent circumstances exception requires that police have objective & reasonable fear of destruction. Fact that narcotics are involved, standing alone, is not enough to invoke exigent circumstances. Ct. found danger of imminent destruction found in Sayre, 471 N.E.2d 708, to be lacking in this case: prior to knock & announce officers did not see people inside home with drug paraphernalia; officers didn't see anyone scrambling to destroy evidence; & officer's previous observations of supposed drug activity in home could have been used to obtain warrant. Warrantless search was also not justified by protective sweep exception, because facts didn't show anyone in home posed danger to officers. Because entry into home was illegal, D's consent given as consequence of illegal entry, was "fruit of poisonous tree" & inadmissible. Held, reversed & remanded for new trial.

RELATED CASES: Scott, App., 803 N.E.2d 1231 (police were justified in looking around the outside of the property to secure the area due to the explosive nature of manufacturing methamphetamine &, most importantly, to protect themselves from possible presence of the two individuals previously seen on the property); VanWinkle, App., 764 N.E.2d 258 (if officers would have taken time to obtain warrant, people in residence could have been injured by volatile methamphetamine manufacturing process, could have destroyed evidence, or could have attempted to inflict harm upon officers or others).

TITLE: Holder v. State
INDEX NO.: Z.3.e.
CITE: (05-18-06), Ind., 847 N.E.2d 930
SUBJECT: Warrantless invasion of curtilage & entry into home - smell of ether
HOLDING: Tr. Ct. did not err in denying motion to suppress evidence of methamphetamine manufacturing operation conducted inside D's home. D sought suppression of evidence under both federal & state constitutions after police came upon his property without a warrant & sniffed at his basement window to find source of strong odor of ether they had detected in neighborhood. Officers knocked on front & back door to investigate, initially receiving no response. D released more ether fumes into outdoor air when he opened door & revealed to officers that: 1) he had methamphetamine charges pending in another county & 2) that three others, including a three-year-old child, were present inside house.

Record was unclear whether officers encroached curtilage of D's home to sniff at basement window. Regardless of whether officers invaded D's curtilage, the significant degree of fumes from a known explosive & flammable chemical in a residential area compelled officers to find its source for safety & health of nearby residents. Thus, exigent circumstances created need to find source of ether odor, which led officers to walk across private property of several residents in neighborhood & ultimately crouch near D's basement window to take a sniff. Exigent circumstances also justified warrantless entry of D's house after he spoke to officers outside his back door. Although State offered no evidence suggesting a current or imminent effort to destroy evidence inside home, police were also focused upon risk of immediate danger to a young child in volatile atmosphere of home. Ct. cited several federal decisions which have held that a belief that an occupied residence contains a methamphetamine laboratory presents exigent circumstances permitting a warrantless search for occupants' safety.

In rejecting D's separate challenge to police conduct under Art. 1, § 11 of Indiana Constitution, Ct. noted that two of three Litchfield (824 N.E.2d 356) balancing factors--police concern that a violation of law has occurred, & extent of law enforcement needs for protection of public, were clearly present in this case. Held, transfer granted, Ct. App. opinion at 824 N.E.2d 364 vacated, judgment affirmed.

RELATED CASES: Warren, 73 N.E.3d 203 (Ind. Ct. App. 2017) (D's consent to search of his residence was not rendered invalid by repeated and prolonged "knock and talk"); Peters, App., 888 N.E.2d 274 (smell of ether, along with other indicia of methamphetamine manufacturing, justified a warrantless search of the D's car under the exigent circumstances exception to the warrant requirement).

TITLE: Ingle v. State

INDEX NO.: Z.3.e.

CITE: (2nd Dist., 10-25-78), Ind. App., 381 N.E.2d 887

SUBJECT: Exceptions to search warrant requirement - Protective sweep

HOLDING: Where police officers were faced with large number of people present on premises where arrest took place, at least one of whom was suspected of dealing in drugs and one of whom had displayed shotgun, it was permissible for police to make cursory search of basement to determine if there were other persons present who could pose threat to police. Arrest gives police right to search person and immediate surroundings of arrestee. Surveillance of prisoner and right to check for confederates or accomplice extends that right to permit police overall view of other rooms in premises, with concomitant right to seize evidence or weapons in plain view. Held, judgment affirmed, petition for rehearing denied.

RELATED CASES: Collins, App., 822 N.E.2d 214 (officer's observations through kitchen window of man holding gun corroborated tip & justified warrantless entry on basis of exigent circumstances).

TITLE: Jones v. State

INDEX NO.: Z.3.e.

CITE: (5/17/2016), 54 N.E.3d 1033 (Ind. Ct. App. 2016)

SUBJECT: Welfare check for children who were home alone was permissible

HOLDING: Exigent circumstances justified a warrantless welfare check of D's home to check on the safety of her three children who were left unattended in the middle of the night.

Just after midnight, police officer stopped D's car. He eventually arrested her for drug related offenses. D told officer that her children were home alone. Officer went to the home but could not establish communication with the children from outside the home. While still at the police station, D was allowed to call the children, but she could not reach them. Officer then entered the home and found marijuana, and in the basement, he found a lighting system and live marijuana plants.

Officer's reasonable belief that D's three minor children were at home without adult supervision was an exigent circumstance authorizing him to enter the home and help the children, those whom he reasonably believed needed help. See Montgomery v. State, 940 N.E.2d 374, 380 (Ind. Ct. App 2009), *trans. denied*. Unlike most other cases dealing with exigent circumstances, officer was not motivated by an intent to apprehend a suspect or seize incriminating evidence. See e.g. McDermott v. State, 877 N.E.2d 467 (Ind. Ct. App. 2007), *trans. denied*. Held, judgment affirmed.

TITLE: Justice v. State

INDEX NO.: Z.3.e.

CITE: (1st Dist. 4/16/90), Ind. App., 552 N.E.2d 844

SUBJECT: Exigent circumstances - dissipation of alcohol in blood insufficient standing alone

HOLDING: Absent auto accident, dissipation of alcohol in blood does not create exigent circumstances such as to justify warrantless, non-consensual blood test. Sample was taken & tested, showing .25 BAC, & evidence regarding it was admitted at trial over D's objection. State argues that exigent circumstances justified warrantless taking of sample, *citing Schmerber v. California*, (1966), 384 U.S. 757, 86 S. Ct. 1826, 16 L.Ed.2d 908. However, when discussing exigency arising from dissipation of alcohol in blood, U.S. S. Ct. referred to time required to investigate scene of accident & bring D to hospital as "special facts." Indiana Ct. App. concludes that dissipation of alcohol in blood does not alone create exigent circumstances. Ind. Code 9-11-4-1 to -18 allows police to take drivers' license & initiate suspension of license & prosecution of individual who refuses to submit to chemical test, but it does not authorize officer to order taking of blood sample without consent. Ind. Code 9-11-4-6(g), which became effective after charged offense here, does authorize nonconsensual blood sample from individual taken to hospital for treatment following involvement in accident resulting in death or serious bodily injury of another. Sample taken here was unlawful & inadmissible, but in light of other overwhelming evidence of D's intoxication, error was harmless. Held, conviction affirmed.

NOTE: Cf. State v. Robbins, App., 549 N.E.2d 1107.

TITLE: Lindsey v. State
INDEX NO.: Z.3.e.
CITE: (2nd Dist., 11-09-09), 916 N.E.2d 230 (Ind. App. 2009)
SUBJECT: Protective sweep of car - exigent circumstances
HOLDING: Exigent circumstance of officer safety justified police officer's actions in opening D's car door wider and visually inspecting the car's interior. Officer saw D run into store, brandish a weapon, and leave store heading in direction of the car, which had its driver's side door open. Under these circumstances, it was reasonable for officer to believe that the car may have been D's getaway car and that a possibly armed accomplice may have been inside. Officer ceased his search as soon as he confirmed that no one was in car and no longer had safety concerns. Nothing in car was seized until a search warrant was obtained. Because the contents of the car were concealed by its tinted windows and door was ajar, officer did not violate Fourth Amendment or Article 1, Section 11 of Indiana Constitution by opening the door wider and looking inside. Thus, Tr. Ct. did not abuse its discretion by admitting evidence discovered during subsequent search of D's car. Held, judgment affirmed.

TITLE: Mitchell v. Wisconsin
INDEX NO.: Z.3.e.
CITE: 139 S. Ct. 2525 (6/27/2019) (U.S. 2019)
SUBJECT: Police can order blood drawn from unconscious DUI suspects
HOLDING: When police encounter an unconscious driver suspected of driving under the influence of alcohol or drugs, the exigent circumstances doctrine will “almost always” permit a blood test without a warrant.

To determine whether exigency exists where a suspected drunk driver is unconscious, Court considers whether the BAC evidence is dissipating, and when some “other factors create pressing health, safety, or law enforcement needs which would take priority over an application for a warrant.” Thus, when a driver is unconscious, the Court imposed the general rule that a warrant is not needed.

Wisconsin statute provides that people driving on a public road have impliedly consented to having their blood drawn if police suspect them of driving under the influence, and that being unconscious doesn’t mean that consent has been withdrawn. But Court did not decide whether police officers can rely on Wisconsin’s informed consent law alone. Thomas, J., *CONCURRING*, believes that exigent circumstances will always be present once police have probable cause to believe the driver is drunk, regardless of whether the driver is unconscious. Sotomayor, J., joined by Ginsburg and Kagan, JJ., *DISSENTING*, emphasized that a warrant is necessary if there is time to get one, and Wisconsin officials here admitted there had been time to get a warrant but said the step wasn't needed because of the implied consent statute; Gorsuch, J., *DISSENTING*, notes that the Court declined to answer whether Wisconsin's implied consent law alone justifies a warrantless blood draw on unconscious individuals. He would have dismissed the case as “improvidently granted.”

TITLE: People v. Grazier

INDEX NO.: Z.3.e.

CITE: 992 P.2d 1149 (Colo. 2000)

SUBJECT: Warrantless Search -- Probable Cause/Exigent Circumstances

HOLDING: Despite neighbor's call reporting possible burglary, totality of circumstances, including officer's observations once they arrived at residence, did not give rise to probable cause to believe that burglary was in progress. Police received 911 call saying that someone was entering nearby apartment through window, and caller thought it might be burglary. When police arrived at scene, they looked through window and saw man sitting on couch. When they knocked on the door, the man opened it to them. Police arrested and handcuffed this man without asking him whether he lived in the apartment, and on further searching they found D taking shower and arrested him. Search of D's person revealed marijuana. Tr. Ct. properly suppressed all evidence, holding that officers lacked either probable cause or exigent circumstances. Only fact supporting conclusion that burglary was in progress was equivocal 911 call. Officers' observation of man sitting on couch cast doubt on idea that burglary was in progress, and fact that man opened door to police evaporated probable cause completely.

TITLE: Price v. State

INDEX NO.: Z.3.e.

CITE: (2/22/2019), 119 N.E.3d 212 (Ind. Ct. App. 2019)

SUBJECT: Exigent circumstances justified search of apartment and cellphone

HOLDING: Search of D's home and cell phone following her son's death was not a violation of her Fourth Amendment rights. The day of victim's (B.P.'s) death, after he had been taken to the hospital, a detective did a cursory walk-through of D's apartment, attempting to find anything the child might have consumed to report to the doctors to aid in their diagnosis. During the walkthrough, the detective saw blood spots on the bedding in B.P.'s room and a blood spot on the bedroom carpet. After the detective learned B.P. had died, a search warrant was issued for the apartment and officers found more incriminating evidence, including a camera by B.P.'s bed that D indicated sent video to her cell phone. The detective retrieved the phone from the apartment and took it to D, who was sitting in her vehicle outside, for help powering and unlocking it. The detective informed D that he "didn't want her accessing the phone at that time." After about "twenty or thirty seconds" of D "actively . . . hitting the screen," the detective reached into the car and grabbed the cellphone from D. A warrant to search the phone was issued and officers found incriminating texts.

Court rejected D's argument that both searches violated her Fourth Amendment rights. Relying on the exigent circumstances exception to the warrant requirement, Court stated, "[w]e cannot find many situations more urgent than a child who has been found unconscious, was on his way to the hospital, and an officer's need to save that child's life by looking for apparent dangerous substances in the apartment that the child might possibly have consumed, and in turn offering that information to doctors to aid in the child's treatment." Additionally, the detective's warrantless entry into the apartment and brief walk-through constituted a legitimate exercise of the community caretaking function of the police. Because the detective reasonably believed that D was deleting evidence from her phone, he correctly seized the phone under exigent circumstances. Because the warrant to search the phone "included but was not limited to, . . . text messages, . . . records of calls received, sent, or missed," it was not overly broad. This clause "enjoyed a close nexus to the testimony offered by [detective] at the probable cause determination hearing—that his department was investigating the suspicious death of B.P., and they hoped a search of D's phone would yield 'pertinent information.'" Held, judgment affirmed.

RELATED CASES: Caniglia v. Strom 141 S. Ct. 1596 (U.S. 2021) ("Community caretaking" exception cannot justify warrantless home entry and search).

TITLE: Ramirez v. State
INDEX NO.: Z.3.e.
CITE: (9/23/2021), 174 N.E.3d 181 (Ind. 2021)
SUBJECT: Seizure of home-security footage under exigent circumstances exception
HOLDING: In murder, neglect and LWOP prosecution, trial court did not abuse its discretion in admitting into evidence video footage obtained from a home-security-system recorder detectives seized while executing a warrant to “photograph and/or videotape” Defendant’s parents’ home. Believing the recorder contained “potentially fleeting evidence” that was “clearly critical” to the investigation, a detective secured it while he applied for a search warrant to prevent its contents from being tampered with or destroyed. The footage showed Defendant in the driveway, striking the children. The Indiana Supreme Court concluded that the exigent-circumstances exception justified the warrantless seizure of the recorder under the Fourth Amendment, and that under the Indiana Constitution, the seizure was likewise reasonable under the totality of the circumstances. The detective’s belief that the recorder’s contents were in danger of being imminently destroyed was objectively reasonable. When the recorder was seized, law enforcement officers were still establishing a timeline of events leading up to child’s death and had reason to believe Defendant brought victim to his parents’ house the night before she died. Even assuming the recorder had been improperly seized, admitting the footage was harmless beyond a reasonable doubt considering independent, overwhelming evidence of Defendant’s guilt.

The Court also found no abuse of discretion in excluding evidence of mother’s prior bad acts involving her children — specifically, the murder victim’s buckle fracture suffered a year before her death which the trial court deemed “too remote.” Defendant did not demonstrate that the 2017 buckle fracture was evidence of a “strikingly similar” crime or was caused by mother specifically, as required by Garland v. State, 788 N.E.2d 425, 430 (Ind. 2003). And the trial court properly concluded that Defendant failed to show “enough evidence of another appropriate purpose” under Rule 404(b). Moreover, even if this evidence should have been admitted under Rule 404(b), its exclusion was harmless because its probable impact on the jury in light of the other evidence was so minor that Defendant’s substantial rights were not prejudiced.

Next, the Court found no error in the supplemental jury instruction given over objection in response to a jury question during deliberations. The jury asked whether “intentionally causing harm that leads to death” was the same as “intentionally kills.” The trial court sent the jury a supplemental instruction saying, “The State does not have to prove that a defendant specifically intended to kill another person for that defendant to be guilty of murder. It is enough for the State to show that a defendant knowingly inflicted an injury that resulted in the other person’s death, and at the time he inflicted that injury, the defendant was aware of a high probability that said injury could cause the death of the other person.” The Supreme Court emphasized that the decision to give a supplemental instruction should be made with great caution. But consistent with Ind. Code § 34-36-1-6, an error or legal lacuna — a gap in final instructions — is no longer required for trial courts to supplement final instructions in responding to a jury’s question on a point of law. See Inman v. State, 4 N.E.3d 190 (Ind. 2014). The statute only requires that the jury “seek information concerning a legal issue before it.” Defendant’s challenge to the substance of the instruction also failed, with the Court declining to reverse based on his arguments that the instruction used the word “could” instead of “would” in the definition of “knowingly” and failed to define “intentionally.” Defendant waived his challenge to the process for giving the supplemental instruction — sending it to the jury in writing rather than calling the jury back in and reading it.

Finally, the Court found sufficient evidence to support the statutory “torture” aggravating factor that led the jury to recommend life without parole. Even without that aggravator, the jury could have recommended life based on the murder-of-a-child aggravator. Defendant’s sentence did not violate Article 1, Section 16 of the Indiana Constitution given the “severe” nature of Defendant’s offense, and revision is not warranted under Indiana Appellate Rule 7(B).

TITLE: Randall v. State
INDEX NO.: Z.3.e.
CITE: (4/26/2018), 101 N.E.3d 831 (Ind. Ct. App. 2018)
SUBJECT: Evidence admissible under emergency aid doctrine
HOLDING: Tr. Ct. did not abuse its discretion in denying D's motion to suppress drugs and paraphernalia found in his car because the warrantless search was justified under the emergency aid doctrine.

A deputy sheriff working as an off-duty security guard for a hospital observed D slumped over in his parked car. When deputy drove up to D's car and activated his lights, D abruptly exited his car and strode quickly toward the deputy. The deputy told D to return to his car; he complied. When he approached D, the deputy noticed D was sweating profusely and was "reaching around the car very nervously." Deputy asked D if he had drugs; he admitted he had both methamphetamine and marijuana pipes in his car. Once charged, D filed a motion to suppress. Relying on the community caretaking exception, the Tr. Ct. denied the motion.

The Tr. Ct. properly denied the motion to suppress but for the wrong reason. The evidence was admissible under the "emergency aid doctrine," not the community caretaking function, which applies only to inventory searches. The emergency aid doctrine applies here because it allows police to act without obtaining a warrant when they reasonably believe a person needs immediate help. See Mincey v. Arizona, 437 U.S. 385, 392 (1978). An officer may act without a warrant if he has "an objectively reasonable basis for believing that medical assistance [is] needed, or persons [are] in danger." Michigan v. Fisher, 558 U.S. 45, 49 (2009) (quotations omitted). Here, given D's physical condition and behavior, the deputy had an objectively reasonable basis to conclude D needed help. Thus, the evidence was admissible.

The outcome is the same under the Indiana Constitution. The degree of concern was high because D was slumped over his steering wheel, later acted erratically, and showed signs of physical distress. See Litchfield v. State, 824 N.E.2d 356, 361 (Ind. 2005) and M.O. v. State, 63 N.E.3d 329, 333 (Ind. 2016). The degree of intrusion was low because the deputy merely ordered D to return to his car, the place he had occupied mere moments before. See Litchfield, 824 N.E.2d at 361. Finally, while the extent of law enforcement needs were relatively low, the high degree of concern and the minimal intrusion weighed in favor of the brief seizure of D. Held, judgment affirmed.

TITLE: Ryburn v. Huff
INDEX NO.: Z.3.e.
CITE: (01-23-12), 132 S. Ct. 987 (U.S. 2012)
SUBJECT: Officers who entered a private residence without a warrant because they believed the family or officers inside the home were in danger were entitled to immunity in a lawsuit brought under 42 U.S.C. § 1983.

HOLDING: Two officers learned of a threat by Vincent Huff to "shoot up" the school. The officers knocked on the front door of the Huff residence and called the home phone number, but no one answered. When one officer called Mrs. Huff's cell phone, she answered and indicated she and Vincent were inside the home. They came outside to talk to the officers. When the officers asked if there were any guns in the house, Mrs. Huff immediately ran into the house, followed by her son. Without a warrant, the officers went inside to continue the interview. Eventually, the officers concluded the rumor about the school shooting was false.

The Huffs sued under 42 U.S.C. § 1983, alleging the officers violated the Huffs' Fourth Amendment rights by entering their home without a warrant. A divided Ninth Circuit panel ruled that the officers acted in an "objectively unreasonable manner" in entering the home without a warrant.

The Court summarily reversed the Ninth Circuit, holding the officers were entitled to qualified immunity because there was "an objectively reasonable basis for fearing that violence was imminent." The Court noted that the need to protect and preserve life and to avoid serious injury "is justification for what would be otherwise illegal absent an exigency or emergency." *Cert. granted* Ninth Circuit decision summarily reversed. Held, judgment affirmed.

TITLE: Short v. State

INDEX NO.: Z.3.e.

CITE: (12/27/82), Ind., 443 N.E.2d 298

SUBJECT: Emergency searches

HOLDING: Where identifying characteristics of stolen items are easily removable, police are justified in searching premises under exigency exception to warrant requirement. Here, D had stolen construction materials that if removed from boxes could not be identified as stolen items. Ct. finds police had valid reason to believe if they waited to obtain search warrant for construction site, identifying characteristics would be lost. State proved exigency exception. On exigency exception, see Ludlow 314 N.E.2d 750; Maxey 244 N.E.2d 650. See also Schmerber v. CA (1965), 384 U.S. 757, 86 S. Ct. 1826, 16 L.Ed.2d 908. Held, no error.

RELATED CASES: Paul, 971 N.E.2d 172 (Ind. Ct. App. 2012) (where officers observed D ,whom they had probable cause to believe had just committed a vicious murder and who had threatened to commit at least two more murders, tampering with evidence while they were standing on an exposed stairway, entry was justified for safety reasons and to prevent the destruction of evidence); McDermott, App., 877 N.E.2d 467 (warrantless home entry was justified by D's erratic & increasingly menacing behavior); Robinson, App., 730 N.E.2d 185 (Ct. found exigent circumstances to search D's apartment, given unknown whereabouts of armed individuals who had just shot at police officers & resulting risk of bodily harm or death to both police & civilians); Robles 510 N.E.2d 660 (exigent circumstances justified warrantless search of D's bag at airport 20 minutes before his flight was to leave; held, conviction affirmed).

TITLE: Shorter v. State

INDEX NO.: Z.3.e.

CITE: (7/6/2020) 151 N.E.3d 296 (Ind. Ct. App. 2020)

SUBJECT: Defendant's statement to confidential informant that he wanted to leave town was an exigent circumstance justifying warrantless arrest

HOLDING: Fact that officers knew Defendant wanted to leave town was an exigent circumstance justifying Defendant's warrantless arrest. Defendant sold drugs to a confidential informant and later told the informant that he knew the police were looking for him and he wanted to leave town. Police went to home where they knew Defendant to be staying and watched him, for over forty minutes, through an open door where they could plainly see him sitting on a couch. Police approached the house and arrested Defendant inside the home and then brought in a drug sniffing dog who indicated on drugs outside the home. Defendant was tried and convicted of dealing and conspiracy to deal in methamphetamine and narcotics. The Court of Appeals found the warrantless search of Defendant was supported by probable cause and exigent circumstances, although stating "it would have been advisable and best practice for the officers to at least attempt to obtain an electronic warrant prior to arrest but because there were sufficient exigent circumstances...a warrant was not required." The search was also reasonable under the Indiana Constitution. Judge Pyle, dissenting, finding that an arrest warrant could have been obtained, especially when considering the advent of technology that could have assisted in obtaining an arrest warrant in an expedited manner. Also, there was no evidence of the existence of an emergency or imminent destruction of evidence, and police could have obtained an arrest warrant based upon an identifiable description of Defendant even without the police knowing Defendant's actual name.

TITLE: Sloane v. State

INDEX NO.: Z.3.e.

CITE: 686 N.E.2d 1287 (Ind. Ct. App. 1997)

SUBJECT: Warrantless search of fire-damaged premises - exigent circumstances

HOLDING: Search of D's residence & seizure of items therein by firemen was proper, where fireman entered residence to conduct search & rescue in attempt to locate any extension of fires and/or possible victims. When determining whether warrantless & non-consensual entry onto fire-damaged premises is constitutional, Ct. must consider whether there are legitimate privacy interests in fire-damaged property that are protected by 4th Amend., whether exigent circumstances justify government intrusion regardless of any reasonable expectations of privacy, & whether object of search is to determine cause of fire or to gather evidence of criminal activity. Michigan v. Clifford, 464 U.S. 287 (1984). If reasonable privacy interests remain in fire-damaged property, any official entry requires warrant unless consent is given, or exigent circumstances exist. Id. Here, because there was only small amount of fire damage to interior of residence, personal items were in residence at time of fires & home was used as private residence prior to fires, D did maintain reasonable privacy interest in fire-damaged premises, & thus, warrant requirement applied. However, exigent circumstances required firemen to enter residence in attempt to protect private property of D from further damage & to aid any person who was injured or in danger of being injured by blaze & its effects. Thus, any object which was in plain view of firemen upon entry & walking through residence was properly seized. Held, conviction affirmed.

TITLE: State v. Crabb

INDEX NO.: Z.3.e.

CITE: (1st Dist., 10-20-05), Ind. App., 835 N.E.2d 1068

SUBJECT: Warrantless home entry & search - exigent circumstances

HOLDING: Smell of ether emanating from an apartment reported to house a small child constituted exigent circumstances justifying a warrantless search. D's neighbor called police to report a strong smell of ether & noted her concern over fact that a small child lived in apartment from which smell emanated. Once they arrived at scene, officers detected smell of ether & neighbors confirmed that they had observed odors at other times as well. When officers first knocked on door, they noticed a rustling of curtains in front window, indicating people were in apartment. These circumstances, combined with credible evidence that a small child was on premises &, thus, being exposed to both risks from explosions due to flammability of chemicals used in producing methamphetamine & from effects that ether can have on respiratory system, such as numbing senses & even loss of consciousness, caused officers to reasonably believe that a person inside apartment was in immediate need of aid. Ct. acknowledged that production & use of methamphetamine have plagued Indiana communities but would not draw a bright line which would allow police officers to enter a home without a warrant based solely on smell of ether. Ct. found that specific facts of this case justified warrantless entry & search of D's apartment under exigent exception to warrant requirement. Held, grant of motion to suppress reversed; Baker, J., concurring, believes that smell of ether emanating from apartment-- regardless of presence of child-- was enough to justify officers' warrantless entry & search.

RELATED CASES: Peters, App., 888 N.E.2d 274 (smell of ether, along with other indicia of methamphetamine manufacturing, justified a warrantless search of the D's car under the exigent circumstances exception to the warrant requirement); Holder, 847 N.E.2d 930 (Ct. agreed with Ct. App. analysis in Crabb).

TITLE: State v. Lawson

INDEX NO.: Z.3.e.

CITE: 144 P.3d 377 (Wash. Ct. App. 2006)

SUBJECT: Potential danger of meth lab does not justify warrantless search

HOLDING: The Washington Court of Appeals held the general danger posed to a neighborhood and its residents by a methamphetamine manufacturing operation is not the type of danger that will justify a warrantless entry pursuant to the Fourth Amendment's emergency aid doctrine. Many courts have held that the risk of fire, toxic fumes and other dangers posed by the methamphetamine manufacturing process presents a sufficient exigency to justify a warrantless entry. E.g., U.S. v. Rhiger, 315 F.3d 1283 (10th Cir. 2003). The Court, here, said, "Generally, we have endorsed an emergency aid exception only where the officers reasonably believed that a specific person or persons needed immediate help for health or safety reasons. . . We are unwilling to authorize warrantless entries where the officers express only a generalized fear that methamphetamine labs and their ingredients are dangerous to people who might live in the neighborhood." Because the State did not show that the officers reasonably believed that someone on the D's property needed assistance for health or safety reasons, the Court held that the Tr. Ct. should have granted the D's motion to suppress evidence of the meth lab the officers found inside a shed. A dissent was entered where dissenting judge noted that majority of courts have found evidence indicated here as a sufficient exigency for a search.

[Ed. **Note:** Holding is contrary to Indiana precedent. See Holder v. State, 847 N.E.2d 930 (Ind. 2006). However, this was the first of two defense friendly decisions regarding the smell of ether to come from other states in the last few months. See also State v. Ibarra, 147 P.3d 842 (Kan. 2006) (odor of ether alone emanating from a vehicle).

TITLE: State v. McGrane
INDEX NO.: Z.3.e.
CITE: 733 N.W.2d 671 (Iowa 2007)
SUBJECT: Search of upstairs unconstitutional after D called down for arrest
HOLDING: Iowa Supreme Court held police officers who called a suspect downstairs from the second story of a residence to arrest him pursuant to a warrant had no basis under either the search-incident-to-arrest doctrine or the protective sweep exception to the Fourth Amendment's warrant requirement to then go upstairs and look around. A legitimate search incident to the arrest could not extend that far, and a sweep was unjustified because nothing about the situation would have indicated to reasonably prudent officers that someone who might pose a danger to them was lurking above. Court held that the search-incident-to-arrest exception established in Chimel v. California, 395 U.S. 752 (1969) did not apply. The search-incident exception applies only to searches that are substantially contemporaneous with and confined to the immediate vicinity of an arrest. Court also found that the search did not conform to the limitations imposed on the scope of a search in Maryland v. Buie, 494 U.S. 325 (1990).

TITLE: State v. Setterstrom
INDEX NO.: Z.3.e.
CITE: 163 Wash. 621, 183 P.3d 1075 (Wash. 2008)
SUBJECT: Officer improperly frisked man reasonably believed to be high on meth
HOLDING: Washington Supreme Court held a police officer violated the Fourth Amendment and its state constitutional counterpart by conducting a protective frisk of a man the officer reasonably believed was high on methamphetamine. Officers responded to a complaint concerning two young men in a social services lobby, one of whom appeared to be under the influence. When officers arrived, D was sitting on the floor filling out a benefits form. The officer looked at the name on the form and asked D whether that was him, to which D initially responded yes, and then said that he was filling the form out for a friend. The officer stated that based on D's escalating, fidgety behavior and the officer's past experience with drug users led the officer to believe D was under the influence of methamphetamine. He also testified that, as a result of his frequent encounters with tweakers, he believes they are erratic and can be violent without notice. The officer frisked D for weapons, and the frisk led to the officer's discovery of meth in D's pocket and backpack. Court held that the situation faced by the officer - a man under the influence of meth who lied about his name - did not support a reasonable belief that D posed a threat justifying a frisk. Court stressed that D did not place his hands in his pockets, stand up, or otherwise exhibit "threatening gestures or words." It noted that being under the influence of meth is not a crime, that the officer had no other grounds for detaining D, and that the encounter took place in a public lobby of a government service building rather than "in a dark alley in a crime-ridden neighborhood." "It seems likely that some people filling out benefits forms exhibit erratic behavior, making employment difficult and benefits applicable."

TITLE: State v. Woods
INDEX NO.: Z.3.e.
CITE: 136 N.C. App. 386, 524 S.E.2d 363 (N.C. Ct. App. 2000)
SUBJECT: Emergency Search of Burglarized Home -- Limited to Areas Where Person Could Hide
HOLDING: Warrantless entry of residence based on probable cause that burglary was in progress was justified, but search should have been limited to places large enough for a person to hide. Purpose of search was to look quickly for suspects and victims, and scope thus extended only to places where suspects and victims could be found.

TITLE: State v. Wells

INDEX NO.: Z.3.e.

CITE: 928 P.2d 386 (Utah Ct. App. 1996)

SUBJECT: Warrantless Search of Jacket Found in Home After Arrest Held Invalid

HOLDING: Utah Court of Appeals holds that warrantless seizure of cocaine from lining of jacket found in residence after occupant's arrest was not justified under either exigent circumstances or search incident to arrest doctrines. Because occupant had already been handcuffed before jacket was searched and there was no indication that there was anyone else in residence to take cocaine away, exigent circumstances do not apply. Further, because occupant was handcuffed and evidence was not clear that he could even reach jacket, let alone retrieve cocaine from lining, search incident to arrest doctrine does not apply.

TITLE: State v. Williams & Grace

INDEX NO.: Z.3.e.

CITE: (3rd Dist., 06-17-93), Ind. App., 615 N.E.2d 487

SUBJECT: No exigent circumstances justifying warrantless search

HOLDING: On interlocutory appeal by State, Ct. found warrantless search was improper because officer had probable cause to believe drugs were in house before he knocked on door. Any emergency present to justify search was created by officers' approach & clearly foreseeable to them. Informant (CI) told police Ds had arrived at home where she was staying & had cocaine with them. CI said she saw cocaine & heard Ds discuss plans to distribute it after moving it to another location. Officer told CI to call back in few hours to update him. After officer went to residence, watched for about hour, & saw man matching D's description enter house, he returned to station. CI again called & said she had seen cocaine transaction involving D. She was told to call back later & officer resumed surveillance of house. Officer then approached house with other officers to get consent to enter. They knocked on front door & announced they were police. As officer knocked, he saw one of Ds jump off couch & run into other room. Officer immediately opened door & followed D into kitchen where he saw cocaine packets, & Ds were arrested.

Ct. rejected argument search was justified because officers had probable cause to believe cocaine was present & there was actual or imminent destruction of evidence occurring; distinguishing present situation from that in Sayre (1984), App., 471 N.E.2d 708, *cert. denied*. In Sayre there was no evidence that officers created emergency in order to justify search. Ct. found situation similar to that in U.S. v. Rosselli, (7th Cir., 1974), 506 F.2d 627, where suppression was sustained because emergency giving rise to warrantless search was created by officers' actions in knocking on door when they already possessed probable cause to believe drugs were in house. Held, suppression affirmed.

RELATED CASES: Weis, App., 800 N.E.2d 209 (State failed to present evidence of exigent circumstances to allow a warrantless entry into Ds' house, & police created emergency upon which State relied for exception to warrant requirement of 4th Amendment).

TITLE: United States v. Collins

INDEX NO.: Z.3.e.

CITE: 510 F.3d 697 (7th Cir. 2007)

SUBJECT: Circumstances did not justify 'emergency' entry without a warrant

HOLDING: Seventh Circuit Court of Appeals held law enforcement did not have the justification required by the Fourth Amendment to make a warrantless entry of a suspected "drug house" after they knocked on the door, waited 20 seconds, and heard the sounds of movement and someone saying, "The police are at the door." Rather than treating the case as one in which the officers were deemed to have manufactured their own exigent circumstances, Court concluded that the circumstances did not establish an emergency. Court was willing to assume that the officers, at some point, would be reasonable in inferring from the failure to answer the door that the people they knew were inside might be busy destroying evidence or arming themselves to violently resist entry by the police. Court also acknowledged that the U.S. Supreme Court suggested the police need not hold off for more than 15 or 20 seconds. See U.S. v. Banks, 540 U.S. 31 (2003). Seventh Circuit itself has upheld a delay of as little as seven seconds before a forced entry. In present case, however, Court noted officers had time to obtain a warrant and no reason to believe that anyone inside was aware of their investigation before they knocked. Unlike other circuits, Court did not address issue in terms of police "manufacturing" exigency, noting that the "manufacturing metaphor is misleading." Instead of treating the officers' actions before the entry as misconduct, Court discussed them in terms of a legitimate gamble by investigators. Court noted that the police had the time to initiate the warrant process and that, "if something happened before the warrant was issued to create a grave concern about the possible destruction of evidence they could have moved in at once." "It is the fact that nothing happened, rather than the 'manufacture of exigent circumstances,' that undermines the government's position."

TITLE: U.S. v. Davis
INDEX NO.: Z.3.e.
CITE: 290 F.3d 1239 (10th Cir. 2002)
SUBJECT: No Blanket Exigency in Domestic Violence Situations
HOLDING: Tenth Circuit Court of Appeals refuses to establish blanket rule finding exigent circumstances in domestic violence situations. Court rejects government's argument that domestic violence calls are inherently violent and place police at greater risk, creating blanket exigency justifying warrantless searches. Court *cites* Richards v. Wisconsin, 520 U.S. 385, in which U.S. Supreme Court refused to create analogous rule for drug cases.

TITLE: Vanzo v. State

INDEX NO.: Z.3.e.

CITE: (5th Dist.; 11-21-00), Ind. App., 738 N.E.2d 1061

SUBJECT: Emergency search for victim or suspect - second search not justified

HOLDING: Tr. Ct. erred in denying D's Motion to suppress marijuana found in plain view during second search of crime scene. In order for officer's seizure of evidence to be justified by plain view, officer must have legal right to be at place from which evidence was plainly viewed. Houser, 678 N.E.2d 95 (Ind. 1997). Officers may make cursory inspection of those spaces where person may be found to secure crime scene & ensure their safety. Maryland v. Buie, 494 U.S. 325 (1990). When determining whether search is to secure crime scene, Ct. should consider number of officers on scene & their actions before victim-or-suspect search is performed, nature of search (such as whether it is investigative), & timing of search. Here, first officer who arrived at apartment where victim had been shot searched apartment to make sure that there were no other victims or persons who might launch attack. Although officer did not look in closets in each room, first officer testified that he was satisfied no one else was in apartment. When other officers arrived, first officer did not indicate to them that there was need for another search of apartment. However, thirty minutes later, second officer searched closets & found marijuana. Although second officer claimed she was searching for safety, fact that first officer already searched apartment, victim had been removed from scene, & another officer had been guarding door to apartment illustrated that scene was already secured. Because second officer could not justify search based on safety for those still in apartment, she did not have legal right to be at place from which marijuana was viewed. Held, Tr. Ct.'s denial of motion to suppress reversed.

RELATED CASES: Johnson, 117 N.E.3d 581 (Ind. Ct. App. 2018) (exigent circumstances that juvenile suspect was at large after a murder had been committed allowed police to gather evidence absent a warrant); LaMunion, App., 740 N.E.2d 576 (Tr. Ct. erred in denying D's motion to suppress evidence obtained during warrantless search conducted over two hours after his premises were secured).

TITLE: Vitek v. State

INDEX NO.: Z.3.e.

CITE: (6-29-01), Ind., 750 N.E.2d 346

SUBJECT: Warrantless entry into residence upheld - missing person in need of aid

HOLDING: Tr. Ct. did not err in denying D's motion to suppress evidence obtained as result of warrantless search of D's residence. Detective was legitimately searching for missing person that he thought might be in need of aid. It is not necessary for police to have warrant to enter residence where, as here, circumstances suggest reasonable belief that person within premises is in need of aid. Stewart v. State, 688 N.E.2d 1254 (Ind. 1997). Moreover, there can be reasonable belief that person may be in need of aid within premises when occupant has been missing. Geimer v. State, 591 N.E.2d 1016 (Ind. 1992). Due to missing person's disabilities, it was reasonable for detective to think that person might have been in imminent need of medical assistance. Held, judgment affirmed.

RELATED CASES: Snow, 118 N.E.3d 50 (Ind. Ct. App. 2019) (exigent circumstances justified warrantless entry into residence to determine if victims were in need of aid); Barker, 2018 Ind. App. LEXIS 103 (Ind. Ct. App. 2018) (even assuming D had standing to challenge search of girlfriend-victim's apartment, Ct. could not say that some further investigation after warrantless entry and prior to being informed that a body was discovered was improper); Smock, App., 766 N.E.2d 401 (without deciding whether presence of odor of decaying flesh in & of itself is enough to trigger exigent circumstances exception, Ct. held that officers in this case had reasonable belief that someone may have been in need of immediate assistance).

Z. SEARCH AND SEIZURE

Z.3. Exceptions to search warrant requirement

Z.3.f. Prevent loss of evidence

TITLE: Dunnuck v. State
INDEX NO.: Z.3.f.
CITE: 367 Md. 198, 786 A.2d 695 (Md. 2001)
SUBJECT: Officer-Created Exigency Spoils Warrantless Entry
HOLDING: Officers who observed marijuana plants through window of presently unoccupied home could and should have obtained warrant. Instead, officers remained at house until occupant returned, allowed her to go inside, then knocked on door and told her they were "drug officers" and needed to come in. When occupant began to pick up marijuana plants, officers kicked door in and obtained occupant's written consent to search. Held, because officers created exigent circumstances by waiting until occupant returned home and identifying themselves, exigency cannot justify warrantless entry into home. Court reasons it COULD be possible for mere observation of commission of crime to provide exigent circumstances, but where officers did not see D "actively engaged" in crime, and she did not know of their investigation, warrantless entry was not justified.

TITLE: Esquerdo v. State

INDEX NO.: Z.3.f.

CITE: (10-4-94), Ind., 640 N.E.2d 1023

SUBJECT: Warrantless search improper no exigent circumstances

HOLDING: Where no exigent circumstances were shown to exist, Tr. Ct. erred in denying D's motion to suppress evidence seized before warrant was obtained, & evidence secured thereafter was product of illegal search. After being advised by confidential informant (CI) that D was selling drugs from his residence, police orchestrated controlled buy. After departing residence, CI signaled to officers that she had purchased cocaine. CI advised police that she felt D was preparing to leave residence because he might have detected presence of police officers, & also stated her belief that D might be destroying evidence or getting ready to leave with evidence. Based on this information, officer in charge of operation ordered surveillance units to enter residence without warrant to secure evidence. After protective sweep of house revealed cocaine & marijuana, officers prepared probable cause affidavit & two officers left residence to obtain search warrant while others remained behind. After officers returned with warrant, more extensive search revealed drugs hidden throughout house. Warrantless entry & seizure to prevent destruction of evidence falls within recognized exigent circumstances exception to warrant requirement, but State must show by clear & convincing evidence that police had objective & reasonable fear that evidence was about to be destroyed, Harless v. State, Ind. App., 577 N.E.2d 245. Tr. Ct.'s selection of applicable legal standard will be reviewed under de novo standard & factual findings will be reviewed under clearly erroneous standard. U.S. v. Tartaglia, D.C. Cir., 864 F.2d 837. Here, evidence was insufficient to support Tr. Ct.'s conclusion that officers were induced by objective & reasonable fear that D was about to destroy evidence. Officer's belief rested entirely upon hearsay testimony & beliefs of CI, & State introduced no other facts to support warrantless entry. Mere affirmance of belief, absent statement of adequate supporting facts, is insufficient to establish probable cause & issuance of search warrant, & beliefs under such circumstances therefore cannot be grounds for warrantless entry. Aguilar v. Texas, 84 S. Ct. 1509. Crucial fact here was that CI did not specifically identify or affirm that evidence was being destroyed. At time of their warrantless entry, police already possessed cocaine purchased during controlled buy & did not know from CI that additional drugs were present inside house. Police did not specify what items they believed to be threatened with destruction, & CI gave no indication that D perceived money used in transaction was marked. Until someone tried to leave house, there was no possibility money would become dispersed among D's acquaintances before warrant could be obtained. Rationale for exception to warrant requirement is need for quick action, because evidence is actually in process of being destroyed or is about to be destroyed, Ludlow v. State, Ind., 314 N.E.2d 750. Sufficient independent probable cause did not exist to justify issuance of search warrant, as officers relied on illegally obtained evidence to secure it. Tainted warrant was therefore product of forced, illegal entry & invalid, distinguishing Segura v. United States, 104 S. Ct. 3380. Held, convictions reversed & remanded for further proceedings, Givan, J., dissenting.

Note: Although 4th Amendment violations are subject to constitutional harmless error analysis, Ct. could not find that admission of illegally obtained evidence was harmless beyond reasonable doubt. Hawkins v. State, Ind., 624 N.E.2d 436.

RELATED CASES: Lee, 967 N.E.2d 529 (Ind. Ct. App 2012) (evidence did not support exigent circumstances to justify warrantless swab of juvenile D's penis; officers did not hold an objective, reasonable belief that DNA evidence was about to be destroyed).

TITLE: Hawkins v. State

INDEX NO.: Z.3.f.

CITE: (12-14-93), Ind., 626 N.E.2d 436

SUBJECT: Warrantless search improper - no exigent circumstances

HOLDING: Because police had no reasonable basis to conclude destruction of evidence was imminent, & exigent circumstances were created by their entry into home, warrantless search was improper & Tr. Ct. erred in failing to suppress fruits of search. After getting tip D was selling cocaine, police arranged for controlled buy in his house. During & after buy, house was kept under surveillance, & after drug was confirmed as cocaine, three officers approached front door of house while others waited in rear. After knocking on door & identifying himself, officer demanded door be opened. After someone approached door, asked what was wanted, & then withdrew, officer again demanded entry, & then kicked in door, knocking D to floor with door. Officers testified generally that they didn't hear anyone running before door was forced, but after they entered, they definitely heard people toward back of house. Officers took occupants into custody, secured house, & searched premises, finding cocaine, razor blades, & shotgun shells in plain view. Subsequently, police obtained warrant, based in part on description of cocaine seen upon entry, & additional evidence was found.

Ct. found evidence should have been suppressed due to improper warrantless search, despite State's argument that search was justified to prevent loss of evidence & escape of perpetrators. Searches & seizures must be supported by judicial warrant unless exigent circumstances exist. One such circumstance is belief evidence may be destroyed or removed before warrant can be obtained, but belief must be reasonable & objective, & exigent circumstances cannot be created by police themselves, State v. Williams, 615 N.E.2d 488.

Although officer testified that crack houses typically have high volume of traffic, making officers concerned that they might lose "buy money," Ct. found record did not support claim house was busy as "drive-in restaurant." Only 15 transactions took place in preceding two-week period & on evening in question, officers saw no traffic at home after informant's buy was made. Officers heard nothing after knocking on door, nor did they believe occupants had any idea raid was being initiated. It was only after officer kicked in door that people began to run.

Ct. found State did not make sufficient showing of emergency to justify warrantless search & stated: "[c]ourts should not be reticent in enforcing the constitutional rule restricting the search of a person's home without a warrant or consent...". Prior to warrantless entry, controlled buy was made, & officer-maintained surveillance of premises following buy. It took little more than hour to obtain warrant & return to house. Because State failed to show they could not have obtained proper warrant, & evidence was seized illegally & improperly admitted at trial, Ct. found error was not harmless. Held, conviction reversed, Givan, J., dissenting.

RELATED CASES: Ware, App., 782 N.E.2d 478 (there was no danger of imminent destruction of evidence, where officer smelled burning marijuana when D opened door, D shut door, was gone 3 minutes before he returned & officer heard him "walking around" apartment).

TITLE: Haley v. State

INDEX NO.: Z.3.f.

CITE: (3rd Dist.; 7-2-98), Ind. App., 696 N.E.2d 98

SUBJECT: Unlawful warrantless search - preventing loss of evidence; burning marijuana cigarette

HOLDING: Tr. Ct. erred in denying D's motion to suppress evidence seized during warrantless search of tent at public campground. Exigent circumstances justifying warrantless search exist where police have objective & reasonable fear that evidence is about to be destroyed. Esquerdo, 640 N.E.2d 1023. Fact that narcotics are involved does not, standing alone, amount to exigent circumstances justifying warrantless search or arrest. In addition, home entry should rarely be sanctioned when there is probable cause to believe that only minor offense has been committed. Welsh v. Wisconsin, 466 U.S. 740 (1984). Here, officers observed occupants of tent smoking marijuana cigarette, which is only misdemeanor. Occupants were unaware of officers' presence. Once officers made their presence known by entering tent, occupants put what remained of marijuana cigarette into nearby beer can. Attempt to destroy evidence caused by officers' presence was clearly foreseeable to officers & could not justify warrantless search. Because only "destruction of evidence" was consumption of marijuana cigarette in normal course, there was no indication that any of occupants were intending to leave campsite, & officers had no cause to believe that they were in danger, warrantless entry & search of tent was unjustified. Held, judgment affirmed in part & reversed in part; Rucker, J., concurring in result, & dissenting on basis that consumption of marijuana cigarette constituted imminent destruction of evidence; however, warrantless entry & search in this case was unjustified because possession of marijuana cigarette is only minor offense.

RELATED CASES: Frye, App., 757 N.E.2d 684 (after executing investigatory stop, it was proper for officers to enter house due to D's flight from them into residence); Middleton, 714 N.E.2d 1099 (exigent circumstances did not justify entry into home when police had home secured while getting warrant).

TITLE: Illinois v. McArthur

INDEX NO.: Z.3.f.

CITE: 531 U.S. 326, 121 S. Ct. 946, 148 L. Ed. 2d 838 (2001)

SUBJECT: Fourth Amendment, search warrant, detention, drugs, probable cause

HOLDING: D's wife asked police to go with her to the marital house trailer so that she could remove her belongings. When she came out, she told the police that the D had marijuana in the trailer. The police knocked on the door, told the D what his wife had said, and asked permission to enter and search the trailer. The D refused. The police then sought a warrant and told the D that he could not reenter the trailer unescorted until the warrant was obtained and served. An officer returned with a search warrant within two hours, and the police searched the trailer, finding a pipe and a small quantity of marijuana.

Held, the warrantless two-hour seizure of the D was not unreasonable under the Fourth Amendment. First, the police had probable cause to search the trailer. Second, the police had good reason to fear that the D would destroy the drugs if permitted back in the trailer. Third, the police "made reasonable efforts to reconcile their law enforcement needs with the demands of personal privacy", neither arresting the D nor searching the trailer until a warrant was in hand. Fourth, the restraint was only for a limited time (two hours), which was no longer than reasonably necessary to obtain the warrant.

RELATED CASES: Sugg, 991 N.E.2d 601 (Ind. Ct. App 2013) (police did not violate 4th Amendment or Ind. Const. Art. I, Sec. 11 by refusing to let D reenter her home alone while police sought a search warrant because police reasonably believed home contained contraband and that if left alone, D might destroy evidence or retrieve a weapon).

TITLE: Jones v. State

INDEX NO.: Z.3.f.

CITE: (4th Dist., 9-25-80), Ind. App., 409 N.E.2d 1254

SUBJECT: Exceptions to search warrant requirement - prevent loss of evidence; drugs

HOLDING: Search without probable cause is never justified by need to prevent disappearance or destruction of evidence of crime. Even were probable cause to be found, fact that narcotics were involved does not, standing alone, amount to exigent circumstances justifying warrantless search or arrest. Here, however, actions of police officers in knocking on motel room door and stationing themselves behind motel on suspicion that occupants possessed heroin were not unreasonable. Actions were justified as legitimate investigation of reasonable suspicion created by informant's tip that crime was being committed. Buchannon, App., 361 N.E.2d 928. Therefore, no illegal police action preceded abandonment of drugs thrown out of rear motel window. Further, D's action in opening motel door, stepping back, and indicating for officers to enter was voluntary and consensual. Held, judgment affirmed.

TITLE: Kentucky v. King
INDEX NO.: Z.3.f.
CITE: (05-16-11), 131 S. Ct. 1849 (U.S. 2011)
SUBJECT: Whether police caused exigent circumstances irrelevant unless 4th Amendment violated
HOLDING: Where police conduct triggers, exigent circumstances used to justify warrantless entry into a residence to investigate a potential drug offense, the exigent circumstance exception to the Fourth Amendment's warrant requirement still applies, unless police use or threaten a violation of the 4th Amendment to gain entry into the residence.

Here, officers followed a suspected drug dealer into an apartment building. The officers were unsure which apartment the suspect entered, but they smelled marijuana from one apartment. The police knocked on the door and identified themselves. When the police heard shuffling noises inside the apartment, they believed that evidence was being destroyed and entered the apartment without a warrant. Inside, they did not find the suspect but instead found King along with drugs and drug paraphernalia.

The Court explained that its test will still provide "ample protection for the privacy rights that the Amendment protects." Police can knock and announce their presence at a dwelling, as any private citizen can do. If a suspect inside starts to destroy evidence, and the officers hear it, the sound of the evidence being destroyed is not a police-created emergency. However, police cannot threaten to break in if the person will not open the door. Breaking in would be a Fourth Amendment violation, so the officers cannot create exigent circumstances by threatening to break in. "Occupants who . . . elect to attempt to destroy evidence have only themselves to blame for the warrantless exigent- circumstances search that may ensue." Held, Ninth Circuit reversed. Ginsburg, J., DISSENTING, noting that if the police had not knocked on the door the D would likely not have destroyed the evidence, and the police could have obtained a warrant. She said the majority "arms police with a way to routinely ignore the Fourth Amendment's requirement in drug cases," and she asked if police, with no warrant, "can [now] pound on doors at will and, on hearing sounds indicative of something moving, forcibly enter and search for evidence of unlawful activity[.]"

TITLE: Myers v. State

INDEX NO.: Z.3.f.

CITE: (10/19/83), Ind., 454 N.E.2d 861

SUBJECT: Prevent loss of evidence - warrantless search of motel room

HOLDING: Tr. Ct. did not err in admitting items seized from D's hotel room during warrantless search made after checkout time. Here, a store was robbed on 7/29. On 7/29, D, driving a pickup truck with Kansas plates, checked into motel giving out-of-state address as home & paid for 2 days. Clerk identified D's picture. Police entered D's motel room on 7/30 but left without searching it. D was arrested 7/30 in a pool hall. On 7/31, after 10 a.m. checkout time, police entered motel room (with manager's consent but without a search warrant) & removed items stolen from store. Ct. finds first entry proper because of exigent circumstances (D might leave state). Second search was logical continuation of investigatory procedure following arrest. Fair 364 N.E.2d 1007; Whitten 333 N.E.2d 86. Also, D's rental period had expired, thus he had no expectation of privacy in motel room. US v. Akin (CA7 1977), 562 F.2d 459. Held, no error. CONCURRING IN RESULT, DeBruler contends police should not have entered room (first search) but should have been stationed at motel to arrest D when he arrived/left his room. "Inconvenience to police ... is one of the prices of maintaining a free society." Because no fruits of first entry support conviction, reversal is not required. Prentice CONCURS IN RESULT without opinion.

RELATED CASES: Rook, 679 N.E.2d 997 (under circumstances, officer had reasonable belief that marijuana was about to be lost or destroyed and, as result, properly seized evidence); Sayre, App., 471 N.E.2d 708 (held, warrantless police entry into home proper to prevent destruction of evidence, *citing* Johnson v. US (1948), 333 U.S. 10, 68 S. Ct. 367, 92 L.Ed. 436); Zimmerman, App., 469 N.E.2d 11 (taking of blood sample).

TITLE: People v. More

INDEX NO.: Z.3.f.

CITE: 764 N.E.2d 967 (N.Y. Ct. App. 2002)

SUBJECT: Exigent Circumstances - Seizure of Bag Visible Protruding from Rectum

HOLDING: Officers who seized a plastic bag they saw protruding slightly from D's rectum during strip search incident to arrest lacked exigent circumstances and should have obtained warrant for this body cavity search. Following tip that apartment was being used to distribute crack cocaine, police entered apartment with consent from tenant. Inside, they discovered D with a woman on his lap and a crack pipe and small white rock by his side. They arrested D and conducted strip-search incident to arrest. D filed motion to suppress, challenging the strip search, and intermediate appellate court upheld it. Court of Appeals agreed that strip search was justified, but reasoned that crack was in fact seized as result of body-cavity search. Court further found that there were no exigent circumstances to justify body-cavity search, and officers could have kept D under surveillance until they obtained warrant.

TITLE: Sopen v. State
INDEX NO.: Z.3.f.
CITE: (3rd Dist., 07-20-07), Ind. App., 869 N.E.2d 1273
SUBJECT: Illegal warrantless entry into home - prevent loss of evidence of D's intoxication
HOLDING: Tr. Ct. erred in admitting evidence obtained in violation of the Fourth Amendment, & compounded error by instructing jury that officer's entry into D's home was lawful. After observing D commit a traffic violation, officer pulled into D's driveway. D had parked his vehicle in his garage but had not closed the garage door. D got out of his vehicle & walked back to officer. Officer observed signs of intoxication, but let D go back in garage to retrieve his vehicle registration. Because officer did not order D to stop, he was not in "hot pursuit" that might have justified his illegal warrantless entry into D's home. Ct. has declined to find exigent circumstances to justify entry into a private home where a substance of potential evidentiary value is dissipating, but the suspicious officer has no warrant & has not maintained continuous pursuit. Ware v. State, 782 N.E.2d 478 (Ind. Ct. App 2003); State v. Straub, 749 N.E.2d 593 (Ind. Ct. App 2001).

Ct. noted that officer could have obtained a telephonic warrant pursuant to Ind. Code 35-33-5-8(a)(2) prior to entering D's home, but he did not. Statute was intended to encourage procurement of warrants in situations involving exigent circumstances when a warrant might not otherwise be sought. Timmons v. State, 723 N.E.2d 916 (Ind. Ct. App 2000), on *reh'g*, 734 N.E.2d 1084 (Ind. Ct. App 2000). Although dissipation of alcohol without more does not constitute exigent circumstances to support warrantless entry, provisions of telephonic warrant statute might nevertheless be useful & lessen need for warrantless searches in some instances when metabolic destruction of evidence is at issue. Held, convictions reversed & remanded for new trial on driving while intoxicated charge. Given officer's use of unconstitutionally excessive force in effecting arrest, D may not be retried on resisting law enforcement charge. See Shoultz v. State, 735 N.E.2d 818 (Ind. Ct. App 2000).

TITLE: State v. Lagrone
INDEX NO.: Z.3.f.
CITE: (3/26/2013), 985 N.E.2d 66 (Ind. Ct. App 2013)
SUBJECT: Warrantless use of parcel wire inside D's home violated Fourth Amendment
HOLDING: Police violated Fourth Amendment protections against unreasonable search and seizure when they used a parcel wire to monitor a package of marijuana once D had carried it into his home. Due to that violation, warrantless entry into D's home was not justified under exigent circumstances exception to Fourth Amendment because under Kentucky v. King, 131 S. Ct. 1849 (2011), such entry to prevent destruction of evidence is allowed only where the police did not create the exigency by engaging in conduct that violates the Fourth Amendment.

The installation of the GPS device and the parcel wire into the package D picked up from a hotel did not violate the Fourth Amendment because any privacy interest D had in the package was lost when United Parcel Service (UPS) opened the package on its premises. Illinois v. Andreas, 463 U.S. 765 (1983). Nor did police monitoring of the GPS device to track the package en route to D's home violate the Fourth Amendment, because officers also tracked D on the highway visually. But the monitoring of the parcel wire to determine when the package was opened constituted a search of D's home. United States v. Karo, 468 U.S. 705 (1984). And information obtained from the parcel wire after package was inside D's home, i.e., that the package had been opened, could not have been observed from outside the home. As such, the receipt of that information via the parcel wire without a warrant violated D's Fourth Amendment rights. And under King the police cannot use the exigent circumstances exception to justify a forced warrantless entry into the home, based on the electronic signal from the parcel wire located inside the home, without having first obtained a warrant. Held, grant of D's motion to suppress affirmed.

TITLE: State v. Straub
INDEX NO.: Z.3.f.
CITE: (1st Dist., 5-30-01), Ind. App., 749 N.E.2d 593
SUBJECT: Warrantless entry into home - prevent loss of evidence of D's intoxication
HOLDING: Tr. Ct. erred in granting D's motion to suppress evidence obtained from warrantless entry of D's residence, because police officer was justified in pursuing D into his home in order to preserve D's blood alcohol content (BAC). Shortly after observing truck closely following another vehicle, concerned citizen informed officer that truck was driving erratically & that driver was drunk. After receiving tip, officer located truck & observed it travel without headlights. Ct. held that this information provided officer with reasonable suspicion to conduct traffic stop of truck. Officer lost sight of truck, but while searching area, he observed D running downhill. It was reasonable for officer to assume that D was individual who had recently driven truck considering: 1) it was four o'clock in morning; 2) few numbers of people out & about; 3) close proximity of D to where officer had last seen truck; & 4) D's act of running.

Officer obtained probable cause to arrest D for fleeing law enforcement during his attempt to conduct investigatory stop of D that was thwarted by his fleeing of police officer. Absent suspicion of alcohol violation, Ct. noted that officer would not have been justified in entering D's home to apprehend him. However, officer was justified in entering D's home because he was in continuous pursuit of D & there was objective & reasonable fear that time would destroy evidence of D's intoxication. Threat of metabolic destruction of evidence of suspect's intoxication, *i.e.*, bodily absorption of alcohol in bloodstream, has been held to be exigent circumstances. Zimmerman v. State, 469 N.E.2d 11 (Ind. Ct. App 1984). Held, judgment reversed; Brook, J., dissenting.

TITLE: Sugg v. State
INDEX NO.: Z.3.f.
CITE: (7/24/2013), 991 N.E.2d 601 (Ind. Ct. App 2013)
SUBJECT: No constitutional violation for letting D reenter home only if accompanied by an officer
HOLDING: In issue of first impression, Court held police did not violate D's Fourth Amendment rights when they allowed her to enter her home only if accompanied by an officer while they sought a search warrant. See Illinois v. McArthur, 531 U.S. 326 (2001). Police had probable cause to believe D's home contained evidence of a crime, specifically, manufacturing methamphetamine, based on her and her husband's recent purchases of pseudoephedrine and the presence of precursors in her back yard. Police reasonably believed D, if unaccompanied in her home, would destroy evidence or get a weapon. The restraint was limited and tailored reasonably to law enforcement needs while still protecting D's privacy; restraint was imposed for only the short time it took to get the warrant.

Also, the search was reasonable under Art. I, Sec. 11 of the Indiana Constitution. The degree of intrusion on D's activities was low and the extent of law enforcement need to investigate was high. Held, judgment affirmed.

TITLE: U.S. v. Coles

INDEX NO.: Z.3.f.

CITE: 437 F.3d 361 (3d Cir. 2006)

SUBJECT: Exigent Circumstances Created by Officer's Knock

HOLDING: Where police officers with probable cause to believe that D possessed illegal drugs in his hotel room entered after their knocking prompted sounds of running and flushing from inside, exigency arose from officer's attempt to conduct warrantless search, and do not justify warrantless entry into apartment. A hotel manager reported seeing drugs and paraphernalia in D's room, and officers confirmed this through covert surveillance. Officers knocked on D's door and identified themselves first as room service, then as maintenance, and finally as police officers ("Land Shark" apparently being beyond the pale even for them.). They then heard running footsteps and a toilet flushing and forced their way into the room. The Tr. Ct. admitted the evidence, holding that the officers' entry was justified by exigent circumstances. The 3d Circuit reversed, holding that the officers created the exigent circumstances by their own efforts to conduct a warrantless entry.

TITLE: Willis v. State
INDEX NO.: Z.3.f.
CITE: (2nd Dist., 12-30-02), Ind. App., 780 N.E.2d 423
SUBJECT: Illegal entry & search of hotel room - no exigent circumstances
HOLDING: Search of hotel room in which D was a casual visitor violated his rights against unreasonable search & seizure under Article 1, Section 11 of Indiana Constitution. Although State challenged whether D had reasonable expectation of privacy in hotel room, it did not challenge his standing to Indiana Constitutional claim & Ct. could not raise issue *sua sponte*. Everroad v. State, 590 N.E.2d 567 (Ind. 1992). A hotel room is "home" for purposes of Article 1, Section 11 of Indiana Constitution. Indiana Constitution forbids warrantless entry into home for purposes of arrest or search unless supported by judicially issued warrant or exigent circumstances that fit within narrowly defined exceptions. Hawkins v. State, 626 N.E.2d 436 (Ind. 1993).

Here, State failed to meet its burden of showing that police officers' forced entry into hotel room & search incident to arrests which resulted in discovery of cocaine, were reasonable under totality of circumstances. Police reported to hotel after receiving a complaint of suspicious criminal activity. There was no evidence that renter of room may have been in need of aid. As officers approached door, they could not see or hear anything inside hotel room. There was no indication that evidence was in danger of being destroyed or that personal property was in need of protection. Moreover, fact that D repeatedly closed door on officers when they asked to enter room & his failure to consent to search cannot be considered exigent circumstance. Finally, Ct. held that forced entry was not reasonable based on fact that crime was being committed within officers' presence, namely, criminal trespass. Police may not enter home to effectuate misdemeanor arrest absent exigent circumstances or another exception to warrant requirement. Johnson v. State, 747 N.E.2d 623 (Ind. Ct. App 2001). A better approach would have been for one officer to guard hotel room door while other officer sought an arrest warrant & search warrant for hotel room. Steagald v. United States, 451 U.S. 204 (1981). Because arrests in this case were unlawful, search incident to those arrests was also unreasonable. Held, judgment reversed.

Z. SEARCH AND SEIZURE

Z.3.h. Administrative/inspection searches

Z.3.h.3. School (New Jersey Like T.L.O.)

TITLE: Berry v. State

INDEX NO.: Z.3.h.3.

CITE: (1st Dist. 10/31/90), Ind. App., 561 N.E.2d 832

SUBJECT: Administrative search - school property

HOLDING: School principal's search of D's jacket not unreasonable. D was convicted of attempted dealing in marijuana, & at trial, fruits of warrantless search of his jacket by assistant school principal were admitted. In New Jersey v. T.L.O. (1985), 469 U.S. 325, U.S.S. Ct. held that school official's search of student is not subject to warrant requirement & does not require probable cause. Legality of search depends upon reasonableness under circumstances, focusing on (1) whether search was justified at its inception, & (2) whether search as executed was reasonably related in scope to circumstances justifying its inception. In T.L.O., search was prompted by teacher's discovery of T.L.O. & another student smoking in restroom. Teacher took both students to principal's office, where T.L.O. denied smoking. Principal searched her purse, finding pack of cigarettes that also contained rolling papers. He then searched T.L.O.'s purse further, finding marijuana & paraphernalia. U.S.S. Ct. found search was reasonable. Teacher had reported rule violation, & T.L.O.'s denial justified search to determine whether she had cigarettes. Here, teacher found D & another student arguing in restroom about D selling marijuana at school. Teacher took both students to principal's office, where D denied accusations. D attempts to distinguish his situation because another student made accusation, but Ct. App. does not find this fact significant. Search did not exceed its scope because jacket was reasonable place to search for marijuana, & once principal found it, he ended search. Held, conviction affirmed.

RELATED CASES: R.M., ___ N.E.2d ___ (Ind. Ct. App 2014) (school police officer's search of R.M.'s backpack was reasonable where R.M. requested permission to place his backpack behind teacher's desk, but left his backpack unattended and did not return for it); D.L., App., 878 N.E.2d 500 (pat-down search of student who was in hall during non-passing period & admittedly did not have an identification on his person was reasonable); C.S., App., 735 N.E.2d 273 (pat down of student was reasonable when based on tip from another student); D.B., App., 728 N.E.2d 179 (officer's pat down of juvenile was reasonable based on cigarette smoke coming from stall which juvenile & another girl were sharing); S.A., App., 654 N.E.2d 791 (school security officer's warrantless search of D's book bag & school locker reasonable; given information known at time of search, reasonable grounds existed to suspect unlawful behavior).

TITLE: D.I.R. v. State

INDEX NO.: Z.3.h.3.

CITE: (4th Dist., 7-23-97), Ind. App., 683 N.E.2d 251

SUBJECT: Student search held unreasonable

HOLDING: Legality of public-school student searches by school officials depends upon reasonableness of search, under all circumstances, focusing on (1) whether search was justified at its inception, & (2) whether search as executed was reasonably related in scope to circumstances justifying its inception. New Jersey v. T.L.O., 469 U.S. 325 (1985). Under ordinary circumstances, student search will be justified at its inception when there are reasonable grounds for suspecting that search will turn up evidence that student is or has violated either law or school rule.

In this case, pursuant to school policy, every student who entered school was searched with electronic wand metal detector. When D arrived late for her class, security officer had already locked electronic wand in principal's office for evening. Officer consequently manually searched D's pockets & discovered two partially smoked marijuana cigarettes, wooden pipe, & package of rolling papers. Although every student was subjected to electronic search prior to entering classroom, it does not follow that D impliedly consented to intrusive physical search to which she was subjected. Evidence was undisputed that officer reached into D's pockets without provocation merely because she arrived late for class. While D's privacy rights were somewhat restricted due to her status as student, school official's search of her must still meet reasonableness standard. Further intrusion of reaching into D's pockets in light of her age, sex & nature of search was not justified under circumstances. Held, reversed & remanded to vacate delinquency adjudication.

RELATED CASES: D.M. App., 902 N.E.2d 276 (search of D.M.'s jacket was not justified at its inception because D.M.'s statement to another student that he went shopping and had a "stack" was not reasonable grounds for suspecting that the search would produce evidence that D.M. violated either the law or school rule).

TITLE: Doe v. Renfrow

INDEX NO.: Z.3.h.3.

CITE: (7th Cir. 1980), 7th Ct. App., 631 F.2d 91

SUBJECT: School strip searches

HOLDING: School officials' permitting strip search of 13-year-old child violated 4th and 14th Amendments, and officials were subject to liability for damages resulting from emotional injury suffered by child. Here, 2,780 students were subjected to canine sniffing for controlled substances without reasonable suspicion to believe students possessed controlled substances. Subsequently, Doe and 3 others were strip searched. Ct. rejected argument of school that it was immune from civil liability because strip search was conducted in good faith and without malice. Held, remanded to Tr. Ct. for determination of damages stemming from body search.

RELATED CASES: Safford, 129 S. Ct. 2633 (2009) (because there were no facts that drugs school official suspected child to possess posed a danger to students or that drugs were concealed in her underwear, school officials did not have sufficient suspicion to warrant extending their search of child to the point of making child pull out her underwear; however, due to the lack of clarity in the law, the school official had immunity); Oliver v. McClung, 919 F. Supp. 1206 (N. D. Ind. 1995) (Strip search of 7th grade girls by teacher after \$4.50 found missing from gym locker violated 4th Amendment).

TITLE: Safford Unified School District #1 et al v. Redding
INDEX NO.: Z.3.h.3.
CITE: (U.S.), (6-25-09), 129 S. Ct. 2633
SUBJECT: School search - partial strip search of child unreasonable
HOLDING: Because there were no facts that drugs school official suspected child to possess posed a danger to students or that drugs were concealed in her underwear, school officials did not have sufficient suspicion to warrant extending their search of child to the point of making child pull out her underwear. The content of the suspicion failed to match the degree of intrusion. A school search is permissible when the measures adopted are reasonably related to the objective so the search and not excessively intrusive in light of the age and sex of the student and the nature of the infraction. New Jersey v. T.L.O., 469 U.S. 325 (1985). Here, a thirteen-year-old child was suspected of bringing prescription strength ibuprofen and over the counter pain killers to school, which were both banned by school policy. Although a search of the child's bag and outer clothing was justified by the suspicion, the subsequent search of her bra and underwear, exposing her breasts and some of her pelvic area was not justified. The content of the suspicion failed to match the degree of intrusion. Because school officials knew that the pills were common pain relievers, they must have known of their nature and limited threat and had no reason to suspect that large amounts were being passed around or that individual students had great quantities. Nor could the officials have suspected the child was hiding common painkillers in her underwear. Thus, the strip search of the child was unreasonable under the Fourth Amendment of the U.S. Constitution. However, the school officials were protected from liability by qualified immunity. Held, judgment affirmed in part, reversed in part, and remanded; Thomas, J., DISSENTING on Fourth Amendment issue.

TITLE: Vernonia School District 47J v. Acton
INDEX NO.: Z.3.h.3.
CITE: 515 U.S. 646, 115 S. Ct. 2386, 132 L.Ed.2d 564 (1995)
SUBJECT: Search and Seizure - Drug Testing of Student Athletes
HOLDING: Random, suspicionless urine testing of public-school athletes by school district is not “unreasonable under 4th Amendment.” Reasonableness is determined by balancing intrusion on privacy interests against promotion of legitimate governmental interest. First factor to be considered is nature of privacy interest on which search intrudes. Public school students are minors who have been committed to temporary custody of state (school district), and in that capacity, school district can exercise degree of supervision and control greater than it could over free adults. School districts can require students to submit to physical examinations and vaccinations, indicating that students have lesser privacy interest than general public with regard to medical examinations and procedures. Student athletes have even less legitimate privacy interest since participation involves certain amount of communal undress and being subject to physical examination. Intrusion on reduced privacy interest by drug testing here is minimal. Conditions of collection are nearly identical to those typically encountered in public restrooms. Results are released only to limited group. Further, nature and immediacy of governmental interest weighs in favor of finding of reasonableness. Deterring drug use among school “children” is important, as is protecting health and safety of student athletes. While suspicion- based testing might be possible and would be less intrusive, that does not render current policy unreasonable. In light of all factors -- reduced expectation of privacy, relative in obtrusiveness of search, and importance of governmental interest being served, drug-testing policy is upheld as reasonable. O’Connor, Stevens, & Souter, JJ., DISSENT.

TITLE: T.S. v. State

INDEX NO.: Z.3.h.3.

CITE: (2nd Dist.; 03-27-07), Ind. App., 863 N.E.2d 362

SUBJECT: School search -reasonableness standard applied to IPSP officer

HOLDING: Tr. Ct. properly denied motion to suppress because officer acted reasonably when seizing T.S. The legality of a search of a student should depend simply on the reasonableness, under all the circumstances, of the search. New Jersey v. T.L.O., 469 U.S. 325, 341 (1985). The reasonableness standard applies only to school resource officers acting on their own initiative & acting to further educationally related goals. Myers v. State, 839 N.E.2d 1154 (Ind. 2005). Here, an Indiana Public Schools Police (IPSP) officer, while working at Broad Ripple High School, received an anonymous tip that T.S. had marijuana in his front pocket. The officer took T.S. from the gym class, made him change clothes, & asked him if there was anything he should know about to which T.S. responded by giving him a bag of marijuana. The officer then reached in his jeans & pulled out another bag. When pulling T.S. from class, the officer was a school resource officer acting to further educationally related goals. Although the officer did not act in conjunction with other school officials prior to the initial contact with T.S., when he initiated contact, he had the intent to involve the school's dean. Such intent indicates that the officer was concerned with a possible violation of school rules, & not solely a criminal violation. Thus, the reasonableness standard applies to the officer.

Further, the encounter between the officer & T.S. constituted a seizure, thus implicating the Fourth Amendment. The fundamental inquiry into school seizures is the two-prong test of T.L.O.: (1) whether the seizure was justified at its inception, & (2) whether the scope & nature of the seizure was reasonable. For a seizure to be reasonable, an officer does not need the reasonable, articulable suspicion necessary to justify a Terry stop of a citizen in public. However, a seizure may be unreasonable without being arbitrary, capricious, or undertaken for the purpose of harassment. A search in a public school is justified upon reasonable suspicion, but a lower standard is required for an investigatory stop in a public school. Although the anonymous tip did not rise to reasonable suspicion, the officer acted reasonably in investigating the tip, & thus, did not violate the Fourth Amendment. Further, given the totality of the circumstances, most importantly the school setting & the officer's role within the school, the seizure of T.S. was reasonable under the Indiana Constitution. Held, judgment affirmed.

Z. SEARCH AND SEIZURE

Z.3. Exceptions to search warrant requirement

Z.3.h.4. Probation/parole (Jail/prison, see Z.1.e.)

TITLE: Griffin v. Wisconsin

INDEX NO.: Z.3.h.4.

CITE: 483 U.S. 868, 107 S. Ct. 3164, 97 L.Ed.2d 709 (1987)

SUBJECT: Warrantless probation searches

HOLDING: Probationer's home is protected by 4th Amend.'s requirement that searches be reasonable. However, warrant is not required when "special needs, beyond the normal need for law enforcement, make the warrant & probable cause requirement impracticable." NJ v. T.L.O., (1985), 469 U.S. 325, 351, 105 S. Ct. 733, 749, 83 L.Ed.2d 720. State's operation of probation system presents "special needs" beyond normal law enforcement that justify departures from usual warrant/probable cause requirements. Here, probationer's home was searched by probation officers (PO) pursuant to regulation that permitted warrantless search provided PO's supervisor approves & provided there are "reasonable grounds" to believe probationer possesses contraband. Probationer's home was searched pursuant to tip received by D's PO from police officer that there "were or might be" guns in D's apartment. Court dispenses with warrant requirement because it would interfere to appreciable degree with probation system, would result in delay inherent in obtaining warrant, & would reduce deterrent effect that possibility of expeditious searches would otherwise create. Probation regime would also be unduly disrupted by requirement of probable cause. Probable cause requirement would reduce deterrent effect of supervisory arrangement. Further, PO must be able to proceed on basis of entire experience with D & to assess probabilities in light of knowledge of D's life, character, & circumstances. Held, special needs of probation system make warrant requirement impracticable & justify replacement of standard of probable cause by "reasonable grounds." Blackmun, joined by Marshall, & joined in part by Brennan, & Stevens, DISSENTS.

TITLE: Hensley v. State
INDEX NO.: Z.3.h.4.
CITE: (03-08-12), 962 N.E.2d 1284 (Ind. Ct. App 2012)
SUBJECT: Warrantless probation search unreasonable under Fourth Amendment
HOLDING: Tr. Ct. abused its discretion by denying D's motion to suppress marijuana and prescription pills found in her home. A warrantless probation search may be justified on the basis of reasonable suspicion to believe a probation violation has occurred. State v. Schlechty, 926 N.E.2d 1 (Ind. 2010). Even if there is no probationary purpose at stake, a warrantless search may be justified on the basis of reasonable suspicion to believe that the probationer has engaged in criminal activity and that a search condition is one of the terms of probation. Id.

Here, D lived with her husband, who was on probation. As a condition of probation, he allowed a probation officer to visit his home and conduct a warrantless search. An officer received a tip that D's husband possessed marijuana but did not act on the tip and could not remember who provided the tip. Two weeks later, someone else told the officer that husband possessed a firearm. So, the officer contacted the probation officer and asked to do a probation check on which the officers would accompany her. Husband was not present at the home during the check. While the probation officer talked with D in the living room, the police began searching in the bedroom. D told the probation officer that her husband did not share the bedroom but rather slept on the couch. When probation officer went to the bedroom, the room had been "ransacked." The officers found marijuana in a tin under the mattress of the bed and a Xanax in a ring box in D's drawer. The police then obtained a warrant. At the point the police began their own search without the probation officer, the officer's search ceased being a search to determine whether D committed a probation violation. The probation officer testified that it was not standard practice to search under mattresses in probation searches. The police were pursuing their own agenda and conducted an investigatory search under the guise of a probationary search. Nor did the State argue at trial level or prove that the unnamed tipsters provided reasonable suspicion of criminal activity. Even if they had, the evidence was found in D's room and she was not on probation. Thus, the search violated the Fourth Amendment. Held, judgment reversed.

TITLE: In re Jaime P.

INDEX NO.: Z.3.h.4.

CITE: 40 Cal. 4th 128, 146 P.3d 965 (Cal. 2006)

SUBJECT: Officer must know juvenile's probation status prior to search

HOLDING: California Supreme Court held that the Fourth Amendment requires the police to know ahead of time that a juvenile has agreed to random warrantless searches as a condition of probation in order to justify a suspicionless search of the juvenile on that basis, overruling a previous ruling by the Court upholding such a search. Its previous ruling conflicted with a subsequent decision by the Court not allowing such a search for an adult parolee in similar circumstances. The Court analyzed whether a justification existed to treat juveniles differently than adult probationers. Court looked at three reasons it had previously given to allow such a search of a juvenile: (1) the "special needs" of the juvenile probation scheme; (2) the need to deter future misconduct; and (3) the reduced expectation of privacy held by probationers. Comparing to its previous decision as to adult parolees, Court noted in that case it rejected the privacy expectation factor noting that while parolee's expectation of privacy is diminished it is not eliminated and a reasonable expectation exists that a search will not be undertaken absent reasonable suspicion or prior knowledge of a search condition. Court also reasoned that requiring officers to be aware of a search condition would not subvert the goal of deterring future criminal conduct. The Court's previous decision for an adult parolee foreclosed those two factors for allowing such a search of a juvenile probationer, leaving the only question open for determination whether the special needs of the juvenile probation scheme justify a suspicionless search when the officer is ignorant of a special search condition. Court held that the State failed to identify any special need that would be undermined by requiring officers to know of a special search condition before subjecting a juvenile to a suspicionless search. Court noted that while State has an interest in reducing the rate of recidivism by juvenile offenders that interest is equal with the State's interest in deterring future criminal conduct among adult offenders. While State has a special relationship with minors under the doctrine of *parens patriae*, this special relationship does not justify compromising a juvenile's right to be free from arbitrary searches without reasonable suspicion nor advance knowledge of a probation search condition and the doctrine of *parens patriae* cannot be used to defeat the primary purpose of the exclusionary rule -- deterring police misconduct. Dissent was entered agreeing that previous precedent should be disapproved to extent it meant that a juvenile probationer subject to search condition has no expectation of privacy but would uphold the search based on juvenile's reduced expectation of privacy and officer's mistaken belief that juvenile had committed a traffic violation.

TITLE: Jarman v. State

INDEX NO.: Z.3.h.4.

CITE: (11/30/2018), 114 N.E.3d 911 (Ind. Ct. App 2018)

SUBJECT: D did not agree to suspicionless searches as a condition of community corrections

HOLDING: Suspicionless searches of community corrections participants are permissible under the Fourth Amendment only if conditions of the program unambiguously authorize such searches. State v. Vanderkolk, 32 N.E.3d 775 (Ind. 2015). Here, D, who was on community corrections, signed a waiver concerning searches. However, the waiver stated “Specifically, I hereby consent to allow Community Corrections or law enforcement officer to search my person or property without a warrant and without probable cause.” Given the well-established distinction between “probable cause” and lesser degrees of suspicion, Court found the word “specifically” defined the scope of the waiver such that it did not unambiguously mean D was agreeing to a search without reasonable suspicion. “If the State wanted [D] to be subject to suspicionless searches as a condition of entering community corrections, it should have included in its waiver form language like “without suspicion,” “without reasonable suspicion,” “without reasonable cause,” or “without cause.” Held, convictions for possession of methamphetamine, dealing in a synthetic drug or synthetic drug lookalike substance, and possession of paraphernalia reversed.

RELATED CASES: State v. Ellis, 153 N.E.3d 305 (to the extent that Jarman suggests language should be used in community-corrections contracts to clarify that the defendant is consenting to warrantless, suspicionless searches, Court found that language unnecessary).

TITLE: Kopkey v. State

INDEX NO.: Z.3.h.4.

CITE: (4th Dist., 1-29-01), Ind. App., 743 N.E.2d 331

SUBJECT: Random drug testing of in-home detainees without reasonable suspicion upheld

HOLDING: Tr. Ct. did not err in denying D's motion to suppress laboratory results of chemical analysis of two urine samples obtained by community corrections officers that revealed D had recently used cocaine. D voluntarily consented to condition of home detention requiring him to submit to random alcohol or drug testing at any time when requested by home detention staff, even without reasonable suspicion of wrongdoing. There was no indication or reason to suspect D had recently used illegal drugs or alcohol at time two drug tests were administered. *Distinguishing Green v. State*, 719 N.E.2d 426 (Ind. Ct. App 1999) & *Purdy v. State*, 708 N.E.2d 20 (Ind. Ct. App 1999), Ct. found no prohibition against conducting search of in-home detainee's person via urinalysis in absence of reasonable suspicion. As with probationers, State's operation of in-home detention of convicted criminals presents "special needs" beyond normal law enforcement that may justify departures from usual warrant & probable cause requirements of Fourth Amendment. *Griffin v. Wisconsin*, 483 U.S. 868, 107 S. Ct. 3164 (1987). Ct. concluded that D's privacy expectations were greatly reduced when he voluntarily agreed to terms of his in-home detention placement in exchange for being freed from serving time in jail on work-release program. Further, although in-home detention surveillance officer observed D as he produced urine samples, intrusion was relatively unobtrusive under circumstances & not so significant as to render tests unconstitutional. Finally, random drug testing of in-home detainees is effective & reasonable means to deter use of drugs or alcohol, thereby facilitating State's strong interest in facilitating detainee's rehabilitation & ensuring public safety. Held, judgment affirmed.

TITLE: People v. Robles

INDEX NO.: Z.3.h.4.

CITE: 23 Cal. 4th 789; 3 P.3d 311 (Cal. 2000)

SUBJECT: Probation Search of Joint Residence -- Officer's Knowledge of Probation Condition

HOLDING: California Supreme Court has held that, to justify search of residence on ground that one occupant is subject to probation search condition, officers conducting search must be aware of search condition at time of search. Here, officer looked through hole in garage and saw stolen car. Without obtaining warrant, officer opened garage door and went inside, searching car and discovering D's palm print on interior. Officers later learned that D's brother shared residence and was on probation, and subject to probation condition allowing warrantless searches, and state relied on this in defending against suppression motion. Tr. Ct. suppressed, and supreme court affirms. Had officers known of brother's warrantless search condition, that would have provided legal justification for search, albeit pretextual, so long as search was reasonably related to purpose of probation. Where officers did not know of search condition, however, condition could not have provided even pretextual legal basis. The state also argued that because probationers consented to probation search provision, those who cohabit with them have no reasonable expectation of privacy. The majority agreed that cohabitants could not complain about searches conducted by officers knowingly on basis of probation search condition and reasonably related to purposes of probation, they "need not anticipate that officers with no knowledge of the probationer's existence or search condition may freely invade their residence in the absence of a warrant or exigent circumstances." As a policy matter, the majority reasons, such a ruling might impair the probation system by making law-abiding citizens reluctant to open their homes to probationers.

TITLE: Perkins v. State

INDEX NO.: Z.3.h.4.

CITE: (10/25/85), Ind., 483 N.E.2d 1379

SUBJECT: Prison searches - 4th Amend does not apply

HOLDING: Tr. Ct. did not err in admitting pair of shoes seized from D's prison cell. Here, co-conspirators informed police of D's involvement in smuggling drugs into Pendleton. Police searched his cell & recovered shoes with traces of marijuana on them (drugs smuggled in heels). D contends seizure was illegal because made without search warrant or probable cause. U.S.S. Ct. held in Hudson v. Palmer (1984), U.S., 104 S. Ct. 3194, 82 L.Ed.2d 393 that prison inmates do not have reasonable expectation of privacy in prison cells entitling them to 4th Amend protection against unreasonable searches & seizures. Institutional security requires close/continual surveillance of inmates/cells. Held, no error.

RELATED CASES: Hawkins, App., 884 N.E.2d 939 while in jail, D had no expectation of privacy in her outgoing letters; State obtained search warrant before opening letters); Crump, App., 740 N.E.2d 564 (although there are differences between work release participants & those in jail, work release facility may find it necessary to impinge on inmate's constitutional rights to further its objectives of deterring crime, rehabilitating its inmates & security); Cleary, App., 663 N.E.2d 779 (no error in admitting belt seized without warrant from D's jail cell; right to privacy is incompatible with need to maintain security within jail).

TITLE: Purdy v. State
INDEX NO.: Z.3.h.4.
CITE: (4th Dist., 3-25-99), Ind. App., 708 N.E.2d 20
SUBJECT: Warrantless probation search reasonable
HOLDING: After smelling marijuana smoke coming from inside probationer's home, police officer's decision to search home was narrowly & properly made on basis of reasonable suspicion that illegal activity was occurring in probationer's home in violation of his probation. Condition of probation requiring probationer to submit to search without reasonable suspicion is overly broad & in conflict with U.S. S. Ct.'s decision in Griffin v. Wisconsin, 438 U.S. 868, 107 S. Ct. 3164 (1987). Rivera, App., 667 N.E.2d 764 (Staton, J., concurring). While conditions of probation may impinge upon probationer's exercise of constitutionally protected right, those impingements must be designed to accomplish explicit goals of protecting community & promoting probationer's rehabilitation process. State must also be able to demonstrate that warrantless search of probationer was true probation search & not improper investigation search. United States v. Ooley, 116 F.3d 370 (9th Cir. 1997).

In this case, because probation agreement was never entered into evidence, Ct. was unable to determine whether D consented to search condition that was unreasonable or overly broad on its face. However, Ct. concluded that actual search of probationer's home was not unreasonable & did not violate probationer's federal or state constitutional rights. Officers arrived at home on routine, reasonable sweep of probationers to ensure compliance with restrictions & conditions of probation. There was no evidence to indicate that officers intended to search probationer's home until after they arrived & smelled marijuana smoke coming from inside home. Thus, Tr. Ct.'s denial of probationer's motion to suppress marijuana obtained during search of his home was not clearly erroneous. Held, judgment affirmed.

RELATED CASES: Micheau, App., 893 N.E.2d 1053 (probation officer's "home visit" for safety reasons was reasonable despite the presence of police where he made police get a warrant as soon as they found evidence of a crime); Fitzgerald, App., 805 N.E.2d 857 (provision that D waive his right against unreasonable searches was invalid despite State's argument that reasonableness is inherently required. At minimum, there must be reasonable suspicion that conditions of probation are being violated in order for probation search to be reasonable. In this regard, a general or routine sweep for probation compliance checks, as was case in Purdy will not suffice); Bonner, App., 776 N.E.2d 1244 (warrantless search condition of D's probation was reasonably related to D's rehabilitation as well as protection of public); Allen, App., 743 N.E.2d 1222 (parole search of D's home was reasonable, true probation search & was valid within context of his parole agreement & 4th amendment); Kopkey, App., 743 N.E.2d 331 (condition of in-home detention requiring D to submit to random urinalysis without reasonable suspicion is not overly broad & does not violate 4th Amend.; see full review, this section); Carswell, App., 721 N.E.2d 1255 (condition that D submit to warrantless searches was not invalid on its face, despite fact that it contained no language dealing with reasonableness because reasonableness standard is implied).

TITLE: Rivera v. State

INDEX NO.: Z.3.h.4.

CITE: (2nd Dist., 6-18-96), Ind. App., 667 N.E.2d 764

SUBJECT: Warrantless probation search reasonable

HOLDING: Warrantless search of probationer's home was not unreasonable or violative of either United States or Indiana Constitutions. Written conditions of probation contained express waiver of Fourth Amendment search & seizure rights & language authorizing random drug screens & home visits. While on probation, D's urinalysis tested positive for cocaine. Probation officer learned from detective that D was suspected of possessing cocaine in his home.

Ct. found that under these circumstances, probation officer had reasonable grounds to search D's residence. D's cooperation with authorities during search supported conclusion that D was aware of & agreed to submit to searches as condition of probation. State's operation of probation system presents 'special needs' situation beyond normal law enforcement that justifies departure from usual warrant & probable-cause requirements. Griffin v. Wisconsin, 483 U.S. 868 (1987). Held, denial of motion to suppress affirmed; Staton, J., concurring, noted that trial Cts. should be strongly discouraged from using all-encompassing waiver of D's Fourth Amendment rights in probation orders.

RELATED CASES: Kopkey, App., 743 N.E.2d 331 (condition of in-home detention requiring D to submit to random urinalysis without reasonable suspicion is not overly broad & does not violate 4th Amend.; see full review, this section); Polk, App., 739 N.E.2d 666 (where police officers did not know that D was probationer, police did not have reasonable suspicion to stop D because he was in high crime neighborhood); Green, App., 719 N.E.2d 426 (terms of D's work release could not justify investigatory stop of D without reasonable suspicion while he was on work release); Purdy, App., 708 N.E.2d 20 (so long as supervisory function of probation officers conducting regulatory sweep of probationers does not include automatic search of their person, vehicle or residence without reasonable suspicion, consent-to-search provision in probation agreement is valid).

TITLE: Samson v. California

INDEX NO.: Z.3.h.4.

CITE: 547 U.S. 843 (2006)

SUBJECT: Statutory suspicionless search of parolee, 4th Amendment

HOLDING: Pursuant to state statute requiring every prisoner eligible for release on state parole to agree in writing to search or seizure by a parole officer or other peace officer with or without a search warrant or cause and based solely on Petitioner's parolee status, an officer searched Petitioner and found meth. A suppression motion was denied, and he was convicted of possession. Majority held that Fourth Amendment does not prohibit a police officer from conducting a suspicionless search of a parolee. Majority relied on U.S. v. Knights, 534 U.S. 112 (2001) which examined the reasonableness of a search of a probationer in its analysis. In evaluating the intrusion into Knight's privacy, the Court found his probationary status "salient" and that probation searches were necessary to promote legitimate governmental interests of integrating probationers back into the community, combating recidivism, and protecting potential victims. Balancing those interests, the intrusion was reasonable, but since reasonable suspicion was present did not reach question of the reasonableness of the search based solely on the probation status. Majority noted that parolees have fewer expectations of privacy than probationers, because parole is more akin to imprisonment than probation is. Examining the totality of the circumstances, Petitioner did not have an expectation of privacy that society would recognize as legitimate. The State's interests, however, are substantial in supervising parolees who "are more likely to commit future criminal offenses." Pennsylvania Bd. of Probation and Parole v. Scott, 524 U.S. 357 (1998). The State Legislature has concluded that, given the State's high recidivism rate and number of parolees, an individualized suspicion requirement would undermine the State's ability to effectively supervise its parolees and protect the public from reoffenders. The fact that some states and the federal government require a level of individualized suspicion before searching a parolee is of little relevance in determining if California's system is drawn to meet the State's needs and is reasonable. Majority also rejected claim that California's law grants discretion without procedural safeguards. The concern that the system gives officers unbridled discretion to conduct searches, thereby inflicting dignitary harms that arouse strong resentment and undermine parolees' ability to reintegrate into society, is belied by the State's prohibition on arbitrary, capricious, or harassing searches. Held, judgment affirmed; Stevens, J., dissenting, in which Souter and Breyer, JJ. joined, noting that Court's prior decisions have consistently assumed that the Fourth Amendment provides some degree of protection for probationers and parolees; and neither Knights nor Griffin v. Wisconsin, 483 U.S. 868 (1987) supports a regime of suspicionless searches, conducted pursuant to a blanket grant of discretion untethered by any procedural safeguards, by law enforcement personnel who have no special interest in the welfare of the parolee or probationer.

RELATED CASES: Vandervolk, 32 N.E.3d 775 (Ind. 2015) (Samson is applicable to probationers and community corrections participants; see full review, this section).

TITLE: State v. Ellis

INDEX NO.: Z.3.h.4.

CITE: (4/23/21) 167 N.E.3d 285 (Ind. 2021)

SUBJECT: Waiver of "right against search and seizure" clearly informed community-corrections participant that he waived right against warrantless, suspicionless searches

HOLDING: A community-corrections home-detention contract stating that the defendant "waives all rights against search and seizure" unambiguously informs the defendant that a search may be conducted without reasonable suspicion. Additional language specifying that the defendant may be searched without reasonable suspicion and waives the right against "unreasonable" search and seizure is unnecessary. To the extent that Jarman v. State, 114 N.E.3d 911 (Ind. Ct. App. 2018), suggests language should be used in community-corrections contracts to clarify that the defendant is consenting to warrantless, suspicionless searches, Court found that language unnecessary. When an individual waives his rights against search and seizure, this waiver clearly encompasses the right to be free from search and seizure absent reasonable suspicion. Here, because Defendant unambiguously consented to community correction searches absent reasonable suspicion, the trial court erred when it suppressed the evidence obtained from the search of his home. Held, transfer granted, Court of Appeals' opinion at 153 N.E.3d 305 vacated, trial court's judgment reversed.

RELATED CASES: State v. Fox, 186 N.E.3d 157 (Ind. Ct. App. 2022) (suppression improper where D waived search and seizure rights in home detention contract).

TITLE: State v. Harper
INDEX NO.: Z.3.h.4.
CITE: (10-30-2019) Ind. Ct. App., 135 N.E.3d 962
SUBJECT: Trial court's grant of motion to suppress warrantless parole search reversed
HOLDING: Trial court abused its discretion in suppressing evidence resulting from a warrantless search of a parolee's storage unit. Defendant's parole officer received an anonymous tip that Defendant was traveling out of state without permission, dealing in narcotics, and had rented a storage unit in town. The officer called Defendant in for a parole meeting, during which he tested positive for cocaine and admitted to the unauthorized travel. A warrantless search of Defendant's home revealed a receipt for a storage unit in Defendant's name. The parole officer went to the unit, unlocked it using Defendant's keys and observed a handgun and a clear bag containing a block of white substance before stopping his search and notifying police, who then obtained a warrant.

In analyzing this parole search under the Fourth Amendment, the Court of Appeals adopted the balancing test outlined in United States v. Knights, 534 U.S. 112 (2001), which weighs the totality of the circumstances. The Court noted that Defendant had actual knowledge of the search terms of his parole conditions, which permitted parole or law enforcement officers to perform a reasonable search of property under his control if they had reasonable cause to believe he was violating or was in imminent danger of violating a condition of parole. The Court concluded that based on the totality of the circumstances in this case, the parole and law enforcement officers had reasonable suspicion to believe Defendant, who had actual knowledge of the search terms of his parole conditions, was engaged in criminal activity. The Court reversed the trial court's grant of Defendant's motion to suppress.

TITLE: State v. Schlechty
INDEX NO.: Z.3.h.4.
CITE: (03-24-10), 926 N.E.2d 1 (Ind. 2010)
SUBJECT: Probation searches can have investigatory purpose under Fourth Amendment
HOLDING: Tr. Ct. abused its discretion by suppressing marijuana seized during a warrantless search of D's car. A warrantless search of a probationer's property that is conducted reasonably, supported by a probation search term and reasonable suspicion of criminal activity complies with the dictates of the Fourth Amendment. A search authorized by a condition of probation and supported by reasonable suspicion is reasonable under the Fourth Amendment. United States v. Knights, 534 U.S. 112 (2001). Pursuant to Knights, the fact that the search may have been more of an investigatory search rather than a probationary search is no longer a consideration under the Fourth Amendment.

Here, D was placed on probation with the conditions that he "shall behave well," not "commit any other criminal offense," and agree to submit to "reasonable warrantless searches" of his person and/or property by his probation officer in conjunction with other law enforcement officers. A thirteen-year-old girl reported to the police that D tried to persuade her into his car while she was on her way to the school bus stop. She had seen the same man the day before and he frightened her. D's probation officer, along with police officers, confronted D and conducted a warrantless search of his car. The search revealed marijuana. Although one of the officers claimed he did not know if D had committed a criminal offense but was investigating whether D behaved well, a condition of D's probation, the thirteen-year-old's report constituted reasonable suspicion that D committed stalking and attempted confinement. Thus, viewed objectively, the officers had reasonable suspicion to believe criminal activity had occurred even though their subjective states of mind may have suggested otherwise. Because the warrantless search was supported both by reasonable suspicion to believe D was engaged in criminal activity and a search condition contained in the terms of probation and was reasonably conducted, the search did not violate the Fourth Amendment. Court expressed no opinion as to whether the result would be the same under Article I, Section 11 of the Indiana Constitution. Held, transfer granted, judgment of the Tr. Ct. reversed and remanded; Court of Appeals' memorandum opinion is vacated.

RELATED CASES: Vanderkolk, 32 N.E.3d 775 (Ind. 2015) (probationers and community corrections participants who have consented or been informed that their conditions of probation or placement authorize warrantless and suspicionless searches may be subject to such searches; see full review, this section).

TITLE: State v. Vanderkolk
INDEX NO.: Z.3.h.4.
CITE: (6/9/2015), 32 N.E.3d 775 (Ind. 2015)
SUBJECT: Warrantless, suspicionless probation searches as result of advance consent or condition of release

HOLDING: A probationer or community corrections participant may, pursuant to a valid search condition or advance consent, authorize a warrantless premises search without reasonable suspicion. Home detention placement under either probation or a community corrections program (which does not call for differing treatment in this context) is a matter of grace and conditional liberty that is a favor, not a right. Cox v. State, 706 N.E.2d 547 (Ind. 1999). But a probationer's status as a community corrections participant, standing alone, does not authorize a warrantless and suspicionless compliance search by community corrections officers.

Here, probationer consented to law enforcement or probation officer to search without notice only upon probable cause, which was wholly lacking in this case. Thus, all evidence seized from the compliance search was the result of an improper entry and search in violation of Fourth Amendment. Held, transfer granted, Court of Appeals' opinion at 10 N.E.3d 585 vacated, remanded with instructions to grant motion to suppress in its entirety.

RELATED CASES: McElroy, 133 N.E.3d 201 (Ind. Ct. App. 2019) (a person who agrees to house a probationer or community corrections participant retains a limited expectation of privacy in his residence and possessions because the residence and possessions, including common areas, are subject to search to ensure compliance with probation/community corrections rules); Hodges, 54 N.E.3d 1055 (Ind. Ct. App 2016) (majority interpreted Vanderkolk to hold that all probation searches need not be supported by reasonable suspicion either under 4th Am. or Ind. Constitution and may be predicated solely upon a valid search condition contained in the conditions of probation; Vaidik, J., concurring in result, believes that Vanderkolk applies only to probationers and community corrections participants on home detention, not to all probationers, including those on unsupervised probation). Terrell, 40 N.E.3d 501 (Ind. Ct. App 2015) (“nondestructive daytime search” of probationer’s home, safe and nightstand was reasonable under federal and state constitutions).

TITLE: Sureporn Roll v. State

INDEX NO.: Z.3.h.4.

CITE: (1st Dist. 1/24/85), Ind. App., 473 N.E.2d 161

SUBJECT: Reasonableness of search

HOLDING: Tr. Ct. did not err in allowing marijuana discovered by halfway house counselors to be introduced into evidence. Here, D enclosed marijuana in envelope addressed to inmate at halfway house. Counselors at halfway house became suspicious of envelope because of its feel & sound & opened envelope. Ct. finds halfway house's interest in examining resident's incoming mail (to prevent influx of dangerous contraband) outweighs slight intrusion on individual privacy. Ct. concludes search satisfies reasonableness requirement of 4th Amend. Held, no error.

TITLE: United States v. Freeman

INDEX NO.: Z.3.h.4.

CITE: 479 F.3d 743 (10th Cir. 2007)

SUBJECT: State law governs searches of parolees and probationers

HOLDING: Tenth Circuit held that police violated the Fourth Amendment when they conducted a search of a home of a parolee who was subject to a parole condition that authorized warrantless searches by parole officers. Recent decisions by the U.S. Supreme Court have emphasized that search conditions severely diminish reasonable privacy expectations, but Court here held that the diminution corresponds to the particular terms of the search condition. In Samson v. California, 126 S. Ct. 2193 (2006), the Supreme Court held that the Fourth Amendment was not violated when police conducted a warrantless, suspicionless search of a California parolee who was subject to a broadly worded search condition that authorized any peace officer to conduct a search at any time. Building on U.S. v. Knights, 534 U.S. 112 (2001) -- which involved a probationer -- the Samson court stressed that "parolees . . . have severely diminished expectations of privacy by virtue of their status alone." Parolees have even less reason to expect privacy than probationers, that Court explained, "because parole is more akin to imprisonment than probation is to imprisonment."

Relying on the expectation of privacy language in Knights and Samson, federal prosecutors argued in this case that, even if the suspicionless search of D's home by the municipal police did not comply with the parole agreement and Kansas DOC rules, the search did not violate the Fourth Amendment because D had such a diminished expectation of privacy by virtue of his parole agreement. The Samson opinion noted that "some States and the Federal Government require a level of individualized suspicion, and Court here said the Samson court "strongly implied that in such jurisdictions a suspicionless search would remain impermissible." "Parolee searches are therefore an example of the rare instance in which the contours of a federal constitutional right are determined, in part, by the content of state law."

Rejecting the government's expectation-of-privacy argument, Court said: "Samson does not represent a blanket approval for warrantless parolee or probationer searches by general law enforcement officers without reasonable suspicion; rather, the Court approved the constitutionality of such searches only when authorized under state law."

TITLE: United States v. Knights
INDEX NO.: Z.3.h.4.
CITE: 534 U.S. 112; 122 S. Ct. 587; 151 L. Ed. 2d 497 (2001)
SUBJECT: Warrantless searches, probation, reasonable suspicion
HOLDING: Only "reasonable suspicion," rather than probable cause, and no warrant is required for a law enforcement officer to search a probationer D's residence, where a court has conditioned probation on D's consent to search. D's expectation of privacy is diminished by being subject to search by law enforcement as a condition of probation.

D was subject to a search of his person or property by law enforcement without a warrant at any time as a condition of probation for a drug offense. A law enforcement officer, with reasonable suspicion that D was involved with acts of vandalism and arson, searched D's apartment without a warrant and found evidence connecting D with the crimes. Held, because D was on probation, and the Tr. Ct. had conditioned the probation on his acceptance of the search provision, D's expectation of privacy was "significantly diminished" and the search was reasonable under the 4th Amendment. The Court did not reach the question of whether D had effectively consented to the search.

RELATED CASES: Nowling, 955 N.E.2d 854 (Ind. Ct. App 2011) (fact that probationer's drug counselor claimed probationer lived in "la la land" about his drug problem and that he was considered high risk did not constitute reasonable suspicion to search probationer's room); Griffin v. Wisconsin, 483 U.S. 868, 107 S. Ct. 3164, 97 L.Ed.2d 709 (1987) (Probationer's home is protected by 4th Amend.'s requirement that searches be reasonable); Ohio v. Robinette, 519 U.S. 33, 117 S. Ct. 417, 136 L.Ed.2d 347 (1996) (Interpreting 4th Amendment, S. Ct. has generally rejected bright-line rules and focused on the totality of circumstances).

Z. SEARCH AND SEIZURE

Z.3. Exceptions to search warrant requirement

Z.3.h.5. Workplace (O'Connor v. Ortega)

TITLE: In Re Search Warrant for Comm'r of Labor
INDEX NO.: Z.3.h.5.
CITE: (2d Dist. 1/17/84), Ind. App., 458 N.E.2d 1164
SUBJECT: Administrative search warrant
HOLDING: Tr. Ct. erred in quashing administrative search warrant; sufficient evidence to establish probable cause for issuance of administrative search warrant was presented to Tr. Ct. Here, IOSHA sought warrant to inspect premises of J & P Custom Plating, a "highly hazardous" company. Probable cause in criminal sense is not required. Marshall v. Barlow's, Inc. (1978), 436 U.S. 307, 98 S. Ct. 1816, 56 L.Ed.2d 305; State v. Kokomo Tube Co., App., 426 N.E.2d 1338. "A warrant showing that a specific business has been chosen for an OSHA search on the basis of a general administrative plan for the enforcement of the Act, derived from neutral sources ... would protect an employer's 4th Amend. rights." Id. Ct. rejects J & P's contention that it is not a "highly hazardous" industry. An administrative search warrant need not depend upon specific knowledge re a particular industry. See Camara v. Municipal Ct. (1967), 387 U.S. 523, 87 S. Ct. 1727, 18 L.Ed. 2d 930. Held, reversed & remanded with instructions to issue warrant.

TITLE: O'Connor v. Ortega

INDEX NO.: Z.3.h.5.

CITE: 480 U.S. 709, 107 S. Ct. 1492, 94 L.Ed.2d 714 (1987)

SUBJECT: Work related searches - warrant not required

HOLDING: Search conducted without warrant may, nevertheless, be reasonable for purposes of 4th Amend. when "burden of obtaining a warrant is likely to frustrate the governmental purpose behind the search." Camera v. Municipal Court (1967), 387 U.S. 523, 533, 87 S. Ct. 1727, 1733, 18 L.Ed.2d 930. In case of searches conducted by public employer, Court must balance invasion of employees' legitimate expectations of privacy against government's need for supervision, control, & efficient operation of workplace. Legitimate privacy interests of public employees in private objects brought to workplace may be substantial. However, when balanced against realities of workplace, warrant requirement would be unworkable. Employers may have need for correspondence/file/report available only in employee's office while employee is away from office. Or, as alleged here, employer may need to safeguard or identify state property/records in office. Requiring employer to obtain warrant whenever employer wishes to enter employee's office, desk, or file cabinets for work-related purpose would seriously disrupt routine conduct of business & would be unduly burdensome. Held, imposition of warrant requirement would conflict with "the commonsense realization that government offices could not function if every employment decision became a constitutional matter." Connick v. Myers (1983), 461 U.S. 138, 143, 103 S. Ct. 1684, 1688, 75 L.Ed.2d 708. Blackmun, joined by Brennan, Marshall & Stevens, DISSENTS.

TITLE: Oman v. State

INDEX NO.: Z.3.h.5.

CITE: (9-26-00), Ind., 737 N.E.2d 1131

SUBJECT: Workplace drug testing - may be used in criminal proceeding

HOLDING: Use of government-compelled drug test in criminal prosecution did not violate D's Fourth Amendment rights. Although U.S. S. Ct. has upheld government testing programs for employees engaged in safety-sensitive tasks, Ct. left open question of whether use of testing results in criminal prosecutions would give rise to inference of pretext or otherwise impugn administrative nature of testing program. Skinner v. Railway Labor Executives' Ass'n, 489 U.S. 602 (1989); National Treasury Employees Union v. Van Raab, 489 U.S. 656 (1989). Here, as part of employment contract, D, who was fireman, agreed to be confidentially drug tested after any accident involving firetruck. Subsequently, D was involved in wreck & was tested. Same day as accident, unidentified source told police that D had tested positive for marijuana. Based on this information, officer subpoenaed lab for test results. Because fire department was not using drug test as pretext for criminal investigation but rather prosecutor was pursuing criminal investigation based upon: (1) knowledge that two fire trucks, with lights & sirens on, had collided during fire run, & (2) tip that one of drivers had tested positive on his post-accident drug test, use of D's test results in criminal prosecution did not violate Fourth Amendment. Moreover, fact that D's test was compelled as condition of employment makes no difference because Fifth Amendment only protects evidence of testimonial or communicative nature.

In addition, D had little or no expectation of privacy in his post-accident test results. Although individual does have privacy interest in his or her bodily fluids, Whalen v. Roe, 429 U.S. 589 (1977), right to keep employer-mandated test results private is not absolute. First, confidentiality provision of employment contract stated, "disclosure of test results . . . without written authorization of employee shall not be made except when information is compelled by law or by judicial & administrative process." Second, all Indiana drivers impliedly consent to submit to toxicological testing as condition of operating vehicle under Indiana's Implied Consent Law. Thus, results of D's administrative drug test could be used in criminal prosecution against him as long as prosecutor externally subpoenaed results. Held, Tr. Ct.'s judgement affirmed, & Ct. App.' opinion at 707 N.E.2d 325, vacated & reversed; Boehm & Dickson, J.J., concurring on basis that because evidence suggested that person who told police about positive urine test was someone who administered test, confidentiality was broken & tipster should be disciplined by employer.

7: Eichhorst, App., 879 N.E.2d 1144 (D did not have reasonable expectation of privacy in medical records after accident despite fact she did not consent to treatment; D was intoxicated and her treatment was an emergency); Hannoy, App., 789 N.E.2d 977, reh'g granted 793 N.E.2d 1109 (society does not recognize a reasonable expectation of privacy in blood alcohol test results obtained & recorded by hospital as part of its consensual treatment of patient, where those results are requested by law enforcement for law enforcement purposes only in investigation of automobile accident); Gunn, App., 741 N.E.2d 787 (results of administrative breath test taken by police officer who was involved in accident were inadmissible in criminal prosecution because there was no evidence of crime at time test was administered. Unlike Oman, results were not obtained by valid legal process externally initiated from employment setting).

TITLE: State v. Tindell

INDEX NO.: Z.3.h.5.

CITE: (1-30-80), Ind., 399 N.E.2d 746

SUBJECT: Administrative / inspection searches - Workplace

HOLDING: Here, officer stopped truck with paper registration and expired license plate. Officer learned truck purchased from D's business. Title was not notarized and without purchaser's name. Officer went to D's business to inspect title, as statutorily allowed. Officer discovered nine open titles and four titles to junked cars. D challenged inspection statute as violating the Fourth Amendment. Ct. held that statute authorizing inspection searches for motor vehicle titles at manufacturer's or dealer's place of business during reasonable business hours did not violate Fourth Amendment. Those industries that have long history of governmental control can be inspected without a warrant. U.S. v. Biswell, 92 S. Ct. 1593 (1972). Also, those industries that involve high level of public interest in regulatory scheme can be inspected without warrant. Collonnade Catering Corporation v. U.S., 90 S. Ct. 774 (1970). Held, grant of motion to suppress reversed and remanded for further proceedings.

TITLE: State v. Young

INDEX NO.: Z.3.h.5.

CITE: 974 So.2d 601 (Fla. Dist. Ct. App. 2008)

SUBJECT: 4th Amendment violated where church officials allowed search of pastor's computer

HOLDING: Florida District Court of Appeals held police officers who obtained permission from regional church officials to search the office and computer of a pastor violated the Fourth Amendment when they went forward with the searches without obtaining consent from the pastor himself. Employees retain a reasonable expectation of privacy in personal files they place on their office computers. Courts have reached different conclusions about whether individuals have an expectation of privacy in their workplace computers that is "reasonable" and, thus, protected by the Fourth Amendment. See United States v. Ziegler, 474 F.3d 1184 (9th Cir. 2007) (discussing division of authority and finding valid consent to search executive of company's computer). Court distinguished Ziegler and similar decisions on the grounds that D's computer was not part of a network and that the church hierarchy had no clear, disseminated policy regarding its access to its pastors' offices and computers. Affirming the suppression order, Court said, "All employees have supervisors, but many employees may still have a legitimate expectation that others will not examine their personal files, even if these files are brought into the workplace."

Z. SEARCH AND SEIZURE

Z.3. Exceptions to search warrant requirement

Z.3.h.6. Other

TITLE: Adams v. State
INDEX NO.: Z.3.h.6.
CITE: (2-8-02), Ind., 762 N.E.2d 737
SUBJECT: Unconstitutional entry & search of D's home -- to jeopardy tax warrant issued to collect CSET assessments
HOLDING: Search of D's home by revenue authorities who were seeking property to satisfy tax assessment was unconstitutional & exclusionary rule barred use of seized evidence in subsequent criminal proceedings. Tr. Ct. suppressed cocaine found pursuant to unconstitutional search of D's safe deposit box. A day before criminal charges were dropped, Indiana Department of Revenue (Department) issued an assessment pursuant to Controlled Substance Excise Tax (CSET). Subsequently, Department & officers from Marion County Sheriff's Office executed jeopardy tax warrant to search for money & property that could satisfy D's tax debt based on cocaine illegally seized from D's safe deposit box. Pursuant to warrant, officers entered D's home & found more cocaine while looking for assets to collect on assessment.

Ct. noted that jeopardy tax warrants under CSET are not issued pursuant to judicial review & are not necessarily based on probable cause since there is no required finding of exigency. *Citing G.M. Leasing Corp. v. United States*, 429 U.S. 338 (1977), Ct. concluded that entry of home pursuant to these warrants is therefore presumptively unreasonable & search of D's home is unconstitutional unless some exception to warrant requirement applies. Here, there was nothing in the record to suggest that D was about to abscond, hide assets, or destroy documents, thus Tr. Ct. should have suppressed evidence stemming from intrusion & search of D's home under jeopardy tax warrant. Ct. noted that its holding does not impinge on general functioning of jeopardy warrants based on finding of exigency & does not affect Department's ability to collect taxes using jeopardy assessments & jeopardy warrants in most circumstances. Held, transfer granted, Tr. Ct.'s denial of motion to suppress evidence reversed. **Note:** In Indiana Dep't of Revenue v. Adams, 762 N.E.2d 728, the Ind. S. Ct. in a 3-2 decision held that although exclusionary rule bars use of cocaine as evidence in criminal proceedings, exclusionary rule does not apply to tax assessment proceedings.

TITLE: Chandler v. Miller

INDEX NO.: Z.3.h.6.

CITE: 520 U.S. 305, 117 S. Ct. 1295; 137 L.Ed.2d 513 (1997)

SUBJECT: Search & Seizure -- Drug Testing; Electoral Candidates

HOLDING: Statute requiring candidates for certain elected state offices to submit to drug test before being eligible for nomination is not supported by "special needs," and is thus unreasonable under 4th Amendment. State's constitutional power to establish qualifications for elective office does not exempt it from requirement of demonstrating "special needs" for suspicionless drug testing. Ct. must engage in context-specific inquiry, closely examining competing public and private interests. Although drug-testing here is set up to be minimally intrusive, state advances no adequate "special need" to justify it. Duties performed by elected officials are not high-risk or safety-sensitive, nor has state demonstrated sharp rise in drug abuse by elected officials. Moreover, testing scheme is not designed to seriously deter drug-use by elected officials or to deter drug-abusers from seeking office. Purpose state is furthering is merely "symbolic," and will not support suspicionless drug-testing.

TITLE: Germaine v. State
INDEX NO.: Z.3.h.6.
CITE: (2nd Dist., 10-25-99), Ind. App., 718 N.E.2d 1125
SUBJECT: Administrative search - ex parte order entered in CHINS case

HOLDING: In neglect of dependent prosecution, Tr. Ct. properly admitted videotape & photographs taken of inside of D's house under authority of ex parte order entered by juvenile Ct. in collateral CHINS proceedings. Regardless of whether primary objective of particular administrative warrant issued in conjunction with Indiana CHINS proceedings is civil or criminal in nature, search of private residence may be conducted only pursuant to criminal search warrant issued by neutral magistrate & supported by traditional standard of probable cause applicable to criminal investigations.

Ct. held that order entered by juvenile Ct. in this case met requirements of valid criminal search warrant. Record revealed that ex parte order was issued by juvenile Ct. judge & was supported by probable cause sufficient to support criminal search warrant. Based on caseworker's initial observations of squalor within D's residence, juvenile Ct. had substantial basis for concluding that probable cause to search house for evidence of criminal child neglect existed. Held, judgment affirmed.

TITLE: Michigan v. Tyler

INDEX NO.: Z.3.h.6.

CITE: 436 U.S. 499, 98 S. Ct. 1942, 56 L.Ed.2d 486 (1978)

SUBJECT: Administrative/inspection searches - Other

HOLDING: Official entries to investigate cause of fire must adhere to Fourth Amendment warrant requirements. There is no diminution in person's reasonable privacy expectation simply because official conducting search is firefighter instead of policeman, or because official's purpose is to ascertain cause of fire rather than to look for criminal evidence. Showing of probable cause necessary to secure warrant may vary with object & intrusiveness of search, but necessity of warrant persists. To secure warrant to investigate cause of fire, official must show more than bare fact that fire occurred. Magistrate's duty is to assure that proposed search will be reasonable. This determination requires inquiry into need for intrusion, on one hand, & threat of disruption to occupant, on other. Burning building clearly represents exigency of sufficient proportions to render warrantless entry "reasonable." Once in building to extinguish blaze, & for reasonable time thereafter, firefighters may seize evidence of arson that is in plain view & investigate causes of fire.

Here, there was no Fourth Amendment violation by firemen's entry to extinguish blaze, or by fire chief's removal of plastic containers. No warrant was necessary for re-entry of building & seizure of evidence on morning after fire chief's departure. Later entry into building was continuation of first entry, which was temporarily interrupted by poor visibility. However, later entries were clearly detached from initial exigency. Since these entries were made without warrants & without consent, they violated Fourth Amendment. Evidence obtained from such entries must be excluded at D's retrial. Held, judgment ordering new trial affirmed. Blackmun & Stevens, JJ., concurred. White & Marshall, JJ., concurred in part & dissented in part. Rehnquist, J., dissented.

RELATED CASES: Maciejack, Ind., 404 N.E.2d 7 (arson case; D has burden of proving evidence offered by private investigator is product or fruit of illegal police activity.)

TITLE: New York v. Burger

INDEX NO.: Z.3.h.6.

CITE: 482 U.S. 691, 107 S. Ct. 2636, 96 L.Ed.2d 601 (1987)

SUBJECT: Administrative search - "closely regulated" businesses

HOLDING: 4th Amend. prohibition on unreasonable searches & seizures applies to commercial premises. However, privacy expectation of commercial premises is less than expectation in home. Expectation is particularly attenuated in commercial property employed in "closely regulated" industries. Warrantless inspection of pervasively regulated business is reasonable provided (1) there is "substantial" government interest in regulatory scheme under which inspection is made; (2) warrantless inspection is necessary to further regulatory scheme; & (3) inspection program provides constitutionally adequate substitute for warrant re certainty & regularity of application. Here, warrantless inspection of automobile junkyard conducted pursuant to statute. Court finds automobile junkyards are "closely regulated" businesses because of regulatory framework governing business & history of regulation of related industries. Court applies above 3-prong test & finds search constitutional. First, State has substantial interest in regulating vehicle-dismantling/automobile junkyard industry because of increased motor vehicle theft associated with industry. Second, regulation of vehicle-dismantling industry reasonably serves state's substantial interest in eradicating auto theft by controlling market in stolen property. Third, statute informs operators of such businesses that inspections will be conducted regularly. It sets forth scope, timing, & place of inspection. Fact that statute authorizes police officers to conduct inspections & that regulation's purpose is to uncover evidence of criminal activity is of no constitutional significance. Held, warrantless inspection of "closely regulated" business pursuant to statute constitutes exception to warrant requirement. Brennan, joined by Marshall, & in part by O'Connor, DISSENTS.

TITLE: State v. Lewis

INDEX NO.: Z.3.h.6.

CITE: 2007 MT 295, 171 P.3d 731 (Mont. 2007)

SUBJECT: Exigency *clarified* under Michigan v. Tyler

HOLDING: Montana Supreme Court held that a sheriff's deputy who had seized evidence of arson that he had seen while putting out a fire in a residence violated the Fourth Amendment when he re-entered the residence to search for more evidence after the firefighters had extinguished the fire. However, Court did allow a re-entry immediately following the deputy's initial entry into the home with a firefighter where he was helping put out the fire. As a first responder, the deputy saw fuses constructed from matchbooks and cigarettes in the home. After confirming the fires were contained, the officer left and quickly returned with a camera to photograph the evidence. Court found this re-entry allowable, noting the deputy could have lawfully seized the fuses when he saw them during his first entry and that the reason he did not was because the evidentiary value of the lawfully possessed components of the fuses stemmed from their locations in the house and their relationship to each other. A deputy could reasonably believe that this evidence was at risk of being destroyed by the arriving firefighters' efforts to put out the fire, and that risk created an exigent circumstance sufficient to justify the deputy's warrantless re-entry to memorialize the items' locations in photographs.

However, quoting from Michigan v. Tyler, 436 U.S 499 (1978), Court decided that the deputy's second entry "was not 'clearly detached from the initial exigency and warrantless entry.'" That search involved the deputy re-entering several minutes later after a crew of firefighters arrived and tore out some ceiling tiles in the kitchen to confirm that the fire had not spread there. The deputy went into the kitchen to look for more evidence of arson, found some and seized it. A dissent was entered that would have allowed seizure of even this evidence.

Z. SEARCH AND SEIZURE

Z.3. Exceptions to search warrant requirement

Z.3.i. Inventory searches

TITLE: Abran v. State

INDEX NO.: Z.3.i.

CITE: (1st Dist., 04-12-05), Ind. App., 825 N.E.2d 384

SUBJECT: Inventory search upheld

HOLDING: Warrantless search of D's truck did not violate Fourth Amendment or Art. I, Sec. 11 of the Indiana Constitution, as it met the requirements of a lawful inventory search. Initially, Ct. found this issue waived because D objected to the search under a different basis at trial than appeal. In any case, impoundment of truck & inventory search at scene was permissible following D's arrest. No one else at scene could drive the truck that would otherwise be left on the side of a country road with many items lying in the truck's bed that could be stolen or vandalized. Arresting conservation officer followed the Indiana Department of Natural Resources' written standard of procedure for inventory searches & an "unwritten" procedure to open all unlocked closed containers to inventory the contents. These regulations & acts in conformity with them were sufficient to defeat a charge of pretext. Fair v. State, 627 N.E.2d 427 (Ind. 1993). Held, judgment affirmed.

RELATED CASES: Widduck, App., 861 N.E.2d 1267 (although inventory searches conducted at impound lot are "greatly preferred" to searches conducted at scene by arresting officer, record in this case was devoid of any indicia of pretext or subterfuge for general rummaging. Ct. acknowledged this case was "a close call," but could not conclude that officer's subsequent decision to allow driver to leave with the vehicle renders initial inventory search unreasonable).

TITLE: Bartruff v. State

INDEX NO.: Z.3.i.

CITE: (3rd Dist., 2-24-99), Ind. App., 706 N.E.2d 225

SUBJECT: Vehicle search improper - invalid pretextual inventory search

HOLDING: Tr. Ct. erred in denying D's motion to suppress evidence obtained during warrantless inventory search of his vehicle, because inventory of vehicle's contents was neither necessary nor consistent with established police procedures. After valid traffic stop, drug interdiction officer's decision to impound vehicle was reasonable & consistent with established police standards because: 1) neither driver nor occupant was entitled to move vehicle since neither possessed valid driver's license; & 2) officer reasonably believed vehicle would be obstruction to view of traffic & constituted traffic hazard.

However, inventory search of vehicle at scene was mere pretext concealing investigatory police motive. Officer admitted he felt certain vehicle contained drugs or other contraband, & unsuccessfully attempted to secure consent to search & then drug-sniffing dog. Relevant established departmental procedures contemplated that inventory search be conducted after vehicle had been towed to police impoundment or storage lot, rather than at scene. Further, D was present at scene & was capable of taking custody of property within vehicle to protect property & police from claims of loss or damage. Moreover, officer testified that he is drug interdiction officer rather than officer responsible for custody of impounded property. Both location of search & primary responsibilities of officer conducting search may be considered indicia of pretext which draw into question whether search was conducted in good faith. Fair, 627 N.E.2d 427. Rejecting inevitable discovery rule, Ct. noted that under established police procedure, D & his passenger were permitted to take custody of their property within vehicle, thus seized handgun would not necessarily have remained in vehicle until it reached police storage area. Further, record did not reveal that attempt by D to remove handgun from vehicle would necessarily have disclosed its existence to officer. Therefore, handgun was improperly seized & D's motion to suppress should have been granted. Held, judgment reversed & remanded.

RELATED CASES: Sansbury, 96 N.E.3d 587 (Ind. Ct. App 2017) error admitting handgun seized through inventory search because officers deviated from IMPD inventory policy by not creating list of seized property, and officer's statement showed inventory search was actually a pretext for a general investigatory search to gather contraband).

TITLE: Bastin v. State

INDEX NO.: Z.3.i.

CITE: (3d Dist. 7/21/87), Ind. App., 510 N.E.2d 229

SUBJECT: Inventory searches of D's belongings at jail

HOLDING: State did not commit seizure separate from search of D's person when it secured laboratory analysis of pills found on D during inventory search. Here, Ct. rejects D's contention that separate probable cause was necessary to seize pills. D cited Smith, 271 N.E.2d 133 which held nexus must exist between item to be seized & criminal behavior. Inventory search as part of routine administrative procedure incident to booking & jailing a person is well-defined exception to warrant requirement. IL v. Lafayette, (1983), 462 U.S. 640, 103 S. Ct. 2605, 77 L.Ed. 2d 65; Equia, App., 468 N.E.2d 559. Government's interest in station house search & examination of arrested person's property include: (1) prevention of theft of property while person is detained, (2) protection against false claims filed by arrested person, (3) preventing injury to arrested person or others by use of belts, knives, drugs, or other items carried on arrestee, (4) discovering dangerous instrumentalities carried into jail in innocent looking articles, & (5), Inspection of arrestee's personal property may help in ascertaining/verifying identity. IL v. Lafayette. When unknown drug or chemical substance is discovered on arrestee's person as result of inventory search, it does not constitute separate seizure within meaning of 4th Amend. when government submits that substance, or a sample of it, for laboratory analysis. Such conduct is part of/incidental to proper conduct of inventory search. It is immaterial to validity of search & attendant analysis whether arresting officer actually believes discovery substance is contraband. IL v. Lafayette. Held, no error. Staton CONCURS IN RESULT without opinion.

TITLE: Bradford v. State

INDEX NO.: Z.3.i.

CITE: (1st Dist., 3-10-80), Ind. App., 401 N.E.2d 77

SUBJECT: Unlawful warrantless inventory search

HOLDING: Warrantless search of D's purse by state trooper and subsequent inventory search at jail violated Fourth Amendment and entitled D to suppression of evidence found therein. Officer removed and opened D's purse from automobile in which she had been sitting. Officer secured control of purse so that purse posed no threat, and there were no exigent circumstances to justify immediate warrantless search. For Fourth Amendment purposes, one who places personal effects in purse has expectation that contents will not be subjected to public examination. Subsequent warrantless inventory search of purse at county jail was excessive intrusion which violated Fourth Amendment because purse posed no threat and could have been sealed and placed in locked container or locked storage room until warrant was obtained, and where inventory was not matter of routine police procedure but was conducted because of earlier unlawful search of purse by state trooper. Fruits of search warrant cannot be used as justification for illegal search. Manson, Ind., 229 N.E.2d 801. Held, judgment reversed.

RELATED CASES: Combs, App., 878 N.E.2d 1285 (search of D's purse which she possessed outside the car exceeded the scope of an inventory search).

TITLE: Brown v. State
INDEX NO.: Z.3.i.
CITE: (7-11-95), Ind., 653 N.E.2d 77
SUBJECT: Warrantless vehicle seizure & inventory search unreasonable
HOLDING: Under Article 1, Section 11 of Ind. Constitution, police decisions to conduct warrantless seizure & inventory search of vehicle is judged by reasonableness test, considering totality of circumstances. Here, Tr. Ct. erred in admitting into evidence items obtained from warrantless vehicle seizure & subsequent inventory search. When police entered & searched D's car, 24 hours had passed since robbery under investigation had occurred. Police actions were unreasonable because: 1) there was no shortage of time or emergency; 2) there was little likelihood that car would be moved; and 3) police were not engaged in valid community caretaking function. Existence of valid warrant to seize and search vehicle provides "a preeminent form of support for a determination that the state standard of probable cause & reasonableness was met." Preference for warrants is based on belief that neutral and detached magistrate is more likely to be fair evaluator of relevant circumstances than police officer actively involved in investigating particular crime.

In holding that warrantless search of car likewise violated Fourth Amendment of U.S. Constitution, Ct. noted that because D's vehicle was not properly impounded, inventory search exception to warrant requirement did not apply. Automobile exception to warrant requirement was not applicable because there were no exigent circumstances and D's automobile was located in residential parking area. Held, transfer granted, memorandum decision of Ct. App. vacated, reversed & remanded. Sullivan, J., concurring & dissenting, would reject reasonableness test in favor of established warrant requirement.

RELATED CASES: Masterson, App., 843 N.E.2d 1001 (unlike in Brown, 653 N.E.2d 77, searched vehicle here was unquestionably the one involved in a late-night armed robbery that had just occurred. Rather than taking time to prepare a search warrant application, even assuming a warrant could have been obtained within short period of time officers were observing vehicle, under circumstances it was reasonable for police to concentrate their efforts on safeguarding community by quickly & efficiently pursuing potentially armed & dangerous suspects. Therefore, considering & balancing non-exclusive factors identified in Litchfield, 824 N.E.2d 356, Ct. found no violation of article 1, section 11); Jones, App., 814 N.E.2d 298 (simple fact that children's backpack was near a black duffel bag found a mile away from scene of robbery did not provide police with probable cause to search children's backpack. Moreover, no exigent circumstances existed because there was no indication that vehicle was in danger of disappearing while officers obtained warrant); Gibson, App. 733 N.E.2d 945 (where D was being arrested for minor offense & would likely be released soon & vehicle was in secure parking lot, impoundment was unnecessary & inventory search would have been pre-textual).

TITLE: Collins v. State

INDEX NO.: Z.3.i.

CITE: (1st Dist. 1/31/90), Ind. App., 549 N.E.2d 89

SUBJECT: Inventory search of jacket - incident to trip to jail for breath test

HOLDING: Search of D's jacket at jail where D was taken for breath test was permissible inventory search. Evidence showed that D was involved in accident & based on numerous indications that D might be seriously injured, deputy went to house where D had been taken & eventually agreed to be transported to jail for breath test & took jacket with him. When D & deputy arrived at jail, deputy placed jacket on counter & took D to room for breath test. D asked instead to be taken to hospital, & at this point, according to standard police procedure, jail matron performed inventory search on jacket & discovered cocaine. On appeal of possession conviction, D argues that search of jacket was not permissible inventory search because he had not yet been arrested or booked into jail. Deputy testified that he had not arrested D as of time they arrived at jail. However, Ind. Code 9-4-1-134 allows arrest without warrant of driver who has left scene of DUI accident, & Ind. Code 9-11-4-2 authorizes transportation for administration of sobriety test. On basis of these statutes, majority is convinced that D was either under arrest or in lawful custody of deputy when they arrived at jail. That, coupled with fact that D's jacket was placed in care & possession of matron pursuant to established procedure, brings search of jacket within inventory search exception to warrant requirement. Matron was following established procedure, was not acting in bad faith, & was not acting in investigatory manner. Held, conviction affirmed. Baker, J., DISSENTS, arguing that D was not arrested until after search, & allowing inventory search prior to arrest opens door for police subterfuge.

TITLE: Colorado v. Bertine

INDEX NO.: Z.3.i.

CITE: 479 U.S. 367, 107 S. Ct. 738, 93 L.Ed.2d 739 (1987)

SUBJECT: Inventory search of closed containers

HOLDING: Inventory searches are an exception to warrant requirement of 4th Amend. SD v. Opperman, (1976), 428 U.S. 364, 96 S. Ct. 3092, 49 L.Ed.2d 1000; IL v. Lafayette, (1983), 462 U.S. 640, 103 S. Ct. 2605, 77 L.Ed.2d 65. Inventory search may be "reasonable" under 4th Amend. even though it is not conducted pursuant to warrant based upon probable cause. Inventory procedures serve to protect owner's property while it is in custody of police, to insure against claims of lost, stolen, or vandalized property, & to guard police from danger. Here, D was arrested for DWI. After D was taken into custody & before arrival of the tow truck to take D's vehicle to impound lot, an officer inventoried contents of vehicle. Officer opened closed backpack in which he found various controlled substances. Held, reasonable police regulations relating to inventory procedures, administered in good faith satisfy 4th Amend., even though courts might, as a matter of hindsight, be able to devise equally reasonable rules requiring different procedure. Blackmun, joined by Powell & O'Connor CONCUR (permissible for police to open closed containers in inventory search only if they are following standard police procedures that "mandate" opening of such containers in every impounded vehicle). Marshall, joined by Brennan, DISSENTS.

TITLE: Dean v. State

INDEX NO.: Z.3.i.

CITE: (02/14/2023), 203 N.E.3d 1666 (Ind. Ct. App.)

SUBJECT: Inventory search upheld for personal items not impounded

HOLDING: Inventory search of Defendant's personal belongings after officers impounded his vehicle did not violate the Fourth Amendment or Art. 1, Sec. 11 of Indiana Constitution. Officer stopped Defendant for driving with license plates that belonged to a different car, in violation of Ind. Code § 9-18.1-4-5. Therefore, it was reasonable for officers to impound the Jeep under Ind. Code § 9-18.1-2-10 because it displayed a license plate improperly registered to the vehicle. The limited statutory exception to operate a vehicle with a license plate registered to another vehicle did not apply because Defendant evinced an intent to continue using rather than disposing of the other vehicle. And where, as here, officers are statutorily authorized to impound a vehicle, the Court does not engage in any analysis under the police community-caretaking function. Taylor v. State, 842 N.E.2d 327, 331 (Ind. 2006). Evidence presented at the suppression hearing sufficiently showed that the inventory search of Defendant's jacket and lunch pail conformed with "detailed" departmental policies and was, therefore, reasonable. Distinguishing Sams v. State, 71 N.E.3d 372 (Ind. Ct. App. 2017), the Court rejected Defendant's argument that the officer's search of these items before giving them to Defendant exceeded the administrative scope of the search and instead became a pretext for an investigative search. The officer acted reasonably by allowing Defendant to remove his possessions from the vehicle prior to it being towed, and he acted in conformance with the purpose of an administrative inventory search by ensuring that the lunch pail did not contain a weapon before giving it to Defendant. The Court also found the search reasonable under Article 1, § 11 of the Indiana Constitution, noting "[i]t is questionable whether the Litchfield balancing test applies to an inventory search" because the "degree of suspicion" factor is not relevant in this context. Regardless, the search here "was reasonable under the Litchfield analysis for the same reasons the search was reasonable under the Fourth Amendment." Held: trial court's denial of motion to suppress affirmed.

TITLE: Ector v. State

INDEX NO.: Z.3.i.

CITE: (10/18/2018), 111 N.E.3d 1053 (Ind. Ct. App 2018)

SUBJECT: Search warrant for house permitted seizure of car keys --- resulting inventory search of vehicle upheld

HOLDING: Trial court did not err in admitting evidence seized pursuant to a warrantless search of a vehicle parked in driveway of a "trap house" that police officers had a warrant to search and in which residence the officers had found and arrested D and two others with substantial amounts of drugs. Police found keys and, when none of the arrestees in the house claimed them, discovered the keys fit a Toyota Camry in the driveway. Police had seen the Camry there on at least two prior occasions. Police decided to impound the Camry and conduct an inventory search which included lifting up the back seat, where they found \$4500, documents addressed to D, a ledger, and a key which unlocked the front door of the house. D argued pretextual inventory search of the Camry, but Court found impoundment proper based on the reasonable likelihood it had been used to transport contraband in light of facts before the police at the scene. See Ind. Code § 34-24-1-1(a)(1) and -2(a)(1)(A). Moreover, scope of search (lifting up the back seat) was not excessive under IMPD policy. Applying the three-part test under Litchfield v. State, 924 N.E.2d 356, 359 (Ind. 2005), Court concluded that search of the Camry was reasonable and did not violate Art 1, Section 11 of the Indiana Constitution. Held, judgment affirmed.

TITLE: Fair v. State
INDEX NO.: Z.3.i.
CITE: (12-30-93), Ind., 627 N.E.2d 427
SUBJECT: Search improper - Not valid inventory search
HOLDING: Warrantless search of D's car was not valid inventory search, & Tr. Ct. erred in not suppressing results of search; reversing decision at 615 N.E.2d 489. Police received complaint that shots had been fired at apartment complex, & subject was described. When officer arrived, he saw D placing putting cylinder in trunk of car in parking lot. Officer lost sight of D, & when he reestablished contact, car trunk was closed & D was standing next to car. Officer pulled alongside & found 6 shotgun shells in D's pocket. During encounter officer decided D was patron at apartment party & was intoxicated. He arrested D for PI, handcuffed him, & placed him in squad car. Officer then entered D's car & searched glove box to locate rental papers. After finding papers, officer decided to do inventory search of car, & searched trunk & found shotgun. Shotgun was admitted at trial as being fruit of valid inventory search.

Searches without warrants are per se unreasonable unless they fit within narrow exceptions, & State bears burden of showing both need for exception & that conduct fell within its bounds. Test of reasonableness involves two steps; propriety of impoundment must be established because need for inventory arises from impoundment, & scope of inventory must be evaluated. Ultimate character of search is often clearest when necessitousness of impoundment & scrupulousness of inventorying are viewed together.

Ct. refused to make bright line rule that only time cars may be impounded is when violation of motor vehicle or forfeiture statute is involved, instead holding that impoundments will not be invalidated solely because they are not specifically authorized by statute, as long as State demonstrates impoundment is warranted as part of community caretaking function. To meet burden on propriety State must demonstrate: 1) that belief vehicle posed threat of harm to community or was itself imperiled was consistent with objective standards of sound policing; & 2) that decision to use impoundment to meet threat was in keeping with established departmental routine or regulation. Here, State made no effort to show impoundment was authorized by statute, & D's car was undamaged & neatly parked in relatively secure private parking facility. Sole justification for impoundment was that car would be exposed to potential harm or might become nuisance. D's car was properly parked & with PI arrest he would not likely be away long. There was little evidence to show car constituted potential hazard significant enough to justify impoundment. Search might have been found reasonable, but for "indicia of pretext" & absence of evidence about any departmental procedures.

Ct. also examined reasonableness of search if lawful custody of car had been proper, noting search itself must be conducted pursuant to standard police procedure. To show lack of pretext, State has to show existence of sufficient regulations, & that search proceeded in accordance therewith. Here, search was conducted at scene of crime, inventory was conducted by officer in criminal investigations, inventory sheets were not completed & note was not made of D's personal property, & it was not clear if car was ever actually impounded, all indicia of pretext. Fatal defect was that provisions of police department's inventory policy were not established in record in sufficient detail. Held, conviction reversed & order issued to grant motion to suppress, Givan, J., dissenting.

RELATED CASES: Stephens, App., 735 N.E.2d 278 (impoundment of car was reasonable where car was facing wrong direction on street & driver was arrested); Gibson, App. 733 N.E.2d 945 (where D was

being arrested for minor offense & would likely be released soon & vehicle was in secure parking lot, impoundment was unnecessary & inventory search would have been pre-textual).

TITLE: Florida v. Wells

INDEX NO.: Z.3.i.

CITE: 495 U.S. 1, 110 S. Ct. 1632, 109 L.Ed.2d 1 (1990)

SUBJECT: Standardized procedures - inventory search

HOLDING: Where no standardized policy exists governing the opening of closed containers encountered during inventory search cannot be justified under inventory exception to warrant requirement. Here, police impounded D's car after taking him into custody for suspicion of DWI. After obtaining D's consent to open trunk, police discovered locked suitcase. Police forced open suitcase & discovered large quantity of marijuana. Record of suppression hearing contained no evidence of any police policy regarding opening of closed containers found during inventory search. Inventory search must not be ruse for general rummaging in order to discover incriminating evidence. Held, search here violated 4th Amend. Brennan, joined by Marshall, CONCURRING IN JUDGMENT; Blackmun, CONCURRING IN JUDGMENT; Stevens, CONCURRING IN JUDGMENT.

RELATED CASES: Marling, 964 F.3d 667 (7th Ct. of Appeals) (finding that police acted within discretion authorized by their local policy in conducting inventory search and that the U.S. District court "misunderstood" the holding in Wells).

TITLE: Foulks v. State

INDEX NO.: Z.3.i.

CITE: (12/11/92), Ind., 582 N.E.2d 374

SUBJECT: Inventory search of automobile

HOLDING: Where police had warrant for D's arrest, they were justified in impounding his truck & conducting inventory search, even though D was not driving truck at time & officers did not find him. After police obtained warrant for D's arrest, they saw stopped truck, which they knew belonged to D. Driver claimed D had given him truck to use, & police later found that D had fled to Detroit. Driver was detained & brought to police station. Officer testified that driver gave him false name, & he felt driver was not telling truth as to identity & whether D had loaned him truck. Police impounded truck & conducted inventory search which revealed knife tied to murder. Ct. found no error in admitting knife, because police had warrant for D's arrest & therefore were justified in impounding truck known to belong to him. Once impounded they had duty to conduct inventory search. Ct. rejected D's argument that search was not justified because he was not driver & not in custody when search conducted. Held, conviction affirmed, DeBruler & Dickson, J.J., DISSENTING.

Note: Dissent contains good discussion on impoundment searches. #1991-5

TITLE: George v. State

INDEX NO.: Z.3.i.

CITE: (5th Dist., 02-24-09), 901 N.E.2d 590 (Ind. Ct. App. 2009)

SUBJECT: Inventory search - contacting pharmacist to determine pills' chemical composition

HOLDING: Morphine tablets, having been lawfully seized pursuant to an inventory search, were not subject to an additional search within meaning of Fourth Amendment when police officer contacted a pharmacist to determine their chemical composition. Thus, Tr. Ct. did not abuse its discretion when it admitted evidence obtained from inventory search of D's vehicle. To safeguard against a general rummaging in order to discover incriminating evidence, an inventory search must be conducted in conformity with standard police procedures that are rationally designed to meet the objectives that justify the search in the first place and that sufficiently limit the discretion of the officer. Fair v. State, 627 N.E.2d 427 (Ind. 1993). Here, D did not challenge officer's decision to open the pill bottle, because sheriff department's inventory search policy requires that closed or locked containers be opened, and such a policy does not offend the Fourth Amendment. However, policy was silent regarding whether an officer may determine the chemical composition of all medications found inside a vehicle during an inventory search. Morphine tablets had already been lawfully seized thus additional testing did not violate the Fourth Amendment. Bastin v. State, 510 N.E.2d 229 (Ind. Ct. App. 1987). Moreover, Article 1, Section 11 of Indiana Constitution was not violated, because officer's decision to open pill bottle and to contact pharmacist when faced with a pill bottle that lacked a prescription label was reasonable. Held, judgment affirmed.

TITLE: Herald v. State

INDEX NO.: Z.3.i.

CITE: (2d Dist. 7/29/87), Ind. App., 511 N.E.2d 5

SUBJECT: Inventory searches - delay between arrest & search

HOLDING: Tr. Ct. did not err in denying D's motion to suppress evidence seized from him an hour after his arrest. Here, D was arrested for public intoxication & resisting arrest. Police also suspected him of burglary in business district. Police met store owner at burglarized premises & owner identified keys D gave officer as keys to store's cash register. Police then had probable cause to believe D's boots made footprints on store's door panel & officer radioed jail to secure D's boots. Ct. finds facts similar to US v. Edwards, (1974), 415 U.S. 800, 94 S. Ct. 1234, 39 L.Ed.2d 771, which upheld constitutionality of search made several hours after arrest. Ct. finds no unreasonable search or seizure. Held, no error.

TITLE: Lewis v. State
INDEX NO.: Z.3.i.
CITE: (5th Dist., 9-24-01), Ind. App. 755 N.E.2d 1116
SUBJECT: Inventory search upheld - failure to introduce police policy regarding vehicle inventories
HOLDING: Inventory searches performed in conformity with standard police procedures are reasonable under Fourth Amendment; however, State must present more than mere conclusory testimony of police officer that search was conducted as routine inventory. Stephens v. State, 735 N.E.2d 278 (Ind. Ct. App 2000). Here, D argued that inventory search was unreasonable because State failed to introduce as evidence written procedures for vehicle impoundment & inventory. Police officer decided to impound vehicle pursuant to statute because vehicle had no valid registration or license plate & could not be legally driven. Officer testified that he inventoried entire contents of vehicle, recorded contents on notebook paper, completed BMV impoundment form, prepared property cards & receipts for items removed from vehicle, & bagged, marked, & placed these items in evidence lockers of police post. Ct. concluded that officer adequately detailed actions he & another officer took while inventorying contents of vehicle at scene. While better practice would have been for State to have tendered into evidence actual State Police policy & procedure concerning vehicle impoundments, inventory search in this case was reasonable under Fourth Amendment & Ind. Constitution. Accordingly, trial Ct. did not abuse its discretion in admitting into evidence items confiscated during the inventory. Held, judgment affirmed.

RELATED CASES: Weathers, 61 N.E.3d 279 (Ind. Ct. App 2016) (gun admissible, even though officer didn't properly inventory items in D's car, because no prejudice); Berry, 967 N.E.2d 87 (Ind. Ct. App 2012) (where State failed to present any evidence regarding the department's SOP or whether the officer's decision to tow the car under the community caretaker function was consistent with the SOP, State failed to prove the inventory search was justified); Gonser, App., 843 N.E.2d 947 (because State failed to present any evidence regarding police department's policy to inventory impounded vehicles at suppression hearing, it failed to meet its burden to show that decision to impound D's vehicle was in keeping with established departmental routine or regulation); Faust, App., 804 N.E.2d 1242 (although it is best that an inventory search be performed in impound lot by officers trained & experienced in performing such searches, there was sufficient testimony as to police department's procedure to make this a valid inventory search at scene); Edwards, App., 762 N.E.2d 128, *aff'd* on rehearing, 768 N.E.2d 506 (while impoundment of D's truck was proper, State failed to show that search conducted pursuant to impoundment was reasonable).

TITLE: Lytle v. State

INDEX NO.: Z.3.i.

CITE: (2/25/87), Ind., 503 N.E.2d 1222

SUBJECT: Inventory searches - car

HOLDING: Notwithstanding conflict in evidence as to D's consent, police had right to inventory vehicle upon its impoundment with or without D's consent. US v. Johns, (1985), 469 U.S. 478, 105 S. Ct. 881, 83 L.Ed.2d 890; Brown, 442 N.E.2d 1109 [S & S 3.3(6)]. Here, D was arrested in IL on a separate offense & his car was impounded. D filed motion to suppress items seized from his car in IL. IL authorities testified D consented to search of car. D points out conflict in evidence of consent. Held, no error in admission of knife used in IN crimes. Dickson CONCURS IN RESULT without opinion.

RELATED CASES: Caldwell, 508 N.E.2d 27 (Drugs 183; (officers had duty to inventory contents of vehicle upon arriving at police station; see card at Z.4.e).

TITLE: Moore v. State
INDEX NO.: Z.3.i.
CITE: (4th Dist., 07-20-94), Ind. App., 637 N.E.2d 816
SUBJECT: Inventory search proper

HOLDING: Warrantless search of vehicle in which D was passenger was valid inventory search. Police pulled over vehicle for speeding. After determining driver was impaired, police approached D, who admitted smoking marijuana. Tow truck was called & officers proceeded to conduct inventory search of car, eventually finding bags of cocaine in glove compartment. Tr. Ct. denied D's motion to suppress cocaine.

Ct. rejected D's argument that search was not lawful inventory search. Inventory search may occur when car is properly impounded & search stays within permissible scope, Fair v. State, Ind., 627 N.E.2d 427. Such searches are allowed to ensure protection of private property in police custody; protection of police against claims of lost or stolen property; & to protect police from danger. Search here was authorized because vehicle, which would otherwise have been left unattended on public highway, was properly impounded.

Police in this case had standard operating procedure for inventory searches & record showed officers complied with procedure. Although officer testified that when he looked at glove compartment, it raised his curiosity & idea that some sort of criminal contraband was inside; he was already in process of conducting proper inventory search when suspicion arose. Fact suspicion arises after search is properly initiated & in progress, does not make search pretextual, Fair, supra. Ct. seemed to express some concern about possibility search was really investigatory, but nevertheless found there were sufficient indicia of lawful inventory search present to indulge reasonableness of search. Held, conviction affirmed.

RELATED CASES: Lyles, App., 834 N.E.2d 1035 (inventory search was legitimately suspended when officer discovered guns reported to be stolen & he turned custody of the vehicle over to sheriff's department of another county); Ratliff, 770 N.E.2d 807 (because D was arrested & his vehicle was abandoned in middle of parking lot creating a traffic hazard, it was consistent with State police operating procedures to secure truck & inventory its contents); Woodford, 752 N.E.2d 1278 (inventory search was reasonable due to officer's suspicion that vehicle was stolen & because standard operating procedures were followed; further, baggies containing drugs were in plain view); Peete, App., 678 N.E.2d 415 (under circumstances, impounding vehicle was proper exercise of community caretaking function & was carried out pursuant to police standard operating procedures. Officer's actions in opening closed film canister were reasonable & remained within scope of lawful inventory search).

TITLE: Rabadi v. State
INDEX NO.: Z.3.i.
CITE: (7/21/89), Ind., 541 N.E.2d 271
SUBJECT: Inventory search - pretext for investigatory search
HOLDING: Tr. Ct. erred in admitting evidence obtained during warrantless search of D's automobile by Chicago police 3 days after they arrested D. D argues that this was improper warrantless search, while state argues that it was inventory search. Inventory search exception to warrant requirement is based on police caretaking needs, including: (1) protection of private property while in police custody; (2) protection of police from claims based on lost or stolen property; & (3) protection of police from potential danger. SD v. Opperman, (1976), 428 U.S. 364, 96 S. Ct. 3092, 49 L.Ed.2d 1000; Dixon 437 N.E.2d 1318. When inventory is carried out in accordance with routine police procedures, there is assurance that intrusion will not exceed scope necessary to fulfill these needs. Otherwise, risk of inventory search being used as mere pretext to conceal investigatory motive is too great. See Paschall, 523 N.E.2d 1359. Here, state failed to meet its burden to show that this was routine inventory. Officer who conducted search testified that there had been request for search from IN county in which D's murder charge arose. Officer conducting search did not take part in D's arrest. Finally, search did not take place until 3 days after arrest, & D arrived at pound to retrieve car while search was being conducted. Interests justifying inventory search exception clearly were not protected by this search, & it is not sufficient that officer testified that it was conducted according to routine police policy. Held, Tr. Ct. erred in admitting evidence obtained through search of car, but other circumstances rendered error harmless. Givan, J., CONCURS IN RESULT, arguing that this was in fact inventory search.

TITLE: Rhodes v. State
INDEX NO.: Z.3.i.
CITE: (1/19/2016), 50 N.E.3d 378 (Ind. Ct. App. 2016)
SUBJECT: Insufficient evidence of police procedure & compliance to justify inventory search
HOLDING: Trial court abused its discretion in admitting marijuana found in D's car during an inventory search at scene of his arrest for driving while suspended. Arresting officer did not record everything he discovered during the search but did note marijuana found in a red metal grinder in the glove box.

Distinguishing Faust v. State, 804 N.E.2d 1242 (Ind. Ct. App 2004) and Wilford v. State, 31 N.E.3d 1023 (Ind. Ct. App 2015), Court held that officer's testimony was insufficient to prove the inventory search he performed of D's vehicle complied with official police policy. Because the State did not present evidence of police procedure, the search violated D's Fourth Amendment protection from unreasonable search and seizure. Held, possession of marijuana conviction reversed; Barnes, J., concurring to note there was no evidence of any effort made to comply with constitutional and statutory requirements in this case (see Ind. Code § 35-33-5-5(a), which specifically outlines what must be done with regard to "inventory" that is recovered during an inventory search).

Crone, J., dissenting, noted officer's testimony described the purpose of the inventory, outlined the procedures used to conduct it and established that Indianapolis Metropolitan Police Department policy authorizes on-site inventory searches. There is no evidence that officer was rummaging around in the car to find incriminating evidence. Dissent also noted that it was reasonable to decide to impound the vehicle because the car was parked in the "driveway of a private residence" and someone in the residents wanted "to make sure that the car was not going to be left in the driveway."

RELATED CASES: Combs, 150 N.E.3d 266 (Ind. Ct. App. 2020) (record supported a finding that the officers' inventory search of arrestee's van parked on driveway was a pretext for searching the van and that officers did not need the van in solving the OWI or leaving accident scene investigation).

TITLE: Sams v. State

INDEX NO.: Z.3.i.

CITE: (2/21/2017), 71 N.E.3d 372 (Ind. Ct. App 2017)

SUBJECT: Unlawful pretextual inventory search - lack of police regulation

HOLDING: Warrantless inventory search of fast-food bag and box found inside vehicle was not sufficiently regulated by standardized procedure and was pretextual. After pulling D's truck over for a broken taillight, police discovered D did not have a valid license and decided to impound and tow the vehicle because of hazardous road conditions. The officers then decided to conduct an inventory search of the vehicle, resulting in the discovery of 25 grams of methamphetamine inside a hamburger box in a folded up fast-food bag.

The police department had a written impoundment policy, but the officers testified their standard procedure was different from the written policy. Because the written and unwritten policies were different, and because the unwritten policy gave the officers almost unlimited discretion, Court concluded that the inventory search violated the 4th Amendment.

In addition, the search did not follow either the written policy or the unwritten policy described by officers. The policy provided that "when the driver/owner of a vehicle is arrested, and if the vehicle is subject to a lawful impound, the arresting officer will make an inventory of the vehicle for valuables," including all personal property and vehicle accessories. However, one of the officers testified that he was trained to interpret the policy to mean only items perceived to be of liability value should be included on the inventory. A fast-food bag is not a valuable that would need to be listed on an inventory sheet. The officers produced an inventory list that stated only "misc tools," which was not accurate and did not fulfill the purpose of an inventory search. The officers' search was pretextual and therefore unreasonable. Held, possession of methamphetamine conviction reversed and remanded with instructions to grant D's motion to suppress.

RELATED CASES: Sansbury, 96 N.E.3d 587 (Ind. Ct. App 2017) error admitting handgun seized through inventory search because officers deviated from IMPD inventory policy by not creating list of seized property, and officer's statement showed inventory search was actually a pretext for a general investigatory search to gather contraband).

TITLE: South Dakota v. Opperman

INDEX NO.: Z.3.i.

CITE: 428 U.S. 364, 96 S. Ct. 3092, 49 L.Ed.2d 1000 (1976)

SUBJECT: Exceptions to search warrant requirement - Inventory searches

HOLDING: Routine inventory search of D's car, which had been lawfully impounded for multiple parking violations, did not involve "unreasonable" search in violation of Fourth Amendment, especially where search prompted by presence of number of valuables inside vehicle. There was no suggestion procedure utilized, one that is standard throughout country, was pretext concealing investigatory police motive. Once officer was lawfully inside vehicle to secure personal property in plain view, it was not unreasonable to open unlocked glove compartment. Routine practice of securing & inventorying contents of impounded cars developed in response to 3 distinct needs: (1) Protection of owner's property while it remained in police custody; (2) Protection of police against claims or disputes over lost or stolen property; & (3) responding to incidents of theft or vandalism & determining whether vehicle was stolen & thereafter abandoned. Held, judgment reversed & remanded. Powell, J., concurred. Marshall, Brennan, Stewart, & White, JJ., dissented.

RELATED CASES: Sansbury, 96 N.E.3d 587 (Ind. Ct. App 2017) error admitting handgun seized through inventory search because officers deviated from IMPD inventory policy by not creating list of seized property, and officer's statement showed inventory search was actually a pretext for a general investigatory search to gather contraband), Dearing, Ind., 393 N.E.2d 167 (Where D, after arrest, solicited police to take custody of bags of personal effects, D voluntarily subjected such effects to normal & reasonable custodial procedures & officers justified in conducting inventory search thereof.)

TITLE: State v. Lucas & Winkle

INDEX NO.: Z.3.i.

CITE: (1st Dist., 01-17-07), Ind. App., 859 N.E.2d 1244

SUBJECT: Illegal search of closed containers found inside stolen van; standing

HOLDING: Trial Ct. properly granted Ds' motion to suppress evidence discovered in a locked container inside a stolen van the Ds were traveling in. State argued that Ds lacked standing to challenge search of van or containers within it, noting Ds had no legitimate expectation of privacy in the van or its contents because van was stolen. Regardless of their interest in the stolen van, the issue was whether Ds have a reasonable expectation of privacy in a locked metal box, which is akin to a locked briefcase or purse which are repositories of especially personal items. See Friedel v. State, 714 N.E.2d 1231 (Ind. Ct. App 1999); Krise v. State, 746 N.E.2d 957 (Ind. 2001). Thus, Ds had standing to challenge search of locked metal box at issue.

As to propriety of inventory search, Ct. noted that to ensure that search is not a pretext for general rummaging in order to discover incriminating evidence, State must establish that search was conducted pursuant to standard police procedures. Fair v. State, 627 N.E.2d 427 (Ind. 1993). While purported policy of Shelby County Sheriff's Department provided that closed containers could be opened, it made no reference to locked containers. Trial Ct. found the policy to be "unclear on what an officer should do when finding a locked container" & thus properly found no clear department policy or procedure to mandate the opening of a locked container as part of an inventory search. Officers had control of locked box & could have easily obtained a search warrant to open it. Under facts & circumstances, Ct. concluded that warrantless search of locked metal box was unreasonable under Article 1, Section 11 of Indiana Constitution, & was an invalid inventory search under Fourth Amendment. Held, judgment affirmed.

TITLE: Taylor v. State

INDEX NO.: Z.3.i.

CITE: (4th Dist., 02-14-06), Ind., 841 N.E.2d 631

SUBJECT: Warrantless inventory search unreasonable

HOLDING: Tr. Ct. erred in denying D's motion to suppress cocaine seized as a result of an inventory search of his car. After police officer initiated lawful traffic stop, D pulled his car diagonally against a curb in apartment complex parking lot. To justify inventory search, State argued that impoundment of Ds' car was warranted under officers' community caretaking function because: 1) car was illegally parked; 2) D did not live in any apartment within complex; & 3) D was driving on a suspended license & could not be allowed to operate his car further. Even assuming D's car was parked illegally, it is not true that every vehicle parked illegally must be impounded, especially where, as here, vehicle poses no potential hazard to public safety. Officer testified that there were relatively few cars parked in parking area, that vehicle was parked on correct side of parking lot for non-residents & did not constitute a public nuisance.

There was nothing in record indicating that D's vehicle was at risk of harm, & record was silent on whether D was a guest of a resident living in apartment complex. Thus, merely because D was not a resident of apartment complex does not support a reasonable belief that vehicle posed some threat or harm to community or that vehicle itself was imperiled. At time of impoundment, officer believed that D had committed an infraction, thus D could & should have been afforded opportunity to contact a responsible friend or relative to retrieve his car. Gibson v. State, 733 N.E.2d 945 (Ind. Ct. App 2000).

The three factors presented by police officers in this case, even when taken together, do not show that impoundment of D's vehicle was warranted as part of a routine police administrative caretaking functions. State failed in its burden of demonstrating that officer's belief that D's vehicle posed some threat or harm to community or was itself imperiled was consistent with objective standards of sound policing. Thus, Court did not need to address whether impoundment of D's car was consistent with established departmental routine or regulation. Court also held that under totality of circumstances, inventory search violated Article 1, Section 11 of Indiana Constitution. Held, transfer granted, Ct. App.' opinion at 812 N.E.2d 1051 vacated, denial of motion to suppress reversed.

RELATED CASES: Farris, 144 N.E.3d 814 (Ind. Ct. App. 2020) (because D was unable to remove the car himself from the busy roadway where it had been pulled over, police had the statutory authority to remove it, ensuing inventory search based on proper impoundment upheld); Jones, App., 856 N.E.2d 758 (unlike the car in Taylor, a car parked on the paved shoulder of a highway can be properly towed).

TITLE: Terry v. State

INDEX NO.: Z.3.i.

CITE: (1st Dist., 11-05-92), Ind. App., 602 N.E.2d 535

SUBJECT: Improper inventory search

HOLDING: Where D's car was found in Ohio by officers who conducted routine inventory search, subsequent "inventory" search by Ind. officers two days later, was improper because it was not true inventory search, & Tr. Ct. erred in admitting evidence found. D was indicted by Grand Jury for forgery in 1986. In 1989, Ohio police discovered outstanding warrant for his arrest when conducting routine license check. Ohio officers arrested D & impounded his car. Upon conducting inventory search, they found attaché case with various evidence which turned out to be incriminating. Officers contacted Ind. State Police & met two officers from there. Ind. officers obtained search warrant from Ohio judge & seized incriminating items. Tr. Ct. ruled warrant was invalid but admitted evidence under inventory search exception.

Inventory search is conducted under routine administrative procedures designed to protect private property in police custody, to protect police from potential danger, & to protect police from claims of lost or stolen property. Tucker, App., 588 N.E.2d 579. Unless search is conducted as matter of routine department policy, there is risk that it is being used as mere pretext to avoid warrant requirement. Rabadi, 541 N.E.2d 271. State did not challenge ruling that warrant was invalid or assert "good faith" exception to invalid warrant, & inventory search of D's car had already been done in Ohio. When Ind. police obtained warrant, they recognized some items as incriminating, seized them, & returned to Ind. Ct. found interests protected by inventory exception were already satisfied by time Ind. officers arrived, & therefore search was investigatory, not inventory, in nature.

RELATED CASES: Friend, App., 858 N.E.2d 646 (inventory search exception did not apply because search was not necessary under standard operating procedure & officer admitted that he was searching for contraband); Stevens, App., 701 N.E.2d 277 (vehicle search was not authorized under inventory exception because there was no established police policy allowing it).

TITLE: U.S. v. Palacios

INDEX NO.: Z.3.i.

CITE: 957 F. Supp. 50 (S.D.N.Y. 1997)

SUBJECT: Inventory Search – Failure to Know and Follow Standardized Procedures

HOLDING: FBI agents' failure to know and follow agency rules for inventory searches resulted in suppression of evidence found during inventory. Agents' failure to follow standardized procedures, as 4th Amendment requires for valid inventory, was demonstrated both by their different approaches and by conflicts between way each proceeded and FBI's written inventory guidelines. One agent expressly testified to ignorance of written guidelines. Court criticized government for arguing that searching for evidence is permissible purpose of inventory search.

TITLE: Wilford v. State
INDEX NO.: Z.3.i.
CITE: (2/26/2016), 50 N.E.3d 371 (Ind. 2016)
SUBJECT: Inventory search - impounding vehicle under community-caretaking function requires proof of established routine or regulation authorizing impound
HOLDING: Impoundment and inventory searches of vehicles are unreasonable unless the State can show those actions were in keeping with established, particular police departmental routine or regulation. Fair v. State, 627 N.E.2d 427, 433 (Ind. 1993). Generalized or conclusory assertions about such regulations are inadequate to make that showing. While written policies are not necessary to show established departmental routine or regulation, absent such a writing the burden is on the police department through the testimony of its officers to show that there is a standardized impoundment procedure. Id. At 432-33.

Here, D was pulled over because of multiple equipment problems, including a damaged rear end, a broken taillight, and a cracked windshield. D pulled the car into a commercial parking lot, and officer discovered that his license was suspended. D told the officers that the car belonged to his sister, but the record does not show if the officer attempted to contact D's sister to retrieve her car. Officer arrested D and decided to impound the vehicle based on police department's "procedures in that situation." State presented no evidence of the particulars of the impoundment procedures, but only the officer's bare assertion that such a policy existed and that his actions were consistent with the policy.

Without the "particulars" required by Fair, Court could not evaluate whether this impoundment was a reasonable exercise of community-caretaking function and not merely a pretext for an investigatory search. Thus, as in Fair, Tr. Ct. abused its discretion by admitting handgun discovered during the subsequent invalid inventory search of the vehicle. Held, transfer granted, Court of Appeals' opinion at 31 N.E.3d 1023 vacated, carrying handgun without license conviction reversed.

RELATED CASES: Smith, 130 N.E.3d 1181 (Ind. Ct. App. 2019) (State failed to establish police officer's decision to impound D's vehicle adhered to established departmental routine or regulation; while evidence of the department's written procedure need not be introduced, more than conclusory testimony from an officer is required); (Anderson, 64 N.E.3d 903 (Ind. Ct. App 2016) (inventory search exception did not apply because State failed to show that police officer followed established procedure; he did not create an inventory of items he found and no inventory list was placed into evidence).

Z. SEARCH AND SEIZURE

Z.4. Vehicles

TITLE: Luster v. State

INDEX NO.: Z.4.

CITE: (5th Dist. 09/24/91), Ind. App., 578 N.E.2d 740

SUBJECT: Search & seizure - Warrantless search of auto

HOLDING: Drugs & paraphernalia obtained from warrantless search of D's truck were properly admitted at trial. At 1:35 a.m. D was standing next to open driver's side of truck parked behind a car in lot with no adjoining businesses, in area of frequent crime including drug trafficking. Truck's front beams & interior lights were on. As officer drove marked police car into lot, he saw D dive into truck, lay his body across front seat, make movements as though attempting to hide something, & then quickly exit truck & resume standing outside. Uniformed officer approached D, told him to place hands on truck, & looked through open cab, seeing small scale on driver's seat & rolled up paper bag hanging out vent where he saw D reach earlier. Officer then opened passenger door & retrieved bag, finding cash & 11 packages of white powdery substance. All evidence was admitted at trial. While area & time of day alone might not provide sufficient articulable suspicion of criminal activity to warrant investigatory stop, under "totality of circumstances" test, facts taken together were sufficient, especially considering D's actions when he saw officer. Ct. rejected D's argument that his actions occurred after investigatory stop & were fruits of illegal seizure, finding D was free to leave until officer actually exited his car, & D's diving into truck occurred before that time. Additionally, officer's looking into truck was not "search," because materials were in "open view," & subsequent search of paper bag was warranted by exigent circumstances. Ct. did note that it would have been better practice for officer to question D before taking additional action in searching truck, but given facts, actions were still reasonable. Held, D's conviction for dealing in cocaine affirmed, additional conviction for possession vacated *sua sponte* because double jeopardy precluded conviction for both.

TITLE: State v. Berrios

INDEX NO.: Z.4.

CITE: 235 S.W.3d 99 (Tenn. 2007)

SUBJECT: "Frisk and sit" made subsequent vehicle search unconstitutional

HOLDING: Tennessee Supreme Court held frisking a motorist and placing him in the back of a patrol car during a routine traffic stop, without any suspicion that he is armed and dangerous, violates the Fourth Amendment's prohibition of unreasonable searches and seizures, as well as its counterpart in the state constitution. Officer had probable cause to stop D's vehicle for speeding. However, before checking D's license or issuing him a citation, the officer ordered D out of car, frisked him, and placed him in the back seat of the patrol car. Officer then requested, and was granted, permission to search the vehicle, finding a package of cocaine that led to the filing of drug charges. Court said the "frisk and sit" was "more akin to a full-scale arrest than the brief detention generally incident to an ordinary traffic stop." Usually, a D involved in a routine traffic stop can expect to receive either a warning or a citation and be allowed to continue on his way. A frisk-and-sit is far more intrusive, with Court noting that a person placed in the back seat of a patrol car generally does not feel free to leave.

TITLE: State v. Gomez
INDEX NO.: Z.4.
CITE: 122 N.M. 777; 932 P.2d 1 (N.M. 1997)
SUBJECT: New Mexico Rejects Blanket Exception to Warrant Requirement for Automobiles
HOLDING: New Mexico Supreme Court holds that under state constitution, state must make particularized showing of exigent circumstances to justify warrantless vehicle search. While U.S. Supreme Court has announced “bright-line” blanket exception that permits warrantless search of lawfully stopped car and any closed containers within it, California v. Acevedo, 500 U.S. 565 (1991), New Mexico Court finds that holding in tension with general disfavor of bright-line tests. Injecting neutral magistrate into process of searching vehicle or containers in it provides layer of protection against unreasonable searches. Where there is no reasonable basis for believing that automobile will be moved or its search will otherwise be compromised by delay, warrant is required. It may well be true that in most cases, exigent circumstances will exist, but Court does not accept blanket vehicle exception.

TITLE: State v. Henage
INDEX NO.: Z.4.
CITE: 143 Idaho 655, 152 P.3d 16 (Idaho 2007)
SUBJECT: Admission of possessing knife not sufficient for frisk
HOLDING: The Idaho Supreme Court held that a motorist's admission during a traffic stop that he has a knife did not, by itself, provide the basis required by the Fourth Amendment and Terry v. Ohio, 392 U.S. 1 (1968), to conduct a weapons frisk of the motorist.

D in this case was the passenger in a vehicle stopped for having a broken taillight. Although both the driver and D were polite and cooperative, D seemed to the officer to be overly nervous. When the officer asked if he was carrying any contraband, D admitted that he had a knife. The officer conducted a pat down search and found the knife, which he returned to the passenger. He continued the search and found a glass pipe and a rock later identified as methamphetamine.

Terry allows police officers to frisk a suspect whenever there are facts that support an objectively reasonable belief that the suspect is armed and poses a risk of danger to himself or others. Court rejected State's argument that D's admission that he possessed the knife was not enough to give rise to a reasonable suspicion that D was a threat. Under the totality of the circumstances, Court noted that D, although nervous, remained polite and cooperative and did not make any furtive movements. Court added that the officer returned the knife to D before concluding the search and distinguished this case from one where an officer had a reason to believe that a suspect was under the influence of illegal substances. A concurring opinion noted that the fact that someone carries a knife, a nail file, or a permitted concealed weapon does not make that person dangerous. A second concurrence stressed that this was a consensual encounter and not one where reasonable suspicion of criminal activity was present.

TITLE: State v. Ibarra

INDEX NO.: Z.4.

CITE: 282 Kan. 530, 147 P.3d 842 (Kan. 2006)

SUBJECT: Vehicle search unlawful based on smell of ether alone

HOLDING: Kansas Supreme Court reversed denial of motion to suppress holding that under the facts of the case the strong odor of ether alone emanating from a vehicle, even without a legitimate explanation, does not constitute probable cause to search the vehicle. Police had stopped D's vehicle for a lack of a light on his license plate, and officers smelled a strong odor emanating from the vehicle, which they recognized as ether. When asked about the smell, D said he did not notice it and suggested it might be coming from his work clothes. After he gave the officers his work jacket, the odor continued to come from the vehicle's interior. The officers searched the vehicle and found a jar, which after field testing proved to contain methamphetamine. Other items and precursors associated with meth production were found on D and in his vehicle. Court determined that facts presented did not provide officers' an exception to the search warrant requirement due to a public safety threat, emergency or exigent circumstances. "[T]here was no evidence that the police had reasonable grounds to believe that there was an emergency at hand and an immediate need for their assistance for the protection of life or property." The primary motive of the officers was to search the property. Court distinguished from other jurisdiction cases based on those cases not basing their rulings primarily on odor alone. "The strong odor of ether emanating from a house or a vehicle is as consistent with lawful activity as it is with criminal activity." Majority disagreed with the dissent in finding probable cause based on the smell of ether and informant information provided to another officer. Majority noted this argument was not forwarded in the lower courts or by the parties and it refrained from basing a decision under such circumstances. Majority also rejected "fellow officer rule", as no findings by the Tr. Ct. regarding the reliability of the informants exist. Serious corroboration by police of the informant information would be necessary to justify the search under this argument. Dissenting opinion challenged majority by noting that vehicles have a lesser privacy interest than homes. The justice also would uphold the Tr. Ct. ruling because of the additional informant information known by an officer involved, also noting that he found it ironic and troubling that had a drug-sniffing dog been available a probable cause determination undoubtedly would be upheld, but the sense of smell of two well-trained law enforcement officers isn't being upheld.

TITLE: United States v. Cohen

INDEX NO.: Z.4.

CITE: 481 F.3d 896 (6th Cir. 2007)

SUBJECT: Reasonable suspicion not provided by 911 hang-up call

HOLDING: Sixth Circuit Court of Appeals held that police officers checking out a hang-up call to a 911 emergency line at 5 a.m. did not have the reasonable suspicion required by the Fourth Amendment to stop a car they saw pulling out of the small cul de sac from where the call originated. Court decided that the silent 911 call provided the officers with even less reason to suspect D than the anonymous tip found insufficient to justify a stop in Florida v. J.L., 529 U.S. 266 (2000). Unconvinced by the government's reliance on a case involving a stop near an activated burglar alarm, United States v. Moore, 817 F.2d 1105 (4th Cir. 1987), Court pointed out, among other things, that a burglar alarm is a "more reliable indication of a criminal activity" than a silent 911 call and that the pedestrian in Moore was closer to the source of the alarm than D in this case was to the house from which the call had been placed.

TITLE: United States v. Cortez
INDEX NO.: Z.4.
CITE: 449 U.S. 411, 101 S. Ct. 690, 66 L.Ed.2d 621 (1981)
SUBJECT: Justification for investigatory vehicle stop
HOLDING: In determining what cause is sufficient to authorize police to stop person, totality of circumstances must be taken into account. Detaining officers must have particularized & objective basis for suspecting particular person stopped has engaged in criminal activity. Process of assessing all of circumstances does not deal with hard certainties, but with probabilities, & evidence collected must be weighed as understood by those versed in field of law enforcement. Here, objective facts & circumstantial evidence suggesting that particular vehicle was involved in transporting aliens illegally provided sufficient basis to justify investigatory stop by border agents, & intrusion of privacy was limited & reasonably related in scope to justification for its initiation. Held, judgment reversed; Marshall & Stewart, JJ., concurring.

TITLE: United States v. Flores-Montano

INDEX NO.: Z.4.

CITE: 541 U.S. 149 (2004)

SUBJECT: Reasonable Suspicion, Border Crossings, 4th Amendment

HOLDING: Intrusive searches of automobiles at international border crossings do not require reasonable suspicion. In this case, the Government removed and disassembled the gas tank from the respondent's vehicle, finding marijuana hidden inside. The Government has a 'paramount' interest in protecting the border from the entry of unauthorized persons and effects.

TITLE: United States v. Olivares-Rangel
INDEX NO.: Z.4.
CITE: 458 F.3d 1104 (10th Cir. 2006)
SUBJECT: Identity information suppressible following illegal seizure
HOLDING: The U.S. Court of Appeals for the Tenth Circuit held that the U.S. Supreme Court's ruling in INS v. Lopez-Mendoza, 468 U.S. 1032 (1984), that the "identity" or "body" of a suspect may never be suppressed applies only to challenges to a court's physical jurisdiction over a D and does not preclude the application of the Fourth Amendment's exclusionary rule to evidence of the D's identity discovered as the result of an illegal search or seizure. The Court also held that a D challenging the admissibility of evidence of identity as the fruit of an illegal search or seizure need not have any proprietary interest in the items sought to be suppressed, with each issue dividing jurisdictions.

D was charged with being present in the country after having previously been deported. The government conceded that D was illegally seized during a traffic stop by border patrol agents. During the bad stop, an agent recognized D as someone he had recently arrested for being in the country illegally and questioned him about his identity and citizenship. After admitting he was in the country illegally, D was arrested, questioned further, and fingerprinted. That evidence led to the discovery of immigration records showing that he had previously been deported and that he was a convicted felon. The government appealed from an unfavorable district court ruling on suppression.

In Lopez-Mendoza, the Supreme Court in a pair of civil deportation cases stated, "The 'body' or identity of a D or respondent in a criminal or civil proceeding is never itself suppressible as a fruit of an unlawful arrest." Circuit courts have given varying interpretations to that language, with the Ninth Circuit relying upon it to justify denying suppression of either a D's identity or his government files in prosecutions for unlawful re-entry and the Eighth Circuit concluding that the "identity" language referred only to jurisdictional challenges and did not foreclose suppression of all identity-related evidence. See U.S. v. Guzman-Bruno, 27 F.3d 420 (9th Cir. 1994); U.S. v. Guevara-Martinez, 262 F.3d 751 (8th Cir. 2001). Agreeing with the Eighth Circuit, Court held that Lopez-Mendoza does not exempt from the exclusionary rule all evidence that tends to show a D's identity. The Court upheld the district court's suppression order as to statements elicited from D about his identity but remanded to the district court to determine a question as to the fingerprints. If they were obtained merely as part of routine booking, they were unrelated to the unlawful arrest but, if they were obtained to develop evidence of criminal conduct, they were suppressible.

TITLE: Whren v. U.S.

INDEX NO.: Z.4.

CITE: 517 U.S. 806, 116 S. Ct. 1769 (1996)

SUBJECT: Vehicle Stops - Pretextual

HOLDING: Temporary detention of motorist supported by probable cause to believe the motorist has committed a civil traffic violation is reasonable under 4th Amendment, regardless of actual motivation of officers making stop & regardless of whether reasonable officers in same circumstances would have made stop in absence of purpose of investigating other violations for which stop was not justified. As long as officers “could have” made stop on basis of traffic violation, it does not matter what reasonable officers “would have” done. Fourth Amendment reasonableness is not concerned with subjective intent of officers. Test turning upon what reasonable officer under same circumstances is too subjective & would often require speculation. Test turning upon local police enforcement practices would make 4th Amendment protections vary from place to place & time to time. Interest balancing test suggested by Ds is appropriate only where police action is extreme or extraordinary, which traffic stop is not. Ds also raised possibility of racially motivated selective enforcement of traffic laws, but majority writes that this should be challenged under equal protection principles, not 4th Amendment reasonableness.

RELATED CASES: Arkansas v. Sullivan, 532 U.S. 769, 121 S. Ct. 1876, 149 L.Ed.2d 994 (2001).

Z. SEARCH AND SEIZURE

Z.4. Vehicles

Z.4.a. Search incident to stop/arrest (U.S. v. Robinson, New York v. Belton)

TITLE: Arkansas v. Sullivan

INDEX NO.: Z.4.a.

CITE: 532 U.S. 769, 121 S. Ct. 1876; 149 L. Ed. 2d 994 (2001)

SUBJECT: Traffic stop, subjective motivation, probable cause

HOLDING: When the U.S. Supreme Court has specified the extent of federal constitutional protection, a state appellate court is not free to interpret the federal constitution to provide greater protection. Sullivan was arrested for drug possession during a traffic stop. The state supreme court suppressed the admission of the physical evidence, stating that it did not believe that Whren v. U.S., 116 S. Ct. 1769, disallowed inquiry into an arresting officer's subjective motivation. The U.S. Supreme Court reversed. Note that in this case, as in Ohio v. Robinette, 117 S. Ct. 417; 136 L.Ed.2d 347 (1996), the state supreme court did not rest its holding on independent state law grounds.

TITLE: Banks v. State

INDEX NO.: Z.4.a.

CITE: (2nd Dist., 6-12-97), Ind. App., 681 N.E.2d 235

SUBJECT: Search of auto passenger incident to stop - inevitable discovery

HOLDING: Although pat down search of passenger during roadblock stop was not justified, evidence of handgun seized pursuant to pat down was admissible under inevitable discovery doctrine. Because sobriety checkpoint is lawful stop, police were justified in requesting D & other passengers to exit car. Maryland v. Wilson, 117 S. Ct. 882 (1997). However, pat down search conducted after D entered sobriety checkpoint stop was not based upon reasonable belief, supported by articulable facts, that D was armed & dangerous. Officer's testimony that he was "uncomfortable" because nobody knew to whom car belonged & because he thought he might be dealing with intoxicated persons was not sufficient to meet standard required by Terry v. Ohio, 392 U.S.1 (1968). Officers failed to use least restrictive means for effectuating stop. Florida v. Royer, 103 S. Ct. 1319 (1983).

Notwithstanding problematic pat down search of D, Ct. held that inevitable discovery exception to exclusionary rule applied in this case. As D & front passenger obeyed officers' legitimate request to exit car, one of police officers on scene observed gun which was in plain view on front dashboard of car. Officer testified that he saw this gun at same moment other officer announced he had found gun on D. Having seen one gun in car, it would have been reasonable to believe that other occupants might be presently armed & dangerous, & pat down search for weapons on each of occupants would have been justified. Thus, police officers ultimately & legitimately would have discovered weapon on D had he not been patted down prematurely. Held, judgment affirmed.

TITLE: Bell v. State

INDEX NO.: Z.4.a.

CITE: (4th Dist., 11-30-04), Ind. App., 818 N.E.2d 481

SUBJECT: Vehicles - search incident to arrest; dismantling glove box

HOLDING: Tr. Ct. erred in denying D's motion to suppress evidence recovered as a result of vehicle search incident to lawful arrest. Both D & his passenger were immediately removed from vehicle, handcuffed, patted down & placed in separate police vehicles. D's weapon was retrieved before officers commenced search of his vehicle. A search of open area of passenger compartment & inside of glove compartment pursuant to New York v. Belton, 453 U.S. 454 (1981), revealed no contraband. However, without search warrant, police dismantled glove box to view behind it into vehicle's chassis. Ct. rejected State's argument that Belton would allow dismantling of interior structures of vehicles without a search warrant. While a search of passenger compartment & containers found therein incident to a lawful arrest is a valid warrant exception, the officers' search in this case exceeded permissible scope, as outlined in Belton. Thus, D's Fourth Amendment rights against unlawful search & seizure were violated. Ct. also held that under totality of circumstances, dismantling glove compartment was unreasonable under Indiana Constitution. Held, judgment reversed & drugs found in chassis of D's vehicle ordered suppressed.

TITLE: Caldwell v. State
INDEX NO.: Z.4.a.
CITE: 780 A.2d 1037 (Del. 2001)
SUBJECT: Pretextual stop - exceeding scope
HOLDING: A police officer who stopped suspected drug dealer for pre-textual purpose of investigating parking violation exceeded lawful scope of stop by frisking occupants of car, placing them in handcuffs, and waiting until other officers and drug-sniffing dog arrived. Duration and intrusiveness of stop must be reasonably related to underlying justification for the stop.

TITLE: Callahan v. State
INDEX NO.: Z.4.a.
CITE: (1st Dist., 11-17-99), Ind. App., 719 N.E.2d 430
SUBJECT: Voluntary consent to search car - no advisement of right to refuse
HOLDING: Under totality of circumstances, D's consent to search of his car & spare tire carrier was voluntarily given. D was stopped for having improperly tinted windows & Texas license plate which appeared to have expired. After issuing warning ticket for window violation, officer testified that D was free to go. D did not immediately leave, however, & during ensuing conversation with police officer, officer asked to look inside car. Officer clearly told D that he was drug interdiction officer & that his purpose was to stem transport of illegal narcotics. D consented each time officer wished to escalate search. At any time prior to discovery of large amount of marijuana in spare tire carrier, D was free to leave without repercussion.

D argued that Article I, § 11 of Indiana Constitution requires independent reasonable suspicion of some illegal activity apart from traffic stop in order for officer to seek consent to search. Although Ct. was troubled by increasingly common practice of police stopping vehicles for minor traffic offenses & seeking consent to search with no suspicion whatsoever of illegal contraband, it was unwilling under facts of this case to say that Indiana Constitution prohibits police from doing so. Thus, Tr. Ct. did not err in denying D's motion to suppress. Held, judgment affirmed.

RELATED CASES: McClain, 963 N.E.2d 662 (Ind. Ct. App 2012) (Article 1, § 11 did not prohibit police from questioning D or asking for consent to search after traffic stop concluded); Navarro, App., 855 N.E.2d 671 (D gave consent to search on two separate occasions without hesitation & agreed to wait fifteen minutes for canine unit to arrive; in requesting D's consent, officers did not touch or physically restrain D in any manner. Fact that officer had possession of D's license indicates only that nature of encounter was investigative & did not render consent during course of stop involuntary); Ammons, App., 770 N.E.2d 927 (scant but uncontroverted evidence revealed that D voluntarily consented to search); Camp, App., 751 N.E.2d 299 (Ct. rejected D's claims that his consent was not voluntary because officer was deceptive as to his motives for traffic stop, because of illegal activity by police prior to search request, & because his consent was stale).

TITLE: Cannon v. State
INDEX NO.: Z.4.a.
CITE: (2nd Dist., 1-28-00), Ind. Ct. App, 722 N.E.2d 881
SUBJECT: Illegal detention for dog sniff - no reasonable suspicion
HOLDING: Tr. Ct. erred in denying D's motion to suppress evidence obtained as result of canine sniff test of his vehicle, where after valid initial traffic stop, police officer lacked requisite reasonable suspicion to detain vehicle for further investigation. At suppression hearing, officer testified that after activating his emergency lights, he observed D moving his right arm between seats of his truck. D stopped truck, exited immediately, & began pacing. After body search to which D consented revealed no weapons, officer requested D's permission to search his truck for weapons. D stated that he had no weapons & declined to give consent for vehicle search. Officer testified that he felt D was "being honest" about not having weapon in his truck, but that D's "nervous" & "suspicious" demeanor must have had another cause, which led him to conduct canine sniff test with dog trained in narcotics detection.

While Fourth Amendment permits search incident to custodial arrest, it does not permit search incident to traffic citation. Knowles v. Iowa, 119 S. Ct. 484 (1998). Sniff testing by trained narcotics detention canine is not search within meaning of Fourth Amendment, & detention of personal property for sniff test is not prohibited if officer has reasonable suspicion to believe property contains narcotics. Kenner, App., 703 N.E.2d 1122. In this case, sniff test of D's truck was not premised upon reasonable suspicion that it contained narcotics. Officer's safety concerns had been alleviated before he retrieved his canine & led him around perimeter of D's truck. At that point, his lingering suspicion about contents of truck was premised solely on D's "nervousness." Officer's hunch based only on vague & general characterization of D's demeanor did not rise to level of reasonable suspicion. Sniff test was therefore unreasonable, & cocaine found as result thereof should have been suppressed. Held, conviction reversed.

RELATED CASES: Rodriguez, 135 S. Ct. 1609 (U.S. Supreme Court 2015) (absent reasonable suspicion, prolonging the duration of a traffic stop to conduct a dog sniff constitutes an unreasonable seizure; see full review, this section); Bush, 925 N.E.2d 787 (Ind. Ct. App 2010) (D & his car were unlawfully detained for dog sniff based on passenger's arrest for outstanding warrant); Wells, 922 N.E.2d 697 (Ind. Ct. App 2010) (D's extreme fidgetiness & other furtive gestures raised legitimate safety concerns that justified removing D from car & conducting pat-down search, but once concerns were alleviated, there was no reasonable suspicion to keep D until K-9 unit arrived); Wilson, App., 847 N.E.2d 1064 (officer did not have reasonable suspicion to detain D after traffic stop was concluded & until arrival of drug-sniffing dog that was summoned only after D declined consent to search); Bradshaw, App., 759 N.E.2d 271 (where canine sweep was conducted prior to officers receiving information from dispatch on license & warrants check, it did not prolong traffic stop longer than necessary & was thus proper); Mitchell, 745 N.E.2d 775 (reasonable search under Ind. Const. would permit police to briefly detain motorist only as necessary to complete officer's work related to illegality for which motorist was stopped); D.K., App., 736 N.E.2d 758 (nervousness, failure to make eye contact, turning to look at officer, refusal to consent to search & information about D's possession of police radio in vehicle were unparticularized suspicions, & did not create reasonable suspicion of criminal activity to support continued detention for canine sniff for drugs).

TITLE: Charity v. State
INDEX NO.: Z.4.a.
CITE: 132 Md. App. 598, 753 a.2d 556 (Md. Ct. Spec. App. 2000)
SUBJECT: Pretextual Stop -- Spoiled by Failure to Pursue Pre-textual Purpose
HOLDING: A state trooper who made a lawful pre-textual traffic stop pursuant to Whren v. U.S., 517 U.S. 806 (1996), exceeded the scope of the stop by failing to diligently pursue his investigation of the traffic violation. Even where the officer's investigation lasts no longer than a typical traffic stop, the reasonableness of the scope of a pre-textual stop may depend on the diligence with which the officer pursues the stated basis for the stop.

TITLE: Dennis v. State
INDEX NO.: Z.4.a.
CITE: 345 Md. 649, 693 A.2d 1150 (Md. Ct. App. 1997)
SUBJECT: Vehicle stop -- Cannot Be Upheld on Basis Other Than That Articulated by Officer
HOLDING: Stop conducted by officer who fails to provide adequate support for claim of concern for safety may not be upheld on ground that facts in record, viewed objectively, would have supported stop on different rationale. U.S. Supreme Court remanded for reconsideration in light of Whren v. U.S., 116 S. Ct. 1769 (1996), in which upheld "pre-textual" stops holding that regardless of officer's unexpressed subjective motivation, stop is valid as long as objective evaluation of facts yields probable cause for stop, i.e. for traffic infraction. Maryland Court finds that Whren is inapposite and does not change rule that courts are bound by officer's expression of his or her subjective motivation for stop.

TITLE: Gibson v. State

INDEX NO.: Z.4.a.

CITE: (2nd Dist.; 7-31-00), Ind. App., 733 N.E.2d 945

SUBJECT: Search of vehicle - not justified by search incident to arrest or inventory exceptions

HOLDING: Because warrantless search of D's van did not fit within search incident to arrest or inventory search exceptions to warrant requirement, Tr. Ct. erred in denying D's motion to suppress. To lawfully impound vehicle under community care-taking function, State must demonstrate: (1) that belief that vehicle posed some threat or harm to community or was itself imperiled is consistent with objective, sound policing; & (2) that decision to combat threat by impoundment was in keeping with established departmental routine or regulation. Fair, 627 N.E.2d 427 (Ind. 1993). In addition, scope of search incident to valid arrest is generally limited to search of person of arrestee & area within his immediate control to which he could reach for weapons or to destroy evidence. Chimel v. California, 395 U.S. 752 (1969).

Here, officer stopped D who had exited his van & was walking into store because there was arrest warrant issued for D. Upon placing D under arrest, police, without reading D his rights, asked D whether he had any weapons or contraband in his van, to which he responded that he had marijuana in center console. Fact that officers placed D under arrest & could have impounded & inventoried van could not save warrantless search of van based on un-mirandized questioning. Because van was undamaged & neatly parked in relatively secured parking lot of store & D was arrested for minor offense, there was no need to impound van & inventory search would be nothing more than pretext to search vehicle for contraband. In addition, because D was out of van & walking through parking lot when stopped & arrested, interior of van was not within area of D's immediate control & search incident to arrest could not justify search of van. Thus, marijuana found in van should have been suppressed. Held, judgment reversed.

RELATED CASES: Edwards, App., 762 N.E.2d 128 (search of garbage bag located in back of truck and outside D's reach did not pose threat to police & was not justified as search incident to arrest; on rehearing at 768 N.E.2d 506, Ct. upheld its earlier decision & noted that there is factual & legal distinction explicitly recognized between person arrested while in vehicle or process of exiting vehicle & those who are outside vehicle).

TITLE: Graham v. State

INDEX NO.: Z.4.a.

CITE: 119 Md. App. 444, 705 A.2d 82 (Md. Ct. Spec. App. 1998)

SUBJECT: Detention of Passenger After Traffic Stop

HOLDING: Once purpose of traffic stop was effectuated and driver had been arrested for traffic offense, officers should not have detained passenger twenty-five minutes to be scanned by drug detection dog. In Maryland v. Wilson, 117 S. Ct. 882 (1997), U.S. Supreme Court held that officers may always order passengers to exit vehicle during traffic stop, but specifically declined to address issue of how long officers may detain passenger during stop. Moreover, unlike in Wilson, justification relied on here was not officer safety but suspicion arising from inconsistent information given regarding purpose of trip, which would have been insufficient alone to justify stop. Although there is no bright-line rule limiting length of detention during traffic stop, officers must diligently pursue investigation relating to purpose of stop, and detention should end once that purpose has been accomplished.

NOTE: See also State v. DeMarco, Kan. S. Ct. Nos. 78,065, etc., 1/23/98, 62 CrL 1444.

TITLE: Jackson v. State
INDEX NO.: Z.4.a.
CITE: (2nd Dist., 3-24-03), Ind. App., 785 N.E.2d 615
SUBJECT: Multiple vehicle searches exceeded scope of lawful Terry stop
HOLDING: Although initial traffic stop & vehicle search was valid, Tr. Ct. erred in denying D's motion to suppress handgun found in his car, because police officers exceeded scope of stop by conducting multiple protective searches of D's car. Purpose of limited search for weapons after investigative stop is not to discover evidence of crime, but to allow officer to pursue his investigation without fear for his safety or safety of others. State v. Joe, 693 N.E.2d 573 (Ind. Ct. App 1998).

Here, after valid stop of his car, officer testified that D began "furiously moving around inside vehicle" & initially hesitated to follow officers' commands to raise his hands in air. D's actions gave rise to reasonable belief that limited search of interior of his car for weapons was necessary to ensure officers' safety. State v. Dodson, 733 N.E.2d 968 (Ind. Ct. App. 2000). However, Court held that police officers' use of multiple protective searches exceeded rationale behind Terry-type investigation & was therefore unreasonable. It was only after officer conducted canine search & discovered no weapons inside car that officer then instructed another officer to perform another search of D's car. Reasonableness of officer's belief that they may have been in danger diminished after pat down search & canine search discovered no weapons. Court noted that concern for officer safety is important interest that should be balanced against D's privacy interests protected by Fourth Amendment; however, there reaches a point where scales begin to tip again in favor of securing D's privacy interests. In this case, after two unproductive protective searches, it was no longer reasonable to conduct another search of D's car. Held, judgment reversed & remanded.

TITLE: Klopfenstein v. State

INDEX NO.: Z.4.a.

CITE: (2d Dist. 9/21/82), Ind. App., 439 N.E.2d 1181

SUBJECT: Vehicles - search incident to arrest

HOLDING: No warrant is required for search incident to lawful arrest. US v. Robinson (1973), 414 U.S. 218, 94 S. Ct. 467, 38 L.Ed.2d 427. Scope of search limited to person & area within immediate control. Chimel v. CA (1969), 395 U.S. 752, 89 S. Ct. 2034, 23 L.Ed.2d 685. Upon lawful custodial arrest of occupant of car, police may search passenger compartment. NY v. Belton (1981), 453 U.S. 454, 101 S. Ct. 2860, 69 L.Ed.2d 768. Containers, including any open/closed containers, found on arrestee may be searched. Robinson, *supra*; Jenkins; Easley; Moss; Taylor (Ind. App. cases). Here, responding to dispatcher's description of car & people involved in shooting incident, police stopped D's car, observed guns, arrested D & 3 passengers. Search of D's person following arrest revealed Tylenol bottle containing 2.2 grams of hashish. Ct. explicitly declines to rule on effect or retroactivity of US v. Ross (1982), 456 U.S. 798, 102 S. Ct. 2157, 72 L.Ed.2d 572. Held, possession conviction affirmed.

RELATED CASES: Garcia, 25 N.E.3d 786 (Ind. Ct. App 2015) (opening a pill bottle found in D's pants pocket during a pat-down search incident to his arrest for driving without a valid license was reasonable under Article 1, Section 11 of the Indiana Constitution; see full review at Z.3.a); Gibson, App., 733 N.E.2d 945 (when D is out of car & walking toward store when arrested, console of van is not within his reach, & thus, search of van was not justified by search incident to arrest); Jones, App., 467 N.E.2d 1236 (to have valid search incident to arrest, initial arrest must be lawful); Culpepper, App., 662 N.E.2d 670 (probable cause to arrest is still required, even though circumstances fall within warrant exception).

TITLE: Maryland v. Wilson

INDEX NO.: Z.4.a.

CITE: 519 U.S. 408, 117 S. Ct. 882; 137 L.Ed.2d 41 (1997)

SUBJECT: Vehicle Stop -- Ordering Passengers out of Car

HOLDING: Officer making lawful traffic stop may order passengers to get out of car pending completion of stop. In Pennsylvania v. Mimms, 434 U.S. 106, 54 L.Ed.2d 331, 98 S. Ct. 330 (1977), Ct. held that officer making lawful traffic stop could order driver out of car. Ct. wrote that touchstone of 4th Amendment analysis is reasonableness of particular governmental invasion of citizen's personal security, and reasonableness depends on balance between public interest and individual's right to be free from arbitrary interference by officers. Public interest was safety of police officers, which was weighty, and additional intrusion on liberty interest of driver, who had already been lawfully stopped, was minimal. Same weighty public interest in safety of police officers is present here, and danger is in fact likely to be greater when there are passengers in addition to driver of stopped vehicle. On personal liberty side it is true that, unlike drivers, for whom there is probable cause that they have committed minor vehicular offense, there is no reason to stop or detain passengers. However, as practical matter, passengers are already stopped by virtue of stop of vehicle, so that additional intrusion upon them is minimal. Officer's ordering passenger out of car was not unreasonable under 4th Amendment, and lower Ct. improperly suppressed cocaine which fell to ground as passenger got out of car. Stevens & Kennedy, JJ., DISSENT, arguing that Terry itself would justify ordering passenger to get out of car if officer had articulable suspicion of possible danger, but that Ct.'s ruling here permits routine and arbitrary seizures of obviously innocent citizens.

[**NOTE:** Accord, Warr v. State, 580 N.E.2d 265 (Ind. App. 1991).]

TITLE: Rodriguez v. United States

INDEX NO.: Z.4.a.

CITE: (4/21/2015), 135 S. Ct. 1609 (U.S. 2015)

SUBJECT: Can't extend traffic stop for dog sniff absent reasonable suspicion

HOLDING: Absent reasonable suspicion, prolonging the duration of a traffic stop to conduct a dog sniff constitutes an unreasonable seizure. A traffic stop for an infraction may last no longer than is needed to complete the purpose of that stop. Illinois v. Caballes, 543 U. S. 405, 407 (2005) (dog sniff). The seizure remains lawful only "so long as [unrelated] inquiries do not measurably extend the duration of the stop." Arizona v. Johnson, 555 U. S. 323, 333 (2009). Beyond determining whether to issue a traffic ticket, an officer's mission in a traffic stop usually includes checking for a driver's license and outstanding warrants, and inspecting registration and proof of insurance. These steps ensure vehicles on the road are operated safely and responsibly. However, a dog sniff is not fairly characterized as part of an officer's traffic mission because it lacks the same close connection to road safety.

Here, an officer pulled D over for driving on a highway shoulder. After the officer issued a warning ticket, he asked D if he would consent to a dog sniff of his car. D declined. The officer then waited until another officer arrived and then conducted a dog sniff, which led to the discovery of methamphetamine in the car. Held, cert. granted, Eight Circuit opinion at 714 F.3d 905 vacated, and remanded to Eighth Circuit for determination if there was an independent basis to justify the dog sniff. Ginsburg, J., joined by Roberts, C.J., Scalia, Breyer, Sotomayor, and Kagan, J.J., Thomas, J., dissenting, joined by Alito, J., and joined in part by Kennedy, J.; Alito, J., dissenting.

RELATED CASES: Cassady, 56 N.E.3d 662 (Ind. Ct. App 2016) (dog sniff did not unreasonably prolong traffic stop, where approximately four minutes passed between the time officer gave his location and a description of the vehicle to dispatch and the time he completed his dog sniff).

TITLE: State v. Joe

INDEX NO.: Z.4.a.

CITE: (1st Dist., 3-24-98), Ind. App., 693 N.E.2d 573

SUBJECT: Search of vehicle incident to stop - reasonable belief that officer was in danger

HOLDING: Tr. Ct. erred in granting D's motion to suppress gun found during warrantless search of his car. Once vehicle has been properly stopped for investigative purposes, officer may conduct search of automobile's interior for weapons without first obtaining search warrant if officer reasonably believes that he or others may be in danger. Gann, 521 N.E.2d 330 (Ind. 1988). Reasonableness depends on whether facts available to officer at moment of seizure or search would warrant person of reasonable caution in believing that action taken was appropriate. Here, officer was patrolling neighborhood well known for drug trafficking & shootings when he pulled D over for traffic violation. During stop, D was fidgeting with his hands between console & driver's seat & continued to do so despite officer's request to place his hands where officer could see them. Eventually, officer pulled his gun in order to get D to comply with his requests, & then searched D's car where he found gun. Thus, un-contradicted evidence points unerringly to conclusion that D's actions gave rise to reasonable belief that limited search of car for weapons was necessary to ensure officer's safety. Held, judgment reversed & remanded with instructions to deny D's motion to suppress.

RELATED CASES: Woodson, 966 N.E.2d 780 (Ind. Ct. App 2012) (police had safety concerns and reasonable suspicion of criminal activity after the traffic stop for speeding was concluded, based on driver's nervousness, failure to inform officer of handgun in glove compartment, fact that car was rented even though driver owned his own vehicle, and duo had just returned from a one-day round trip to Gary); Williams, App., 754 N.E.2d 584 (officer feared for his safety & believed he was in danger due to D's nervousness, his refusal to remove his hands from his pockets, & attempt to grab the officer's wrist); Dodson, App., 733 N.E.2d 968 (State met its burden of proving that weapons search of D's car was valid search prompted by reasonable concerns for safety of officer & others, where D had been moving around inside car & officer saw D's empty shoulder holster).

TITLE: State v. McCaa

INDEX NO.: Z.4.a.

CITE: (01-30-12), 963 N.E.2d 24 (Ind. Ct. App 2012)

SUBJECT: Vehicle stop - ordering driver to move vehicle up the road two miles

HOLDING: Tr. Ct. abused its discretion by granting D's motion to suppress evidence. If nothing in the initial stages of a vehicle stop based on erratic driving serves to dispel an officer's reasonable suspicion that the driver is impaired, fear for the safety of others on the highway entitles him to conduct a carefully limited search by observing the driver's conduct and performance of standard, reasonable tests to discover whether the driver is drunk. The battery of roadside sobriety tests is such a limited search.

Here, police received a dispatch concerning various reports of a semi-truck being driven erratically toward a fatal accident site where only one lane was open for passing traffic. An officer observed the truck go off the road twice and being driving slowly in relation to the speed limit. The officer who was driving behind the truck radioed to the officer at the accident site to stop the truck. When the second officer stopped the truck, the truck blocked the one lane stopping all traffic. D explained to officer that he had been eating his lunch and spilled his pop, which caused him to swerve. The officer saw a sandwich wrapper and a spilled soft drink can on the floor. The officer did not notice any slurred speech or dexterity problems. Because of a downpour of rain, the officer ordered D to drive two miles down the road to continue with the stop at the gas station. As the officer followed D's truck, he saw D drive his truck off the roadway three more times. At the station, D failed the field sobriety tests and agreed to a blood draw. Although this is a somewhat close call, the officer was still entitled to detain D for further investigation at the time he told D to move his truck to the gas station. Under these unusual circumstances, the reasonable suspicion created by D's erratic driving was not dispelled by anything in the initial encounter. A reasonable person could have doubted D's self-serving story about spilling the pop. Moreover, asking D to drive his truck to the station allowed the flow of traffic to resume, maintained access to the accident, permitted the officer's investigation to continue indoors in a controlled environment, allowed for medical attention to be paid to D if necessary and removed the truck without having to wait for another driver or wrecker. Because of these considerations and the short amount of time that the stop was lengthened, the stop was not unconstitutionally extended. Finally, ordering D to move his truck two miles down the road was distinguishable from Osborne v. State, 805 N.E.2d 435 (Ind. Ct. App 2004), in which the police asked a man whom they knew to be drinking and using cocaine to speed through town in order for them to make a bust of his passenger. In Osborne, the officers created the situation rather than reacted to it. Thus, the extended stop in this case did not violate D's rights under the U.S. or Indiana Constitutions. Held, judgment reversed and remanded; Barnes, J., begrudgingly concurring with separate opinion on basis that these circumstances are the proverbial "once in a lifetime."

TITLE: McCain v. Commonwealth

INDEX NO.: Z.4.a.

CITE: 275 Va. 546, 659 S.E.2d 512 (Va. 2008)

SUBJECT: No reasonable suspicion to subject passenger to protective frisk for weapons

HOLDING: Virginia Supreme Court held a police officer who observed two occupants of a car in a high-crime area at 3 a.m. visit a house where the officer knew drugs had been sold months earlier, and who proceeded to lawfully stop the car for a traffic infraction, did not have the reasonable suspicion required by the Fourth Amendment to subject the passenger to a protective frisk for weapons. Court acknowledged that officer's observation of the traffic violation justified stopping the vehicle and directing not only the driver but also D to exit. At that point, the officer and his partner would have been justified in subjecting D to a pat-down search had the circumstances supported a reasonable, individualized suspicion that he was armed and dangerous. However, this case involved a relatively minor traffic offense, and the police were more concerned with the driver than D. Further, D's behavior did not suggest that he posed a threat to the officers. Finally, the officer's knowledge that drugs had been sold previously at a home where D had just visited could support no more than a "hunch" that D was involved with drugs.

TITLE: McKnight v. State

INDEX NO.: Z.4.a.

CITE: (4th Dist., 04-21-93), Ind. App., 612 N.E.2d 586

SUBJECT: Investigatory stop & resultant search not improper

HOLDING: Confluence of factors present gave officers reasonable suspicion that D had been involved in illegal activity, & suspicion was independent of initial stop of car, so it was not IAC to fail to object to admission of evidence. In early morning officers were dispatched to scene of fight, & about 2 blocks away, observed large car traveling at high speed. When car didn't come to complete stop, officer stopped car & asked driver why he was driving so fast. When driver responded that he knew he was in violation of curfew, officer allowed car to go & proceeded to fight scene. When he got to fight scene, officer learned several participants had fled in big car, & recalling his earlier stop of car, he decided to stop it again. When officer stopped second time, he knew occupants were violating curfew, & suspected they had been in fight. As he approached car, he saw passenger stuff something under back seat. As occupants were ordered out of car, officer observed small baggie on floorboard in front of where passenger had been, & then arrested all for curfew violation. After arrest, inventory search of car revealed ten baggies of crack cocaine.

Ct. distinguished instant case from People v. Fox, (1990), 203 Ill.App.3d 742, 561 N.E.2d 132 (finding second stop without independent grounds unjustified). Lateness of hour, emptiness of streets, proximity of car to fight scene, speed of car, & information that some participants had fled scene in big car, gave officer reasonable suspicion that D & friends were fight participants. Additionally, suspicion for second stop was independent of initial stop made. Ct. concluded that because there was reasonable suspicion for stop, any objection to admission of evidence from car search would have been futile. Held, conviction affirmed.

RELATED CASES: Clenna, App, 782 N.E.2d 1029 (investigatory stop proper where officer received report of suspicious people in drug store; clerk was afraid D was going to rob store because he had been inside store for over 30 minutes, kept making advances on cash register, & would retreat to back of store whenever someone entered store; when D observed officer, he began to quickly walk away); Crabtree, App., 762 N.E.2d 241 (reasonable suspicion for stop found where D was in high-crime area at 4:30 a.m., was seen next to car with open door, car was at location where there had been complaint of loud stereo, D appeared to be hiding behind car & strained to look over it).

TITLE: Parish v. State

INDEX NO.: Z.4.a.

CITE: (11-09-10), 936 N.E.2d 346 (Ind. Ct. App 2010)

SUBJECT: Protective search of car includes locked glove box

HOLDING: Tr. Ct. did not abuse its discretion by finding that the search of a locked glove box was justified by officer safety. The search of the passenger compartment of an automobile, limited to those areas in which a weapon may be placed or hidden, is permissible if the police officer possesses a reasonable belief based on specific and articulable facts which, taken together with the rational inferences from those facts, reasonably warrant the officer's belief that the suspect is dangerous and the suspect may gain immediate control of weapons. Michigan v. Long, 463 U.S. 1032, 1049-50 (1983).

Here, at the time the police pulled over D's car for a traffic violation, the police were on high alert that D was armed. D was a suspect in several shootings, including a homicide, and the police had a tip that D had threatened to kill the next police officer he encountered. When the officer recognized the driver as D, she asked him to get out of the car. D first asked why the officer did not want to see his license and registration. After she again ordered him out of the car, D slowly exited the car. At this point, another officer arrived. Both officers patted down D. The first officer searched the passenger compartment. During the search, she took D's keys out of the ignition and unlocked the glove box, in which she found a gun, scales and marijuana. When the police determined D's license was valid, they let him go but kept the weapon. The weapon matched the bullets used in the homicide. Because a reasonably prudent person in the officer's position would be warranted in the belief that her safety was in danger, the officer properly searches the passenger compartment. Turning to federal caselaw, the court found that the fact that the glove box was locked did not invalidate the safety concern. Even if removed from the car during a traffic stop, occupants are typically allowed to return to the car after any citation is issued, and once back inside the car, the occupants have easy access to even a locked glove box. Held, judgment affirmed; Riley, J., dissenting on basis that because D was removed from the car and handcuffed at the time of the search, he did not have access to the gun in the locked glove box.

TITLE: People v. Redinger
INDEX NO.: Z.4.a.
CITE: 906 P.2d 81 (Colo. 1995)
SUBJECT: Fourth Amendment - Requesting ID After Basis for Traffic Stop had Dissipated
HOLDING: State trooper who stopped car for missing license plate, then noticed temporary plate in back window as he walked toward car, violated Fourth Amendment when he asked driver to show driver's license and registration. Basis for traffic stop had been resolved, and request for license constituted continuation of detention without reasonable suspicion.

TITLE: People v. Thompson

INDEX NO.: Z.4.a.

CITE: 283 Ill.App.3d 796; 670 N.E.2d 1129 (Ill. Ct. App. 1996)

SUBJECT: Search and Seizure -- Protective Frisk Following Pretextual Vehicle Stop

HOLDING: Despite U.S. Supreme Court's ruling that police may make "pre-textual" vehicle stops, for investigative purposes, as long as they "could have" stopped car for traffic violation, Illinois Appellate Court holds that the pre-textual nature of a stop is "not...totally irrelevant to questions that accompany" the stop. Questions before the court here was whether a protective frisk of a passenger in a stopped van was justified by a reasonable belief that the officer and his companions were in danger. The officers stopped the car on the ostensible basis of a vehicle code violation -- an inoperable brake light. However, their real purpose was to check out an anonymous tip that the van contained guns and drugs. "A pre-textual stop, by definition, harbors an underlying ambition to exceed its original scope. Once a traffic stop's pretextual nature is established, as it was in this case, we know that the true objective is to find a legal excuse to accomplish a warrantless search. This goal exposes to careful scrutiny disputes over ensuing events." Held, remanded to Tr. Ct. for determination of what the officer reasonably believed.

TITLE: Perkins v. State

INDEX NO.: Z.4.a.

CITE: (4th Dist. 7/13/83), Ind. App., 451 N.E.2d 354

SUBJECT: Vehicles - search incident to arrest

HOLDING: Tr. Ct. did not err in denying D's motion to suppress marijuana seized during search of car incident to arrest even though D was handcuffed & placed in police van prior to car search. Here, D contends that police were not in fear for their safety or worried that D would destroy evidence, thus search of car was not incident to arrest under Chimel v. CA, (1969), 395 U.S. 752, 89 S. Ct. 2034, 23 L.Ed.2d 685. Ct. finds NY v. Belton, (1981), 453 U.S. 454, 101 S. Ct. 2860 provides most recent definition of area within arrestee's immediate control & allows search of passenger compartment of vehicle after occupant is taken into lawful custody as "search contemporaneous to that arrest." 453 U.S. at 460. Belton eliminates requirement that officer fear for personal safety/safety of evidence. See also Fyock, [436 N.E.2d 1089]. Held, no error.

RELATED CASES: Gibson, App., 733 N.E.2d 945 (when D is out of car & walking toward store when arrested, console of van is not within his reach, & thus, search of van was not justified by search incident to arrest); Lamar, App., 680 N.E.2d 540 (Tr. Ct. erred in suppressing cocaine found behind panel in dashboard of D's car, where search was consistent with both Fourth Amendment & Art. 1, §11 of Ind. Constitution as search incident to lawful arrest); Howell, App., 663 N.E.2d 227 (no error in admitting evidence seized from glove box during warrantless search of D's vehicle; search was proper as search incident to arrest); Doe, App., 451 N.E.2d 1096; Romack, App., 446 N.E.2d 1346 (Arrest 71.1(5,8); D made drug sale from his vehicle; police search of vehicle was proper incident to D's arrest; drugs found in search were properly admitted; rifle found in search was not (irrelevant) but D fails to show prejudice).

TITLE: Porter v. State

INDEX NO.: Z.4.a.

CITE: (4th Dist. 9/8/87), Ind. App., 512 N.E.2d 454

SUBJECT: Vehicle search - no probable cause; exceeds scope of Terry stop

HOLDING: Warrantless search of D's vehicle was without probable cause, & guns & bullets discovered in that search were inadmissible. Police officer observed D & another man for 30 minutes while the 2 followed people down sidewalk but did nothing illegal. Next, officer saw D in car with 2 other men, & ran check on license plate. Plate did not match car, so officer stopped it & pat-down searched each man. He found nothing. Second officer arrived & searched car, finding handgun & 7 bullets under driver's seat floor mat. While interior of automobile does not enjoy same expectations of privacy as does interior of home, 4th Amend. Nevertheless, protects it from unreasonable intrusions by police. NY v. Class, (1986), 475 U.S. 106, 106 S. Ct. 960, 89 L.Ed.2d 81. Scope of search must be `strictly tied to & justified by `circumstances that justified it." Terry v. OH, (1968), 392 U.S. 1, 88 S. Ct. 1868, 20 L.Ed.2d 889. Here, traffic violation of not having plate match vehicle did not give rise to reasonable suspicion that D was armed & dangerous. Furthermore, D's earlier "suspicious" behavior does not give rise to lawful search of car. D conceded pat-down was warranted. However, police investigating person who is merely suspected of criminal activity may not conduct full search of person or his/her vehicle. FL v. Royer, (1983), 460 U.S. 491, 103 S. Ct. 1319, 75 L.Ed.2d 229. See also Paxton, 263 N.E.2d 636.

TITLE: Preston v. State
INDEX NO.: Z.4.a.
CITE: 141 Md. 54, 784 A.2d 165 (Md. Ct. Spec. App. 2001)
SUBJECT: Delayed Search of Vehicle Not Incident to Arrest
HOLDING: Where D was arrested after exiting vehicle owned by third party, police had no right to impound car, and seizure of car was not related to reason for D's arrest, the warrantless search of the car at a police garage three hours after D's arrest was not a valid search incident to arrest.

TITLE: Sanders v. State

INDEX NO.: Z.4.a.

CITE: (1st Dist. 08/26/91), Ind. App., 576 N.E.2d 1328

SUBJECT: Search following traffic infraction stop - not safety exception

HOLDING: Fact that officers had tip that D would be in area & possibly in possession of narcotics, did not give officers probable cause to search car when stopping for traffic infraction; & when officers had no information D was armed, & had already removed D from car, safety concerns did not justify search which produced marijuana. Officers were observing D after receiving tip that he might have drugs. When D made 2 right turns without using turn signal, he was stopped. Officers removed D & his passenger from car & noticed envelope on floor near passenger area. Inspection of envelope revealed marijuana & further car search yielded total of less than 3 grams of marijuana. D was convicted of possession of marijuana. Tip about D did not establish probable cause for warrantless arrest/search because its reliability was not established by corroborating facts & circumstances, & traffic violation does not establish probable cause for search. Porter, App., 512 N.E.2d 454; Paxton, 263 N.E.2d 636. Although once vehicle is stopped for investigative purposes, officer may conduct search for weapons if he reasonably believes he might be in danger, Ct. found no indication from facts in this case that officers so believed. Ct. found officers went "on a fishing expedition & discovered marijuana." "It will be a sad day indeed when this Ct. sanctions the detention & search of persons & their property on the mere allegation that they are of suspicious character." (Citing to Paxton, *supra*, at 642.) Because only evidence submitted to prove D possessed marijuana was illegally obtained, reversal requires D to be discharged. Held, conviction reversed. But see State v. Houck, 577 N.E.2d 608, at Z.4.a.

TITLE: State v. Charpentier
INDEX NO.: Z.4.a.
CITE: 197 Ida. LEXIS 112 (1997), withdrawn & replaced by 131 Idaho 649, 962 P.2d 1033 (1997)
SUBJECT: Automobile Search Incident to Arrest
HOLDING: Idaho Supreme Court rejects bright-line rule of New York v. Belton, 453 U.S. 454 (1981), which allows police to search passenger compartment of vehicle incident to arrest of an occupant of vehicle. Relying on state constitution, majority said that, just as in searches not involving vehicles, search incident to arrest may extend only to arrestee's person and area within his/her immediate control. When driver is arrested and removed from vehicle, rationale of officer safety and fear of destruction no longer exists.

TITLE: State v. Elders

INDEX NO.: Z.4.a.

CITE: 927 A.2d 1250 (N.J. 2007)

SUBJECT: Reasonable suspicion needed to seek consent to search disabled vehicle

HOLDING: New Jersey Supreme Court held that the New Jersey Constitution bars a law enforcement officer who comes upon a disabled vehicle on the roadside from requesting an occupant's consent to search the car unless the officer has an articulable basis to reasonably suspect that a search will turn up evidence of a crime. The case represents an extension of a prior holding by Court that requires the police to have reasonable suspicion in order to seek permission to search an automobile stopped for a traffic infraction. See State v. Carty, 806 A.2d 798 (N.J. 2002). The State urged Court to limit Carty to its facts and to distinguish between a traffic stop and a situation in which a police officer is rendering aid to a disabled vehicle as part of his community caretaking duty, arguing that a stranded driver of a disabled car is not as vulnerable to coercion of consent as a driver of a car stopped for a violation. Court disagreed. "Clearly, in the case of a disabled vehicle, if the police are fulfilling a caretaker function, the consent search of a car for evidence of criminality is hardly in keeping with that mission. The driver of a disabled car facing police officers whose offer of assistance quickly turns into a 'fishing expedition' based on a 'hunch' that criminal activity is afoot is subject to no less compulsion to accede to a consent search than the driver subject to a typical motor vehicle stop."

TITLE: State v. Heuck

INDEX NO.: Z.4.a.

CITE: (1st Dist. 08/28/91), Ind. App., 577 N.E.2d 608

SUBJECT: Traffic stop - not pre-textual

HOLDING: Where officer initially followed D's car on mere suspicion but did not stop him until traffic violations were committed, the stop was legal under "objective reasonableness" test, & fact that officer had other suspicions about D did not render stop pre-textual or invalid. Police received call from CI saying D was at tavern. Officer was aware D had been involved in narcotics in past & that his Tennessee driver's license was suspended, & this information was relayed to other officers. One officer went to tavern, saw D, & on leaving radioed other officer that if any trouble occurred later, he should look for D's car. In early morning, D left tavern & was followed by police who observed various traffic violations & possible intoxicated driving (D tested .05% BAC). Police then decided to stop D & as D slowed down, officer saw him toss baggie out window. It was later determined that D's license had been reinstated, but that baggie contained methamphetamines. Prior to trial D filed motion to suppress baggie evidence on grounds that stop was merely pretextual to search for other crimes, & motion was granted, resulting in State's appeal. Relying extensively on U.S. v. Trigg, (7th Cir. 1989), 878 F.2d 1037, Ct. holds that reasonableness of arrest is based on "objective reasonableness" standard, & that if arresting officer had probable cause to believe offense was committed, & officer had authority to effect custodial arrest for offense, standard was satisfied. Officer's subjective reasons for stopping D are irrelevant if they have sufficient information to believe he violated law, US v. Hope, (7th Cir. 1990), 906 F.2d 254, appeal denied, & even if officer would have ignored violation but for his other suspicions, stop is not unreasonable if it satisfies test. US v. Cummins, (8th Cir. 1990), 920 F.2d 498, appeal pending. Although officer began to follow D on mere suspicion, he did not try to stop him until he observed traffic violations & had authority to stop. Porter, 570 N.E.2d 1326, Walker, 527 N.E.2d 706. Stop did not become invalid because officer had other suspicions when he stopped D. Therefore, stop was not pre-textual & evidence should not have been suppressed. Held, reversed & remanded, J. Sharpnack concurring in result.

RELATED CASES: Ashcroft, 179 L.Ed.2d 1149 (U.S. 2011) (whether detention violates Fourth Amendment is evaluated by an objective standard, not the subjective motives of law enforcement officers).

TITLE: State v. Johnson

INDEX NO.: Z.4.a.

CITE: 729 N.W.3d 182 (Wis. 2007)

SUBJECT: Reach under front seat did not equal reasonable suspicion

HOLDING: Wisconsin Supreme Court held that police officers' observation that the driver of a car they had just pulled over leaned down momentarily and seemed to reach under the front seat was not enough to give the officers the reasonable suspicion necessary to perform a protective search of the interior of the vehicle after removing the occupants. At suppression hearing, officers testified that based on their training and experience they believed the movement was consistent with an attempt to conceal contraband or weapons. Analyzing case in relation to Michigan v. Long, 463 U.S. 1032 (1983), Court acknowledged that a surreptitious movement by a suspect in a vehicle immediately after a traffic stop could be a substantial factor in establishing that officers had reason to believe that the person was armed and dangerous. However, other cases in which Court has found reasonable suspicion involved additional factors, such as a driver suspected of selling drugs or the smell of alcohol, or that the stop took place in an area in which the officers were in a more vulnerable position than the officers were in present case.

Here, Court noted D was initially suspected of driving a vehicle with a registration that was suspended for an emissions violation and failing to signal for a turn. Driver proved that he had fixed the emissions problem, so all the officers had on him was a minor traffic violation and a "head and shoulders movement." To conclude this provided reasonable suspicion, Court noted would be to authorize frisks of drivers who are observed merely making an innocuous movement such as reaching for a wallet or a purse or turning off the radio. Two justices dissented on grounds that majority should not have substituted its judgment for that of experienced police officers.

TITLE: State v. Louthan

INDEX NO.: Z.4.a.

CITE: 275 Neb. 101, 744 N.W.2d 454 (Neb. 2008)

SUBJECT: Dog sniff unlawfully prolonged stop despite only short delay

HOLDING: Nebraska Supreme Court held the Fourth Amendment requires a police officer to have reasonable suspicion before prolonging a traffic stop for the brief time that it takes to deploy a narcotics-detection dog that is already on the scene. D had been stopped for traffic violations after leaving the residence of a suspected drug trafficker. When D refused a request to search, the officer confirmed with dispatch that D's license was valid and no outstanding warrants existed against him, with this taking about three minutes. The officer then retrieved his drug-detection dog from his vehicle and the dog alerted on the passenger compartment, spending less than four minutes in the sniff search. Court had previously applied the Terry principle to traffic stops and decided that police officers who want to prolong a detention for the time necessary to deploy a drug-detection dog must have a reasonable suspicion that the motorist is involved in criminal activity beyond the purpose of the stop. "We are not persuaded to abandon the reasonable suspicion standard in favor of the 'de minimis rule' advocated by the State." Court pointed to a comment in the opinion of Illinois v. Caballes, 543 U.S. 405 (2005) where majority referred to a state court ruling that a dog sniff "during an unreasonably prolonged traffic stop" amounted to an unconstitutional seizure. The Caballes opinion continued, "We may assume that a similar result would be warranted in this case if the dog sniff had been conducted while respondent was being unlawfully detained."

Court noted, "This indicates that there is a constitutionally significant line of demarcation between a routine traffic stop and one in which a dog sniff is conducted after the investigative procedures incident to the traffic stop have been completed. . . While the detention for the drug sniff was not lengthy, that is but one factor in the Fourth Amendment analysis, which requires the dual inquiries of 'whether the officer's action was justified at its inception, and whether it was reasonably related in scope in the circumstances which justified the interference in the first place.'"

TITLE: State v. Moore

INDEX NO.: Z.4.a.

CITE: (4th Dist., 9-30-03), Ind. App., 796 N.E.2d 764

SUBJECT: Vehicle search incident to arrest - passenger compartment; Indiana Constitution

HOLDING: Under Fourth Amendment, police officer may search passenger compartment incident to lawful arrest of driver. New York v. Belton, 453 U.S. 454 (1981). However, under Article 1, Section 11 of Indiana Constitution, each case must be considered upon its own facts to decide if police behavior was reasonable. Brown v. State, 653 N.E.2d 77 (Ind. 1995). Here, State argued that search of D's car following his arrest for driving while suspended was permissible as search incident to lawful arrest or for officer safety concerns. However, Tr. Ct. found that even if officer's testimony reflected correct sequence of events, the search was not made for reason that officer was fearful for his safety. There was no evidence that D & two passengers were anything but cooperative with police officers at scene. Moreover, there were no facts which indicated that officer needed to search car in order to find & preserve evidence connected to crime of driving while suspended. Thus, Tr. Ct. did not err in concluding that search of D's car was not reasonable under totality of circumstances present when arrest was made. Held, grant of motion to suppress affirmed.

RELATED CASES: Chest, 922 N.E.2d 621 (search of D's car violated Ind. Const. Art I, ' 11 because D was secured in police car & no further action was necessary to protect officer; search was also unreasonable because: a) the only evidence relevant to Refusing to Identify charge was D's actual refusal to identify himself and b) there was no probable cause that D had committed other crimes); Gant, 129 S. Ct. 1710 (strictly construing Belton v. NY, the Supreme Court held that, consistent with Fourth Amendment, police may search the passenger compartment of a vehicle incident to a recent occupant's arrest only if it is reasonable to believe that the arrestee might access the vehicle at the time of the search or that the vehicle contains evidence of the offense of arrest); Baniaga, App., 891 N.E.2d 615 (because officer had no safety concern nor did he suspect any illegal activity, a search of a car incident to arrest for DWS was unreasonable under the Indiana Constitution); Parham, II, App., 875 N.E.2d 377 (because officer had no safety concern, it was unreasonable under Ind. Const. to search the car prior to allowing D's girlfriend, who was not being arrested, to drive the car home).

TITLE: State v. Parker

INDEX NO.: Z.4.a.

CITE: 139 Wash. 486, 987 P.2d 73 (Wash. 1999)

SUBJECT: Search of Other Occupants' Belongings

HOLDING: The Washington Supreme Court holds that, under its state constitution, the rule allowing the search of a vehicle's passenger compartment incident to the arrest of the driver does not extend to closed containers that officers know or should know belong to other non-arrested passengers. If officers have reasonable suspicion to support Terry frisk of non-arrested passengers for weapons, such a search would extend only to containers in which a weapon might reasonably be found.

TITLE: State v. Smith

INDEX NO.: Z.4.a.

CITE: 286 Kan. 42, 184 P.3d 890 (Kan. 2008)

SUBJECT: Particularized suspicion necessary to ask to search during traffic stop

HOLDING: Kansas Supreme Court held police officers conducting routine traffic stops must have particularized suspicion before asking motorists for permission to conduct searches unrelated to the traffic violation, even if the request and the search do not prolong the length of the traffic stop. Court disagreed with other state and federal courts that have loosened up Fourth Amendment restrictions on traffic stops after Muehler v. Mena, 544 U.S. 93 (2005). D was a passenger in a car that had been stopped by a police officer who noticed that it had a broken taillight and an expired tag. While the officer was processing the traffic violations, he was joined by a colleague who knew D and thought she might be holding drugs. The Officer asked D for permission to search her purse, which she granted. His search of the purse turned up evidence used to charge D with drug offenses.

TITLE: State v. Valdez

INDEX NO.: Z.4.a.

CITE: 152 P.3d 1048 (Wash. Ct. App. 2007)

SUBJECT: Canine sniff outside scope of search incident to arrest

HOLDING: Washington Court of Appeals held that a canine sniff search of a vehicle does not come within the scope of a lawful warrantless search incident to arrest under the Washington Constitution when it takes place after the driver has been removed from the vehicle and police officers' initial visual search of the interior turns up nothing that would give officers probable cause to believe drugs are present. After stop for a headlight violation, police ran a records check that showed an outstanding warrant and placed D in a police vehicle. Another officer searched the interior of the van. Noticing some loose panels, officers called in a canine officer, with the dog alerting to drugs hidden behind a plastic cup holder in a back seat.

New York v. Belton, 453 U.S. 454 (1981), established a bright-line Fourth Amendment rule that police officers may, incident to the arrest of a recent occupant of a vehicle, search the entire passenger compartment including the glove compartment and any closed containers. However, the Washington Supreme Court has read the state constitution's counterpart to the Fourth Amendment more narrowly, holding that the search-incident to arrest doctrine does not allow police to search locked compartments and containers inside a vehicle without a warrant after arresting an occupant.

Based on this, Court here held that the search in this case violated the state constitution's guarantee against unreasonable searches and seizures. Court noted that by the time the dog was called in, two officers were on the scene, the driver and the passenger had been removed from the car, and the initial search of the passenger compartment had been completed without turning up any weapons or drugs. At this point, "concerns about officer safety and destruction of evidence did not provide on-going exigent circumstances allowing another warrantless search." Additionally, the officers' discovery of the loose panels was not sufficient to establish probable cause for the ensuing canine search. A dissent was entered to the decision.

TITLE: State v. Wiegand
INDEX NO.: Z.4.a.
CITE: 645 N.W.3d 125 (Minn. 2002)
SUBJECT: Dog Sniff of Car's Exterior During Routine Traffic Stop
HOLDING: Minnesota Supreme Court holds that dog sniff of car's exterior during routine traffic stop requires reasonable suspicion, because it impacts a driver's reasonable expectation of privacy and extends the scope of the stop, even if it does not extend the duration. Because the intrusion is minimal, it requires only reasonable suspicion, but that much, at least, is required.

TITLE: U.S. v. Dortch

INDEX NO.: Z.4.a.

CITE: 199 F.3d 193 (5th Cir. 1999)

SUBJECT: Delay for Canine Sniff at End of Traffic Stop

HOLDING: Although initial traffic stop of D was legal, detention, without justification, for 15 minutes at end of stop for sniff of vehicle by drug-detection canine was 4th Amendment violation. D was stopped for traveling too close to a tractor-trailer on an interstate highway. Rental agreement for vehicle did not list D as authorized driver, and driver and passenger gave inconsistent explanations about the D's relationship to the renter. Officers called in computer check to see whether vehicle had been reported stolen and whether D had any outstanding warrants, and they told D and his passenger that they were free to go as soon as the computer check came back, but that their car would be detained for a canine sniff. D and passenger were not told when results of computer check came back. After dog arrived, officers told D and passenger that computer check had come back negative, but that they were going to have dog sniff vehicle anyway. Dog alerted to driver's seat, but nothing was found. Police then obtained consent to search D and found 137 grams of cocaine in his pants. Court holds that detaining D and passenger to run computer check was legal, and if dog-sniff had occurred while awaiting results of computer check, sniff would have been legal. However, detention for computer check was justified by reasonable suspicion that car was stolen. That justification ended when computer check came back negative. At that point, the detention became unconstitutional, and consent to search obtained from D cannot be considered voluntary.

TITLE: Vasquez v. State

INDEX NO.: Z.4.a.

CITE: 990 P.2d 476 (Wyo. 1999)

SUBJECT: Vehicle Search Incident to Arrest

HOLDING: Wyoming S. Ct. holds that its state constitution offers greater protection than federal 4th Amendment with regard to vehicle searches incident to arrest of driver. Eschewing the bright-line rule of New York v. Belton, the Court holds that the Wyoming constitution permits a police officer to conduct warrantless search of closed containers in vehicle's passenger compartment incident to arrest of vehicle occupant only if the search is reasonable under the circumstances. The Court finds that the rationale for state "search incident to Arrest" exception is similar to federal rationale, to prevent arrestee from reaching weapons or concealing or destroying evidence but holds that reasonableness must be evaluated on case-by-case basis. Special concurring opinion expresses concern that interpreting state constitution's search and seizure protections more broadly than federal protections could result in prosecutions being brought in federal, rather than state, court, eroding state judicial sovereignty.

TITLE: Warr v. State

INDEX NO.: Z.4.a.

CITE: (1st Dist. 10/28/91), Ind. App., 580 N.E.2d 265

SUBJECT: Search of auto passenger incident to stop

HOLDING: After stopping automobile for traffic infraction, it was not violation of 4th Amend. for officer to open van door & request rear passenger to place his hand in officer's view. Officer stopped vehicle in high crime & narcotics area because of no lights & making turn without signal. Driver was nervous & unable to produce driver's license, & front seat passenger also had no license. Both were ordered to exit vehicle after front seat passenger suggested passenger in back might have license. Van was dark & officer could not see rear passenger well from front window, & therefore opened sliding door of van. He then saw D's hand was clenched but could not see it all. He ordered D to put left hand on his leg within officer's view. At that time, bag of cocaine fell on van floor & D was arrested for possession. Tr. Ct. denied D's motion to suppress evidence based on 4th Amend. violation. Ct. App. noted that U.S. S. Ct. had held it was reasonable to order driver to exit car after traffic stop.

Pennsylvania v. Mimms, (1977), 434 U.S. 106, 98 S. Ct. 330, 54 L.Ed.2d 331, *cited* to in Poling, 515 N.E.2d 1074. Ct. then considered decisions from Minnesota & New York & determined that same rationale should work to extend Mimms holding to passengers in car. Therefore, officer's actions were reasonable & not 4th Amend. violation, & Tr. Ct. did not err in denying motion to suppress. Held, conviction affirmed.

TITLE: Washington v. State
INDEX NO.: Z.4.a.
CITE: (03-04-10), 922 N.E.2d 109 (Ind. Ct. App 2010)
SUBJECT: Search of car - removal of occupants alleviates safety concern
HOLDING: On interlocutory review, Fourth Amendment required reversal of denial of motion to suppress. One exception to warrant requirement is that officer may briefly detain person for investigatory purposes if articulable facts and rational inferences show that intrusion is reasonably warranted, and officer had reasonable suspicion that criminal activity was afoot. Terry v. Ohio, 88 S. Ct. 1868 (1968). Where officer had reason to believe he is dealing with armed and dangerous person, reasonable searches for weapons for officer safety are permissible. Malone v. State, 882 N.E.2d 784, 786-87 (Ind. Ct. App. 2008).

Here, officer stopped D because one of his headlights was not working. As he did in all traffic stops, officer asked D if he had any guns. D said he had a licensed handgun underneath the driver's seat. Officer handcuffed D and directed him to stand nearby. As officer shined his flashlight under seat to find gun, he saw a baggie containing what he recognized as marijuana.

Undisputed evidence from suppression hearing showed D fully cooperated with officer, answered all his questions, treated him with respect, and made no furtive movements. Officer had no information that D committed a crime or was about to. Officer did not testify he was concerned for his safety but asked D about guns only as a matter of routine practice. Thus, officer had no articulable basis for safety concerns or belief that D was engaged in criminal activity. Search of D's car was illegal, and Tr. Ct. should have suppressed the marijuana. Held, judgment reversed; May, J., concurring on basis that analysis under Arizona v. Gant, 129 S. Ct. 1710 was preferable to analysis under Terry because A Gant relieves . . . us from the burden of determining whether subjective facts (such as cooperation, respectfulness, and furtive movements) create "an articulable basis" that a search is necessary for officer safety. Such determinations cannot be easy for police officers amidst the ever-changing environment of a traffic stop, and I know they are difficult for judges who simply cannot know what was happening "in the moment." Gant said police may search vehicle incident to arrest only if arrestee is within reaching distance of passenger compartment. Because D was removed from car, handcuffed, and directed to stand nearby while officer recovered gun, his statement about gun could not justify search based on safety concerns.

TITLE: Wilson v. State

INDEX NO.: Z.4.a.

CITE: (8-14-01), Ind. App., 754 N.E.2d 950

SUBJECT: Vehicle stop for non-traffic offense upheld

HOLDING: Violation of non-traffic ordinance is sufficient reason to stop vehicle. Here, D had violated municipal noise ordinance because police officers could hear music coming from his car from blocks away. Ind. Code 34-28-5-3 provides that whenever a law enforcement officer believes in good faith that a person has committed an infraction or ordinance violation, the officer may detain that person for a sufficient time to obtain further information. Moreover, police officer's subjective motives are irrelevant in Fourth Amendment analysis, & stop will be valid provided there is an objectively justifiable reason for it. State v. Hollins, 672 N.E.2d 427 (Ind. Ct. App. 1996). Held, judgment affirmed.

TITLE: Wilson v. State

INDEX NO.: Z.4.a.

CITE: 734 So.2d 1107 (Fla. Ct. App. 1999)

SUBJECT: Ordering Passenger to Remain in Car During Traffic Stop

HOLDING: Florida Court of Appeals holds that 4th Amendment does not authorize officer to order passenger to remain in car for duration of traffic stop. In Pennsylvania v. Mimms, 434 U.S. 106 (1977), U.S. Supreme Court held that general concerns for officer safety justify minimum privacy intrusion of ordering driver out of car during traffic stop, and in Maryland v. Wilson, 519 U.S. 408 (1997), this holding was extended to passengers. Court here notes that U.S. Supreme Court in Wilson relied on statistical data suggesting that risk of assault and homicide against officers would be reduced by ordering occupants to stay outside vehicle and away from potentially available weapons. Court finds that logic suggests that the opposite could not also be true. Further, in footnote in Wilson, U.S. Supreme Court declined to hold that officer could forcibly detain passenger for duration of stop. Looking at privacy intrusion side of the inquiry, Court here finds that preventing innocent passenger from leaving vehicle and continuing on his way is greater intrusion than simply ordering passenger out of vehicle during stop.

TITLE: Woods v. State

INDEX NO.: Z.4.a.

CITE: (2nd Dist., 10-6-94), Ind. App., 640 N.E.2d 1089

SUBJECT: Vehicle search incident to lawful arrest

HOLDING: Tr. Ct. did not err in denying motion to suppress evidence obtained from search of D's vehicle. Officer observed D driving car with hole punched in trunk lid. Suspecting that car might be stolen, officer ran check on car, learned that license plate was not registered to that vehicle, & directed D to stop car. Officer recognized front-seat passenger as being wanted on outstanding arrest warrant, directed him to exit car & placed him under arrest. Officer could not determine vehicle's ownership & decided to impound improperly tagged car. Search of vehicle revealed small handgun under passenger seat & plastic bag containing cocaine under driver's seat. Ct. concluded that because passenger had been lawfully arrested, officers were permitted to conduct warrantless search of area of vehicle within his immediate control, including under front seat, Andrews v. State, Ind. App., 588 N.E.2d 1298; Jackson v. State, Ind. App., 588 N.E.2d 588. Ct. also found that, once vehicle had been stopped for investigative purposes, officers' belief that car was stolen & that they might be in danger was reasonable, therefore justifying search of car for weapons, Sanders v. State, Ind. App., 576 N.E.2d 1328.

TITLE: Young v. State

INDEX NO.: Z.4.a.

CITE: (2d Dist. 01/16/91), Ind. App., 564 N.E.2d 968

SUBJECT: Search of auto driver incident to stop

HOLDING: Warrantless search & resultant seizure of package of cocaine from D's person was not unreasonable under 4th Amend. because officer had grounds to stop D & arrest passenger; to have D exit car & search D for officer's protection; & to search D's pants for contraband, because of D's suspicious circumstances & behavior & exigent circumstances. Evidence presented showed that officer stopped D because he had committed traffic infraction & officer knew passenger had outstanding warrant. Officer had D exit car & performed pat down search for weapons because officer knew D had prior arrest for possession of sawed-off shotgun. D was unable to produce vehicle registration & plates were improper. Officer also knew D had prior arrest on drug charge. D was carrying unusually large amount of cash, & during preliminary questioning D lied about having a beeper. Officer observed piece of plastic protruding from top of D's pants, but D denied having anything in his pants & tried to push plastic down & conceal it. Officer then searched D's pants & found package of cocaine. Ct. App. found that original stop, order to exit car, & pat down for weapons were all easily justified by established precedent. As to search for the plastic bag, which did not fit in weapons search exception, Ct. found that D's suspicious behavior & possibility that D & contraband could easily leave jurisdiction justified this warrantless search based on totality of circumstances & exigent circumstances. Subsequent search of automobile with warrant which yielded spray can of cocaine was therefore not tainted by "fruit of poisonous tree." Held, affirmed as to search & seizure.

Z. SEARCH AND SEIZURE

Z.4. Vehicles

Z.4.b. Search based upon probable cause (U.S. v. Ross)

TITLE: Buhrman v. Commonwealth

INDEX NO.: Z.4.b.

CITE: 275 Va. 501, 659 S.E.2d 325 (Va. 2008)

SUBJECT: Hand-rolled cigarettes, intoxication did not provide probable cause for arrest, search

HOLDING: Virginia Supreme Court held a police officer who approached a woman the officer suspected was preparing to drive while intoxicated and spied hand-rolled cigarettes inside her vehicle did not have probable cause to arrest the woman for possession of marijuana and search the car. Officer saw D in a convenience store in a "high-drug" area having difficulty keeping her balance and staying awake. When D approached her car, the officer asked for identification. D opened the car door to get her ID and the officer saw hand-rolled cigarettes in the inside door handle. On the basis of her experience, the coloration of the cigarettes, and a "faint odor," the officer arrested D for possession of marijuana, with an ensuing search turning up marijuana and other drugs. Precedent in the state establishes that probable cause cannot be based "solely on the observation of material which can be used for legitimate purposes, even though the experience of an officer indicates that such material is often used for illegitimate purposes." Court did not accept that D's apparently "intoxicated" and "suspicious" behavior provided additional justification, noting evidence of inebriation and vaguely "suspicious" actions does not indicate that hand-rolled cigarettes hold marijuana rather than tobacco. Further, "behaving in an intoxicated and suspicious manner is not so overwhelmingly correlated with the use of marijuana as to exclude the reasonable inference that such behaviors are the result of the use of a legal substance such as alcohol." Three justices dissented.

TITLE: California v. Carney

INDEX NO.: Z.4.b.

CITE: 471 U.S. 386, 105 S. Ct. 2066, 85 L.Ed.2d 406 (1985)

SUBJECT: Warrantless search of motor home - No error

HOLDING: Warrantless search of motor home did not violate Fourth Amendment, where it was reasonable to conclude it was not being used as residence. Reduced expectation of privacy stems from ability to move. Under vehicle exception to warrant requirement, only prior approval of magistrate requirement waived. Search otherwise is subject to warrant requirement. DEA agents, based on uncontradicted evidence D was distributing controlled substance from motor home, had ample probable cause to enter & search motor home. Therefore, warrantless search of motor home was not unreasonable. Held, judgment reversed & remanded. Stevens, Brennan, & Marshall, JJ., dissented.

TITLE: Carpenter v. United States
INDEX NO.: Z.4.b.
CITE: (6/22/2018), ____ N.E.2d ____ (U.S. Supreme Court 2018)
SUBJECT: Warrant required to access cell phone location data
HOLDING: The acquisition of D's cell phone location data was a Fourth Amendment search. After the FBI identified cell phone numbers of several robbery suspects, prosecutors obtained the suspects' cell phone records under the Stored Communications Act. Wireless carriers produced location data for D's phone, and the Government was able to obtain 12,898 location points that catalogued D's movements over 127 days - an average of 101 data points per day. D was charged with robbery. He moved to suppress the data, arguing that seizure of the records without a warrant violated the Fourth Amendment. The District Court denied the motion, and prosecutors used the records at trial to show that D's phone was near the robbery locations at the time those robberies occurred. D was convicted. The Sixth Circuit affirmed, holding that D lacked a reasonable expectation of privacy in the location information because he had shared that information with his wireless carriers.

Individuals have a reasonable expectation of privacy in their physical movements. Allowing government access to cell-site records—which “hold for many Americans the ‘privacies of life,’” Riley v. California, 134 S. Ct. 2473 (2014) — violates that expectation. In fact, cell-site records present even greater privacy concerns than the GPS monitoring considered in United States v. Jones, 132 S. Ct. 945 (2012); cell-site records give the Government near perfect surveillance and allow it to retrace a person's whereabouts, subject only to the five-year retention policies of most wireless carriers.

The third-party doctrine does not apply here. That doctrine partly stems from the idea that an individual has a reduced expectation of privacy in information knowingly shared with another. So, for instance, the Court has held that a person has no expectation of privacy in their bank records - United States v. Miller, 425 U.S. 435 (1976) - or in the phone numbers they have dialed - Smith v. Maryland, 442 U.S. 735 (1979). But cell-site location data is radically different; it is an exhaustive chronicle of location information casually collected by wireless carriers.

Here, the government did not get a warrant before acquiring D's cell-site records; instead, it acquired the records pursuant to a court order under the Stored Communications Act, which required the Government to show “reasonable grounds” that the records were “relevant and material” to an investigation. 18 U. S. C. §2703(d). This standard falls far short of the probable cause requirement for a warrant. Thus, an order issued under §2703(d) is not a permissible mechanism to access historical cell-site records.

This ruling is narrow. It does not question conventional surveillance techniques and tools, such as security cameras, and it does not address other business records that might incidentally reveal location information. It also does not foreclose that exigent circumstances may sometimes allow a warrantless search. Held, cert granted, 819 F. 3d 880, reversed, and remanded. ROBERTS, C. J., delivered the opinion of the Court, in which GINSBURG, BREYER, SOTOMAYOR, and KAGAN, JJ., joined. KENNEDY, J., filed a dissenting opinion, in which THOMAS and ALITO, JJ., joined. THOMAS, J., filed a dissenting opinion. ALITO, J., filed a dissenting opinion, in which THOMAS, J., joined. GORSUCH, J., filed a dissenting opinion.

TITLE: Cody v. State
INDEX NO.: Z.4.b.
CITE: (1st Dist., 11-23-98), Ind. App., 702 N.E.2d 364
SUBJECT: Probable cause for vehicle search - odor of marijuana & D's admissions
HOLDING: Odor of marijuana, coupled with fact that D admitted smoking marijuana cigarette earlier, was enough to establish probable cause to search D's vehicle. Vehicle may be searched without warrant where there is probable cause to believe that automobile contains articles that officers are entitled to seize. Patterson, 270 Ind. 469, 386 N.E.2d 936. Even assuming D's consent to search his vehicle was invalid, officer had probable cause to believe that D's vehicle contained marijuana. Thus, Tr. Ct. did not err in denying D's motion to suppress evidence. Held, judgment affirmed.

RELATED CASES: Parrott, 69 N.E.3d 535 (Ind. Ct. App 2017) (odor of raw marijuana in vehicle in which D was sole occupant gave police probable cause to search his person; see full review , this section); Ogburn, 53 N.E.3d 464 (Ind. Ct. App 2016) (while smell of burnt marijuana alone may constitute probable cause to search a vehicle, the smell here did not establish probable cause that the apartment contained evidence of drug dealing); Johnson, 32 N.E.3d 1173 (Ind. Ct. App 2015) (officer had probable cause to enter duplex after D opened door and officer noted smell of burnt marijuana); Edmond, 951 N.E.2d 585 (Ind. Ct. App. 2011) (smell of burnt marijuana from car and breath of sole occupant of car gave probable cause to arrest D and search his person; search did not violate art. 1, § 11 of Ind. Const. because intrusive nature of search was justified by probable cause to arrest D, pat-down search was minimally intrusive and served important purposes, such as ensuring D was unarmed, preventing destruction of evidence and preventing D from bringing contraband to jail); Marcum, App., 843 N.E.2d 546 (officers' testimony that they smelled marijuana was sufficient to allow search of D's vehicle; odor need not be independently confirmed by a trained dog); Dawson, App., 786 N.E.2d 742 (based on suspicious nature of car being parked in middle of road in secluded area a short distance from agricultural co-op, an anonymous tip that individuals were seen carrying containers to & from co-op, the sudden appearance of 3 individuals after officer exited his vehicle, & odor of anhydrous ammonia, an ordinarily prudent person might reasonably conclude that criminal activity had occurred); Johnson, App., 766 N.E.2d 426 (eyewitness informants in this case were cooperative citizens, not anonymous informants, & are considered to be reliable for purposes of determining probable cause, unless incriminating circumstances exist which cast suspicion upon informants' reliability); Hawkins, App., 766 N.E.2d 749 (when a trained & experienced police officer detects strong & distinctive odor of burnt marijuana coming from a vehicle, officer has probable cause to search vehicle under both Fourth Amendment & Article 1, Section 11 of Indiana Constitution); Carlson, App., 762 N.E.2d 121 (no probable cause to search D's vehicle where State's evidence re: odor of marijuana was conflicting); Lark, App., 755 N.E.2d 1153 (after detecting odor of marijuana, police had reasonable suspicion that car contained narcotics which permitted search of car); Sebastian, App., 726 N.E.2d 827 (based on totality of circumstances, including smell of marijuana emanating from stopped vehicle and legal pat down frisk of D, officer had probable cause to arrest D & search of his vehicle was proper); Kenner, App., 703 N.E.2d 1122 (officer's belief that he smelled raw marijuana while D was exiting car was sufficient to satisfy reasonable suspicion requirement justifying investigatory detention for sniff test by trained dog); U.S. v. Dallas, 672 F. Supp. 362 (S.D. Ind. 1987) (smell of marijuana alone is enough to establish probable cause to search vehicle).

TITLE: Fox v. State

INDEX NO.: Z.4.b.

CITE: (1st Dist., 10-30-03), Ind. App., 797 N.E.2d 1173

SUBJECT: Illegal warrantless search of D's parked truck

HOLDING: Tr. Ct. erred in not granting D's motion to suppress evidence obtained from warrantless search of his vehicle. At end of her shift, police officer advised another officer of a tip about someone selling drugs out of his truck at a local motel. Second officer later saw truck at motel & another officer arrived with a canine, which gave a positive indication for drugs. One officer saw white powder on the passenger seat. Officers ran a check on truck's plate & eventually determined that the owner was registered at the motel. Officers requested that D unlock the truck & when he refused, a commanding officer told them to break into the vehicle. Police arrested D at this point for pushing an officer, took his keys & unlocked the truck. Police later received a search warrant for D's motel room based on drugs found in the truck & found larger quantities of drugs there, which led to a charge of Class A felony dealing in cocaine. Ct. found that warrantless search of unoccupied truck was unreasonable under Art. 1, ' 11 of Indiana Constitution. In so holding, Ct. distinguished Justice v. State, 765 N.E.2d 161 (Ind. Ct. App2002), where car had been stopped & left in a public thoroughfare. Here, D's unoccupied truck was locked & parked in a motel lot & flanked by several police officers & a canine. There was little likelihood that the car would be moved & thus lost to police. Brown v. State, 653 N.E.2d 77 (Ind.1995). Drugs found in D's motel room were likewise suppressed as "fruit of the poisonous tree." Held, judgment reversed.

RELATED CASES: Scott, App., 755 N.E.2d 1207, criticized on other grounds by 839 N.E.2d 1146 (although officer smelled marijuana coming from D's vehicle, warrantless search of D's car was unreasonable under Art. I Sec. 1 of Ind. Constitution because vehicle was parked legally, D was detained some distance from vehicle and there were no exigent circumstances).

TITLE: Gonser v. State

INDEX NO.: Z.4.b.

CITE: (5th Dist., 03-15-06), Ind. App., 843 N.E.2d 947

SUBJECT: Unlawful vehicle search - automobile exception

HOLDING: Tr. Ct. erred by denying D's motion to suppress methamphetamine & switchblade knife found during warrantless search of his vehicle. Police received a call that a clock had been stolen from a store. One officer was familiar with D & knew that D matched the description of the suspect. Another officer stopped D's car in parking area in front of mailboxes of apartments where D lived. D did not deny having the clock & began looking for a receipt. Other officers went to store & learned that D had not paid for clock & D's vehicle was eventually towed to towing company's building, where officer conducted a search of vehicle & found clock, methamphetamine, paraphernalia, & a switchblade knife.

Addressing State's argument that automobile exception applies, Ct. noted that the scope of a warrantless search of an automobile is defined by the object of the search & places in which there is probable cause to believe that it may be found. U.S. V. Ross, 456 U.S. 798 (1982). A search must end once police find the item for which they have probable cause to search. Horton v. California, 496 U.S. 128 (1990). Here, record revealed that methamphetamine was found under driver's seat, but did not reveal where switchblade knife was located. Record also did not reveal whether methamphetamine & knife were found before or after the clock was located. Without this information, Ct. could not say whether scope of search was proper under automobile exception. Thus, State failed to meet its burden to show that automobile exception applies.

Ct. also held that search incident to arrest exception did not apply because search of D's vehicle did not occur contemporaneously in both time & place with his arrest. Finally, because State failed to present any evidence regarding police department's policy to inventory impounded vehicles at suppression hearing, it failed to meet its burden to show that decision to impound D's vehicle was in keeping with established departmental routine or regulation. Held, denial of motion to suppress reversed & remanded.

TITLE: Green v. State

INDEX NO.: Z.4.b.

CITE: (1st Dist., 3-16-95), Ind. App., 647 N.E.2d 694

SUBJECT: Warrantless search improper - not impracticable to secure warrant

HOLDING: Tr. Ct. erred in denying D's motion to suppress cocaine seized during warrantless search of his automobile. Police had been surveilling D & knew from reliable informants two days in advance when & where D would be transporting cocaine. Where there is probable cause to believe automobile contains fruits or instrumentalities of crime, inherent mobility of automobile justifies warrantless search. Fyock v. State, 436 N.E.2d 1089. However, where it is practicable to obtain search warrant, it is unreasonable to conduct warrantless search of automobile. Carroll v. U.S., 267 U.S. 132. Although it was clear under circumstances that police had probable cause to search D's vehicle, State failed to show that it was impracticable to secure search warrant. Held, conviction reversed & remanded, Robertson, J., dissenting.

RELATED CASES: Hollins, App., 672 N.E.2d 427 (Green holding inapplicable; police may stop vehicle after observing minor traffic violations, regardless of officer's subjective motives in stopping vehicle)

TITLE: Johnson v. State

INDEX NO.: Z.4.b.

CITE: (5th Dist., 4-18-02), Ind. App., 766 N.E.2d 426

SUBJECT: Vehicle stop & search upheld - cooperative eyewitnesses; automobile exception

HOLDING: Tr. Ct. did not err in admitting into evidence a handgun seized from D's vehicle. Police officer responded to report of shots fired at a restaurant parking lot. Eyewitness informants at scene, some of whom provided their names but wished to remain unidentified, reported that an individual matching description of D shot handgun in parking lot, placed gun under hood of white Cadillac, & then drove car westbound on 38th Street. Based upon information relayed by officer, the officers who stopped D's vehicle had probable cause for stop & arrest of D. Capps v. State, 248 Ind. 472, 229 N.E.2d 794 (1967). Ct. concluded that informants in this case were cooperative citizens, not anonymous informants, & are considered to be reliable for purposes of determining probable cause, unless incriminating circumstances exist which cast suspicion upon informants' reliability. Pawloski v. State, 269 Ind. 350, 380 N.E.2d 1230 (1978). Officer likely had enough information to be able to contact these eyewitnesses in future had he needed to, & because some gave him their names, it did not appear that they were hiding their identities to protect themselves from repercussions of fabricating a story or reporting false information.

Applying automobile exception to warrant requirement, Ct. also rejected D's argument that officers conducted an unconstitutional search of his automobile & illegally seized handgun found from underneath the hood. Given facts known to officers, & significant threat of harm & loss of evidence, it was not unreasonable for them to search under hood to locate & retrieve gun. Where, as here, a car is readily mobile & probable cause exists to believe it contains contraband, police may search vehicle & Fourth Amendment does not require separate exigency requirement for automobile exception. Maryland v. Dyson, 527 U.S. 465 (1999). Determination of whether any of individuals who were present in car would have been or were allowed to drive Cadillac after D was arrested is not necessary, because D had a diminished expectation of privacy in the Cadillac. Held, judgment affirmed.

RELATED CASES: Lee, 956 N.E.2d 758 (Ind. Ct. App 2011) (officers lacked reasonable suspicion to stop D who was driving a Dodge Charger associated with a suspected drug dealer where the suspected drug dealer was the only person previously seen driving the car and none of the previous controlled buys with the suspected drug dealer had occurred in the car); Meister, 933 N.E.2d 875 (Ind. 2010) (probable cause and ready mobility of car allowed warrantless search of car's interior; State is not required to prove exigent circumstances on a case-by-case basis to invoke the automobile exception under Fourth Amendment).

TITLE: Jones v. State

INDEX NO.: Z.4.b.

CITE: (4th Dist., 9-7-04), Ind. App., 814 N.E.2d 298

SUBJECT: Unlawful warrantless vehicle search - backpack in trunk

HOLDING: Tr. Ct. erred in denying D's motion to suppress cocaine obtained from children's backpack in trunk of his vehicle. Police officers had received information that a black duffel bag had been involved in an armed robbery earlier in the day. However, there was no mention of a children's backpack being involved in any crime. Officers observed a white Cadillac parked on side of road with trunk "popped open." Officers looked inside trunk, saw black duffel bag, searched it, & also searched children's backpack where they discovered cocaine & \$30,000 that was not traced to robbery. Ct. held that simple fact that children's backpack was near a black duffel bag found a mile away from scene of robbery did not provide police with probable cause to search children's backpack. Moreover, no exigent circumstances existed because there was no indication that vehicle was in danger of disappearing while officers obtained warrant. One officer could have gone to try to obtain a warrant while the other remained with vehicle in case a prospective driver did appear. Because police lacked probable cause to search children's backpack & because no exigent circumstances existed, automobile exception to warrant requirement did not apply in this case. Held, conviction reversed.

TITLE: Justice v. State

INDEX NO.: Z.4.b.

CITE: (5th Dist., 5-8-02), Ind. App., 767 N.E.2d 995

SUBJECT: Automobile exception to warrant requirement - probable cause; additional exigent circumstances not required

HOLDING: On State's petition for rehearing, Court *clarified* its original opinion at 765 N.E.2d 161 (see full review at Z.1.b) to extent it can be interpreted to mean that, under Fourth Amendment, probable cause was insufficient basis to seize evidence from car without warrant absent additional exigent circumstances. Under Fourth Amendment, there is no separate exigency requirement, aside from inherent mobility of automobile and diminished expectation of privacy, needed to justify warrantless seizure of evidence from car. Held, subject to clarification, Court's earlier opinion affirmed.

RELATED CASES: Meister, 933 N.E.2d 875 (Ind. 2010)

TITLE: Maryland v. Dyson
INDEX NO.: Z.4.b.
CITE: 119 S. Ct. 2013 (1999)
SUBJECT: Automobile search based on probable cause
HOLDING: Per curiam. If probable cause exists to believe that an automobile contains drugs, the "automobile exception" to the warrant requirement of the Fourth Amendment does not require a separate finding of exigent circumstances to justify a warrantless search. Breyer (joined by Stevens) dissenting would not summarily reverse a criminal case where the indigent respondent is unrepresented by counsel & has not filed a brief.

TITLE: McAnalley v. State

INDEX NO.: Z.4.b.

CITE: (10-18-19), Ind. Ct. App., 134 N.E.3d 488

SUBJECT: Handgun properly seized under automobile exception to warrant requirement

HOLDING: Warrantless search of Defendant's wife's vehicle and seizure of handgun found therein did not violate Defendant's federal or state constitutional protections. After pulling over vehicle due to improper plating in a high-crime area, officer noticed Defendant-passenger making furtive movements by leaning forward toward front dashboard area. Officer learned of Defendant's outstanding felony arrest warrant and placed him in handcuffs after he stepped out of the car. He was patted down, and officer found an empty holster clipped to the waistband of his pants. During a protective sweep of car, officers observed a handgun in plain view in open glove compartment area of vehicle. The officers did not have to touch or manipulate anything in the vehicle in order to see the gun. After Defendant was Mirandized, he admitted that the gun was his and that he should not possess it. Although there is no crime for possession of a handgun by a person with an outstanding felony warrant, the handgun here was seized only after Defendant admitted ownership and that he should not have it. Under totality of circumstances, officers' behavior was reasonable and did not violate Fourth Amendment or Article 1, Section 11 of Indiana Constitution.

TITLE: Moore v. State

INDEX NO.: Z.4.b.

CITE: (5/26/23), Ind. Ct. App., 211 N.E.3d 574

SUBJECT: Probable cause for warrantless search of car based on odor of marijuana, though similar to legal cannabis-derived substances

HOLDING: Police officer's detection of a strong odor of marijuana immediately upon his arrival at the open window of the car driven by Defendant provided probable cause for him to search the car, even though it was equally possible that the odor was legal hemp as it was marijuana. Officer testified he had training and experience in recognizing both raw and burnt marijuana. These circumstances created a fair probability—that is, "a substantial chance"—that the car contained marijuana.

The Court of Appeals also upheld the vehicle search under Article 1, Section 11 of the Indiana Constitution, rejecting Defendant's argument that it can no longer be said that marijuana has a distinct smell to indicate criminal activity because illegal marijuana and legal hemp cannot be distinguished due to the similarity of their odors. Marijuana is not the only substance whose legality can't be detected by human senses alone. "For instance, innocuous substances such as talcum powder, flour, and sugar have a white powdery appearance similar to cocaine. But that does not mean that an untested white powder can never indicate criminal activity." The Court also noted that some types of marijuana possession remain illegal in Indiana. "It follows then that the odor of marijuana reasonably may indicate criminal activity.... Therefore, in the consideration of the constitutionality of a search based on the odor of marijuana, as the law stands now it is of no moment that legal hemp smells similar to illegal marijuana because law enforcement's conduct must be reasonable under the circumstances and such reasonableness does not require conclusive proof that a defendant committed a crime."

TITLE: Murphy v. State

INDEX NO.: Z.4.b.

CITE: (11/12/86), Ind., 499 N.E.2d 1077

SUBJECT: Vehicles - search based upon probable cause

HOLDING: Tr. Ct. did not err in denying D's motion to suppress evidence found in car. Here, police apprehended Ds sitting in car outside of mobile home. When D obtained jacket from car, officer saw shotgun. Ds accompanied officers to station for questioning re robbery. One officer remained to watch car. After 2 hours, he determined that gun in car was a sawed-off shotgun & was directed by headquarters to search car. Officer found shotgun ammunition, several guns, money taken in robbery, & green jacket similar to that worn by robber. Warrantless search of car is proper under exigent circumstances (EC) when officer has probable cause to believe car contains fruits/instrumentalities of crime. US v. Ross (1982), 456 U.S. 798, 102 S. Ct. 2157, 72 L.Ed.2d 572; Fyock 436 N.E.2d 1089. Ct. finds facts support Tr. Ct.'s finding of probable cause. EC may be presumed from fact car is readily movable & that evidence contained in car can easily be moved/destroyed. Cochran, App., 429 N.E.2d 672. Ct. finds presumption of EC especially strong because car was parked next to mobile home in which one D & his parents lived (easily movable). Deadly weapon lay in car. Furthermore, Ds were not under arrest & could have returned to home to hide or destroy evidence before warrant could be procured. Finding of EC is not affected by fact that police chose to keep vehicle within their custody for 2 hours before searching it. US v. Newbourn (CA4 1979), 600 F.2d 452; State v. Greene (OR 1979), 591 P.2d 1362. Ct. concludes combination of probable cause & EC justified warrantless search & that evidence obtained from it was properly admitted. However, Ct. notes that absent presence of sawed-off shotgun, state would not have been able to justify warrantless search under circumstances. Held, no error.

RELATED CASES: Perrault 490 N.E.2d 322 (no error in seizure of bank robbery note from D's car following chase & arrest); Moody 488 N.E.2d 660 (S & S 3.3(7); gun found in car of robbery suspect properly admitted where police stopped D's car matching over police scanner, patted down D & passenger & searched car, finding gun under seat).

TITLE: Myers v. State

INDEX NO.: Z.4.b.

CITE: (12-21-05), Ind., 839 N.E.2d 1146

SUBJECT: Warrantless search of vehicle upheld under automobile exception & Indiana Constitution

HOLDING: Warrantless search of D's vehicle after lawful traffic stop was constitutionally permissible under Fourth Amendment & Article 1, Section 11 of Indiana Constitution. Positive reaction of drug-detecting dog to exterior of D's vehicle, especially in light of D's dilated pupils, his extreme nervousness, & presence of heavy cologne mist, constituted probable cause for further police investigation regarding contents of vehicle's interior. As explained in Illinois v. Caballes, 543 U.S. 405, 125 S. Ct. 834 (2005), a canine sweep of exterior of a vehicle does not intrude upon a Fourth Amendment privacy interest. Further, Tr. Ct. properly determined that canine sweep was conducted before traffic stop was completed.

Ct. rejected D's argument that automobile exception to warrant requirement is inapplicable to this case because his vehicle was not readily mobile. Where, as here, a car is readily mobile & probable cause exists to believe it contains contraband, police may search vehicle without a warrant & the automobile exception does not have a separate exigency requirement. Maryland v. Dyson, 527 U.S. 465 (1999). In light of Dyson, Ct. held automobile exception does not require any additional consideration of the likelihood, under the circumstances, of a vehicle being driven away. Rather, the "ready mobility" requirement means that all operational, or potentially operational, motor vehicles are inherently mobile, & thus a vehicle that is temporarily in police control or otherwise confined (as in this case) is generally considered to be "readily mobile" & subject to automobile exception to warrant requirement if probable cause is present.

Distinguishing Brown v. State, 653 N.E.2d 77 (Ind. 1995), Ct. held that warrantless search of D's vehicle was also reasonable under Article 1 Section 11. Unlike Brown, where vehicle was unoccupied, D here was present, not under arrest at time interior search commenced, & free to drive his vehicle away & dispose of contraband contained within. Brown search was done at mid-day, whereas present search occurred after midnight, making prompt access to a magistrate more difficult. Whether car in Brown contained contraband was a matter of speculation & conjecture but here, the searched vehicle was unquestionably the one driven by D, who exhibited suspicious behavior during traffic stop, & the very one positively identified by a police canine sniff test for drugs. Considering balancing of non-exclusive factors identified in Litchfield v. State, 824 N.E.2d 356 (Ind. 2005), interior search of D's car was reasonable under circumstances & did not violate Article 1, Section 11 of Indiana Constitution. Held, transfer granted, Ct. App.' opinion at 812 N.E.2d 146 vacated, judgment affirmed.

RELATED CASES: Gibson, App., 886 N.E.2d 639 (dog sniff of D's car during traffic stop did not violate state or federal constitution).

TITLE: Payne v. State

INDEX NO.: Z.4.b.

CITE: (12-5-2019), 136 N.E.3d 1164 (Ind. Ct. App.)

SUBJECT: Warrantless search of car did not violate Fourth Amendment

HOLDING: Defendant challenged the warrantless seizure of his car, arguing that while there was probable cause the car was involved in a fatal hit and run, the automobile exception to the Fourth Amendment did not apply because the car was parked in a residential area. The Court of Appeals held that while the automobile exception does not apply when a car is parked on private residential property, it does apply when a car is parked on property that is open to the public, such as a city street or a business parking lot. Here, Defendant conceded his car was not parked on private residential property, thus his Fourth Amendment rights were not violated. The Court likewise found no Article 1, Section 11 violation because the conduct of the police in seizing the car until a search warrant was obtained was not unreasonable under the totality of the circumstances.

TITLE: People v. Fondia
INDEX NO.: Z.4.b.
CITE: 740 N.E.2d 839 (Ill. Ct. App. 2000)
SUBJECT: Dog Alert to Exterior of Car Does Not Justify Search of All Occupants
HOLDING: A drug-sniffing dog's alert to a car provides probable cause to believe that there were drugs somewhere in the car, but did not, by itself, provide probable cause to search each occupant. Before searching individual occupants, the officers could have and should have subjected each to a dog sniff. Failing to do so kept them in a state of "willful ignorance."

TITLE: People v. Smith
INDEX NO.: Z.4.b.
CITE: 734 N.E.2d 1039 (Ill. Ct. App. 2000)
SUBJECT: Vehicle Stop -- Scope of Search
HOLDING: Police officer with probable cause to believe that baggie he had seen driver stuff into purse contained contraband should not have continued searching purse once items in bag turned out to be legal. Probable cause extended to baggie but did not extend to entire purse.

TITLE: State v. Branham

INDEX NO.: Z.4.b.

CITE: 952 P.2d 332 (Ariz. Ct. App. 1997)

SUBJECT: Probable Cause -- Failure to Produce Vehicle Registration

HOLDING: Motorist's failure to produce vehicle registration when requested to do so during valid traffic stop does not, without more, provide probable cause to believe that car is stolen. Such failure is not criminal offense and is thus equally consistent with guilt or innocence.

TITLE: State v. Hobbs

INDEX NO.: Z.4.b.

CITE: (09-30-10), 933 N.E.2d 1281 (Ind. 2010)

SUBJECT: Vehicle search upheld under automobile exception

HOLDING: The Fourth Amendment does not prohibit a warrantless search of an operational vehicle found in a public place if the police have probable cause to believe the vehicle contains evidence of a crime. Here, police officers approached a restaurant where D worked to serve a felony arrest warrant. As they approached, the officers saw D exit the restaurant, walk over to his car, put something in his car and return to the restaurant. Once arrested, D refused to consent to a search of his car. A drug dog called to sniff D's car indicated narcotics in the car. Court agreed with D that because the arrest occurred inside the restaurant for unrelated crime, away from his vehicle and there was no threat to officer safety, the search of his car was not authorized as a search incident to arrest. See Gant v. Arizona, 129 S. Ct. 1710 (2009). However, because D's mobile vehicle was in the parking lot and dog alert gave police probable cause to believe D's car contained illicit drugs, no warrant was required to search the car. D was not detained based on suspicion of the crimes charged in this case, and his detention was not prolonged at all by the call for the dog or the subsequent search and seizure.

Court also held that vehicle search was reasonable and did not violate the Indiana Constitution because D was already under arrest for a different crime and the dog's alert gave officers "a high degree of confidence" that the car contained evidence of a crime. Held, transfer granted, Court of Appeals' opinion at 915 N.E.2d 197 vacated, Tr. Ct.'s order dismissing charges for lack of probable cause reversed. Sullivan and Rucker, JJ., dissenting, believe that D's lack of proximity to the automobile at the time of arrest should render the automobile exception unavailable.

RELATED CASES: Florida v. Harris, 133 S. Ct. 1050 (U.S. 2013) (dog's training records regarding drug detection sufficiently established its reliability for sniffs as tool to determine if there is probable cause to search).

TITLE: State v. Holley
INDEX NO.: Z.4.b.
CITE: (3rd Dist., 12-23-08), Ind. App., 899 N.E.2d 31
SUBJECT: No probable cause for vehicle search - insufficient showing officer qualified to detect odor of raw marijuana
HOLDING: State failed to sustain its burden of proof justifying warrantless search of D's vehicle, where there was no evidence that officer who conducted search had any formal training regarding detection of raw marijuana by odor or in distinguishing it from other substances. Second police officer at scene when search commenced did not testify at suppression hearing. Officer who testified stated that he had attended a one-day seminar where he was shown what raw marijuana looked like. While there was evidence that he had encountered marijuana during course of his duties, there was no evidence that he was qualified to know its odor or able to distinguish its odor from that of other substances. Testimony of a police officer shown to be qualified by training or experience to detect odor of raw marijuana may be sufficient in a particular case to demonstrate existence of probable cause as a matter of law. State v. Hawkins, 766 N.E.2d 749 (Ind. Ct. App 2002). However, State failed to make such a showing here. Thus, Tr. Ct. did not err in granting D's motion to suppress evidence. Held, judgment affirmed.

RELATED CASES: Bunnell, 160 N.E.3d 1142, Ind. Ct. App. 2020 (law enforcement's detection of the odor of marijuana based on unspecified "training and experience" by itself is insufficient basis to provide probable cause for issuance of warrant to search a home; the search-warrant affidavit — or information otherwise before the issuing judge — must include some information regarding the detecting officers' relevant qualifications, experience, or training in identifying and distinguishing the odor); Ogburn, 53 N.E.3d 464 (Ind. Ct. App 2016) (while smell of burnt marijuana alone may constitute probable cause to search a vehicle, the smell here did not establish probable cause that the apartment contained evidence of drug dealing); Patterson, 958 N.E.2d 478 (Ind. Ct. App 2011) (Tr. Ct. did not abuse its discretion by admitting marijuana where officer testified that she recognized the smell of marijuana based on her law enforcement training and experience; although the record is void of any evidence that the officer received specific training in identifying marijuana by odor, D was free to cross-examine the officer on that point; officer's general training was sufficient).

TITLE: State v. Lark

INDEX NO.: Z.4.b.

CITE: 319 N.J. Super. 618, 726 A.2d 294 (N.J. Super. Ct. App. Div. 1999)

SUBJECT: Driver's Inability to Produce ID During Stop Did Not Justify Vehicle Search

HOLDING: Driver's unwillingness or inability to produce driver's license during stop for traffic violation does not, without more, justify search of vehicle. Car was stopped due to missing license plate. Passenger, who was vehicle's owner, produced valid registration and driver's license, but driver said that his license had been stolen in a recent mugging. Computer check turned up no record of valid driver's license bearing name and date of birth provided by driver. Officer then ordered both driver and passenger out of car and searched it, finding cocaine. Tr. Ct. acknowledged that police lacked probable cause to believe that crime had been committed and that evidence of that crime would be found in car. However, it upheld search based on officer's "well-founded suspicion" that driver was "hiding something." On appeal, state relied on "identity-search exception to probable cause requirement. Appellate Court reverses. Even automobile search requires probable cause, which was clearly lacking here. Court rejects Tr. Ct.'s "hiding something" exception, as well as state's "identity-search" exception. Driver's apparent lying gave rise to suspicion that he did not have license or that it was suspended, but officer did not need further evidence of offense of driving without a valid license once driver was unable to produce license upon request. Officer needed driver's identity in order to issue summons, but he could have detained D for further questioning or arrested him for offense of driving without a license. He could not, however, properly search the vehicle without probable cause to believe that a further offense had been committed.

TITLE: State v. Parrott
INDEX NO.: Z.4.b.
CITE: (2/6/2017), 69 N.E.3d 535 (Ind. Ct. App 2017)
SUBJECT: Odor of raw marijuana in vehicle gave police probable cause to search Defendant's person
HOLDING: Warrantless search of Defendant's person based on strong odor of raw marijuana emanating from his vehicle did not violate Fourth Amendment or Article 1, Section 11 of the Indiana Constitution. A police officer pulled Defendant over for running a stop sign. The officer detected the odor of raw marijuana coming from the vehicle but did not smell marijuana on Defendant after he exited the vehicle. The officer handcuffed Defendant (who was sole occupant of the vehicle), searched him, and discovered crack cocaine, pills and marijuana. Officers also searched vehicle but did not find any contraband.

Court reversed trial court's grant of Defendant's motion to suppress because the odor of raw marijuana in the vehicle gave probable cause to arrest Defendant and search his person. The smell of raw marijuana "makes it more likely that [Defendant] was presently in possession of marijuana. Butler v. United States, 102 A.2d 736, 742 (D.C. 2014). Defendant cited no authority for his suggestion that the officer was required to search the vehicle before he could search Defendant's person. Held, suppression order reversed and remanded.

TITLE: State v. Wallace
INDEX NO.: Z.4.b.
CITE: 372 Md. 137, 812 A.2d 291 (Md. Ct. App. 2002)
SUBJECT: Drug Dog's Alert to Car -- No Probable Cause to Search Passengers
HOLDING: Where a narcotics sniffing dog alerted to the outside of a stopped car, police did not have probable cause to search all passengers. Non-owner, non-driver's mere presence in car to which dog alerted does not provide probable cause to believe that drugs to which dog alerted are on that individual's person. Officers should have had dog sniff each passenger individually before searching them.

TITLE: United States v. Esparza

INDEX NO.: Z.4.b.

CITE: 120 Idaho 578, 817 P.2d 1102 (Idaho 2007)

SUBJECT: Canine sniff of parked car unconstitutional without reasonable suspicion

HOLDING: U.S. District Court (Idaho) held that police violated the Fourth Amendment by having an explosives-detection canine sniff the exterior of a car parked on a public street in the absence of reasonable suspicion. Police with a warrant to arrest D approached him as he stood next to a Cadillac with its trunk and doors open. D fled and the officers subsequently had an explosives-detection dog sniff the car. The explosives sniff led to the officers' discovery of a bullet in a suitcase in the trunk. Court distinguished from Illinois v. Caballes, 543 U.S. 405 (2005) where it was held that officers conducting traffic stops do not need any independent suspicion before having a narcotics-detection dog sniff the exterior of the detained vehicle during the stop. In this case, Court found that use of the dog was more like the use of the thermal imaging device on a residence found to be a search in Kyllo v. United States, 533 U.S. 27 (2001). Like the thermal imager in Kyllo, and unlike a sniff by a narcotics-detection dog, a sniff by an explosives-detection dog is capable of detecting both contraband and noncontraband items, including chemicals used in fertilizer and printer cartridges.

Compare to: Myers v. State, 839 N.E.2d 1154 (Ind. 2005)

TITLE: U.S. v. Jackson

INDEX NO.: Z.4.b.

CITE: 415 F.3d 88 (D.C. 2005)

SUBJECT: Trunk Search -- Stolen Plates Not Probable Cause

HOLDING: The D.C. Circuit holds that an officer's discovery that a vehicle's license plates were stolen, and that the driver did not have registration documents did not provide probable cause to search the vehicle's trunk. Officers here testified that previous searches of trunks of cars with stolen plates had revealed additional stolen plates and the real plates of the vehicle searched. The majority finds, however, that stolen plates on a car "are an end in and of themselves, and they do not point to related contraband that may be present in the trunk." Judge John Roberts, who has since become Chief Justice of the U.S. Supreme Court, dissents, concluding that stolen cars have stolen plates often enough to create a fair probability that the car here was stolen. He argues that "probable cause does not depend on eliminating other innocent (or here, less incriminating) explanations for a suspicious set of facts."

TITLE: Wertz v. State

INDEX NO.: Z.4.b.

CITE: (7/7/2015), 41 N.E.3d 276 (Ind. Ct. App 2015)

SUBJECT: Warrantless search of GPS violated Fourth Amendment

HOLDING: Warrantless search of D's global positioning system (GPS) device after a fatal crash violated Fourth Amendment. Officers found D's Garmin GPS device near the car, and without a warrant, they recovered information about his speed at the time of the accident and the route travelled. On interlocutory appeal from denial of D's motion to suppress, Court concluded the GPS device is not a "container" that could be searched under the automobile exception to the warrant requirement. Moreover, there is a reasonable expectation of privacy in a GPS device and its contents because, like a cell phone or computer, it stores huge amounts of information about a person's daily activities that most people would consider to be private.

Court rejected State's argument that exclusionary rule should not be applied because officers reasonably believed their search did not require a warrant. Riley v. California, 134 S. Ct. 2473 (2014), which held that a warrant is required to search digital information on an arrestee's cell phone, was not a new rule of law and it did not overrule any binding precedent previously allowing for the warrantless search of an electronic device. Instead, the U.S. Supreme Court *clarified* that electronic storage devices are not properly treated as containers. Held, denial of motion to suppress reversed.

TITLE: Whitenack v. State
INDEX NO.: Z.4.b.
CITE: (2/3/2017), 68 N.E.3d 1123 (Ind. Ct. App 2017)
SUBJECT: Vehicle search upheld despite failure to seek search warrant earlier in day
HOLDING: Defendant's stepmother called police after she found drug paraphernalia in Defendant's vehicle. Later that day, Defendant was pulled over for speeding and driving left of center, and police officer informed dispatch when he realized that the vehicle he had pulled over matched the vehicle in the tip. A K9 officer and his dog walked around the vehicle while the other officer finished writing Defendant's ticket. Her vehicle was searched after the dog indicated the presence of drugs in the vehicle.

On appeal of her convictions for possession of hypodermic syringe and paraphernalia, Defendant argued that the officers' vehicle search was unreasonable under Article 1, Section 11 of Indiana Constitution because police should have obtained a search warrant after stepmother called in the tip earlier that day. But the fact that a search warrant could have been obtained earlier that day has no impact on the legality of the subsequent search and seizure, which was supported by "ample probable cause." Police officers do not have to obtain a warrant at the first practicable moment. U.S. v. Thompson, 700 F.2d 944, 950 (5th Cir. 1983); U.S. v. Garza-Hernandez, 623 F.2d 496, 501 (7th Cir. 1980). Moreover, there is "nothing unreasonable in permitting an officer, who may have knowledge or suspicion of unrelated criminal activity by the motorist, to nevertheless respond to an observed traffic violation." Mitchell v. State, 745 N.E.2d 775, 787 (Ind. 2001). Held, judgment affirmed.

Z. SEARCH AND SEIZURE

Z.4. Vehicles

Z.4.c. Roadblocks

TITLE: Bass v. Commonwealth

INDEX NO.: Z.4.c.

CITE: 525 S.E.2d 921 (Va. 2000)

SUBJECT: Legal Turn to Avoid Roadblock

HOLDING: Law enforcement officer's perception that motorist's legal U-turn was intended to evade a temporary traffic checkpoint did not provide reasonable suspicion for Terry stop. Because there are many reasons a driver might reverse directions, under totality of circumstances, driver's legal U-turn established no more than a "hunch" that he was trying to avoid the checkpoint.

TITLE: Commonwealth v. Yashinski

INDEX NO.: Z.4.c.

CITE: 723 A.2d 1041 (Pa. Super. Ct. 1998)

SUBJECT: Roadblocks -- Trooper's Conversation with Motorist at Tollbooth Equals De Facto Roadblock

HOLDING: Troopers who worked in tollbooths and engaged drivers in conversation when they stopped for ticket, were operating de facto roadblock. Officers routinely started conversations, from which they could make preliminary determinations whether drivers were under influence of alcohol. Because they were systematically stopping cars for brief questioning, their actions constituted a roadblock under state law. Their intent, described as furthering public relations with state police, was irrelevant. It is also irrelevant that officers did not tell drivers to stop or indicate that they were not free to drive away, since "[t]he overwhelming majority of lay people do not feel free to simply ignore a police officer's questions and continue driving along." Because there was no evidence that rules for establishing and conducting roadblock were followed, roadblock was improper and evidence of drunk driving must be suppressed.

TITLE: Covert v. State

INDEX NO.: Z.4.c.

CITE: (5th Dist., 04-26-93), Ind. App., 612 N.E.2d 592

SUBJECT: Evidence from roadblock inadmissible

HOLDING: Tr. Ct. erred in refusing to suppress evidence obtained as result of roadblock because procedure used was constitutionally infirm. Although roadblock may have furthered legitimate government interest, both interests furthered & degree to which roadblock furthered interest were weighed against State. D was convicted of Operating Vehicle with .10% or more alcohol in blood (.10% OWI). Officers had been instructed to set up checkpoint by sergeant, & summoned cars to side of road where they inspected operator's license & registration, lights, brakes, tires & mufflers. Six to eight cars at time were stopped from both directions, & if no violations were found, drivers were directed back to roadway. Occupants of cars were detained for 2-3 minutes. When D was stopped, officers had no reason to believe he was in violation of any traffic law. When they approached him, however, they smelled alcohol on his breath, administered alco-sensor test, & eventually he was charged with .10% OWI. Ct. noted that stop was not justified on basis of reasonable suspicion, but that if roadblock is constitutionally established, stop can be legitimately made without such suspicion. Three-prong balancing test to determine validity of roadblock procedures was set forth in State v. Garcia, 500 N.E.2d 158, *cert. denied*, see separate card. While noting that public's concern with automobile safety & registration was not as grave as concern with under-age drinking & driving while intoxicated involved in Garcia, Ct. acknowledged that interest in ensuring highway safety had history of recognition in Indiana & concluded that gravity of public concern was at least slightly weighed in favor of roadblock procedure used. Ct. found, however, that deterrent effect & degree to which roadblock advanced public interest was minimal, considering both its impact on stopped motorists & those who may have been tempted to operate unsafe cars but didn't because of roadblock. Ct. then considered severity of interference with individual liberty & noted that while intrusion was similar to that approved in Garcia, in light of minimal advancement of public interest, interference was considered severe rather than minimal. Ct. reject D's argument that plan for roadblock had to be written, but concluded that applying balancing test of Garcia, roadblock procedure was unconstitutional, & therefore Tr. Ct. erred in refusing to suppress evidence obtained from it. Held, judgment reversed.

TITLE: Delaware v. Prouse

INDEX NO.: Z.4.c.

CITE: 440 U.S. 648, 99 S. Ct. 1391, 59 L. Ed. 2d 660 (1979)

SUBJECT: Vehicles - Roadblocks

HOLDING: Stopping automobile & detaining occupants constitutes "seizure" for 4th Amendment purposes, even though purpose of stop is limited & resulting detention quite brief. Individual operating or traveling in car does not lose all reasonable expectation of privacy simply because car & its use is subject to government regulations. Stopping car & detaining driver in order to check driver's license & auto registration is unreasonable under Fourth Amendment. Exception is where there is at least articulable & reasonable suspicion driver unlicensed or auto unregistered or occupants of vehicle subject to seizure for violating law. Held, judgment affirmed. Blackmun & Powell, JJ., concurred. Rehnquist, J., dissented.

TITLE: Illinois v. Lidster

INDEX NO.: Z.4.c.

CITE: 540 U.S. 419 (2004)

SUBJECT: Police checkpoints

HOLDING: Police set up a highway checkpoint at which they stopped cars and distributed flyers, asking for information about a fatal midnight hit and run accident at the same spot one week earlier. The D's erratic driving caught the attention of the officers, who arrested him for driving under the influence of alcohol. The D challenged his conviction, arguing that the roadblock violated the Fourth Amendment under Indianapolis v. Edmond, 531 U.S. 32 (2000).

The U.S. Supreme Court has permitted 'suspicionless' police roadblocks in some circumstances, including sobriety checkpoints, see Michigan Dept. Of State Police v. Sitz, 496 U.S. 444 (1990), and border patrol checkpoints, see U.S. v. Martinez-Fuerte, 428 U.S. 543 (1976). However, in Edmond, the Court held that a police drug interdiction roadblock, where passing cars were stopped at random and subjected to search without individualized suspicion, violated the Fourth Amendment's prohibition of unreasonable searches and seizures.

The Illinois appellate courts held that the checkpoint in this case was controlled by Edmond and reversed the conviction. On certiorari, the U.S. Supreme Court disagreed, and all nine justices held that unlike the checkpoint in Edmond, a checkpoint where the police merely stopped passing motorists to ask for assistance in solving a crime is not presumptively unconstitutional but must be reasonable on the basis of the individual circumstances. Six justices went on to hold that under the circumstances of this case, this checkpoint was reasonable, with three justices arguing that the case should be remanded to the Illinois courts on this issue.

TITLE: Indianapolis v. Edmond

INDEX NO.: Z.4.c.

CITE: 531 U.S. 32, 121 S. Ct. 447, 148 L.Ed.2d 333 (2000)

SUBJECT: Drug roadblocks, checkpoints, individualized suspicion

HOLDING: Drug interdiction roadblocks, where drivers are stopped without individualized suspicion, violate the Fourth Amendment. Stopping a driver at a roadblock is a seizure. The Supreme Court has previously approved brief, suspicionless seizures in other circumstances. In Michigan Dept. of State Police v. Sitz, 496 U.S. 444 (1990) the Court approved sobriety checkpoints. In United States v. Martinez-Fuerte, 428 U.S. 543 (1976), the Court approved the use of checkpoints for intercepting illegal immigrants. Because the primary purpose of the drug roadblocks in this case was to serve the general interest in crime control, and vehicles were stopped and searched without individualized suspicion, the program violated the Fourth Amendment. Drug trafficking does not present the same immediate threat to life and limb that driving while intoxicated does, and the seriousness of the problem of drug trafficking alone cannot justify suspicionless seizures.

TITLE: Michigan State Police v. Sitz
INDEX NO.: Z.4.c.
CITE: 496 U.S. 444, 110 S. Ct. 2481, 110 L.Ed.2d 412 (1990)
SUBJECT: Roadblocks
HOLDING: State's use of highway sobriety checkpoints does not violate 4th & 14th Amend's. Here, state advisory committee created guidelines for procedures governing checkpoint operations, site selection, & publicity. All vehicles passing through checkpoint detained & drivers examined for signs of intoxication. Persons suspected of intoxication directed to location out of traffic flow where driver's license & registration checked & further sobriety tests conducted if warranted. Drunk driving & state's interest in eradicating it very serious. Number of drunk driving fatalities now reaching astounding figures only heard of on battlefield. Intrusion of motorists stopped briefly at sobriety checkpoints is slight. Roadblock plan here sufficiently "advances the public interest." Courts should not be in position of deciding which among reasonable alternative law enforcement techniques should be employed to deal with serious public danger of 126 vehicles that entered checkpoint 2 drivers were arrested for drunk driving. Nationwide sobriety checkpoints result in drunk driving arrests of 1% of those detained. Held, balance of state's interest in preventing drunk driving, extent to which system can reasonably be said to advance interest & degree of intrusion on individual motorists leads to conclusion that roadblock does not violate 4th & 14th Amend. Blackmun, CONCURRING IN JUDGMENT; Brennan, joined by Marshall, DISSENTING; Stevens, joined in part by Brennan & Marshall, DISSENTING.

TITLE: Snyder v. State

INDEX NO.: Z.4.c.

CITE: (4th Dist. 5/23/89), Ind. App., 538 N.E.2d 961

SUBJECT: Roadblocks - U-turn to avoid justifies stop

HOLDING: D's act of making U-turn to avoid sobriety roadblock justified Terry stop. D approached roadblock being operated in conformity with State v. Garcia 500 N.E.2d 158. Approximately 100 yards before reaching roadblock, D performed U-turn to avoid it. (D testified that he thought it was accident scene.) Before stop, D committed no traffic violations & was not driving erratically. Officer testified sole reason for stopping D was that he turned to avoid roadblock. Under Terry, where specific & articulable facts give rise to reasonable suspicion that D may be committing crime, officer can detain him to further investigate whether probable cause exists for search or arrest. Officer testified that, in his experience, drivers who avoided roadblocks inevitably were committing some violation. Officer may use experience in forming reasonable suspicion to make Terry stop. To rule otherwise would be to require officers to ignore reality. See US v. Cortez (1981), 449 U.S. 411, 101 S. Ct. 690, 66 L.Ed.2d 621. However, such determination must be made on case-by-case basis. For example, merely turning off road where roadblock is located may not by itself give rise to reasonable suspicion. Here, however, officer was justified. Held, conviction affirmed. Conover, J., DISSENTS, arguing that even in light of officer's experience, D's conduct did not raise "reasonable" suspicion.

TITLE: State v. Damask

INDEX NO.: Z.4.c.

CITE: 1996 Mo. App. Lexis 194 (Mo. Ct. App. 1996)

SUBJECT: Drug Roadblock - Improper Under 3-Part Test of Sitz

HOLDING: Drug roadblock designed to surprise drivers who had turned off interstate after seeing sign advertising non-existent checkpoint farther down the road failed to pass 4th Amendment muster. Three-part test established in Michigan Dept. Of State Police v. Sitz (1990), 496 U.S. 444, balances (1) gravity of public interest addressed by roadblock, (2) degree to which roadblock advances public interest, and (3) severity of interference with individual liberty. Although Court's primary objections had to do with way roadblock was conducted, it noted at outset that there was insufficient empirical evidence of effectiveness of roadblocks to deal with drug crime. Roadblock here used surprise, provided almost no communication in conjunction with naked show of force by camouflage-clad officers, and lacked any display of official authority. Further, absence of supervisory officials provided little control over officer's individual discretion both on scene and at planning stage.

TITLE: State v. Garcia

INDEX NO.: Z.4.c.

CITE: (11/20/86), Ind., 500 N.E.2d 158

SUBJECT: Roadblocks

HOLDING: Tr. Ct. erred in granting D's motion to suppress evidence of DWI obtained in roadblock. U.S.S. Ct. has recognized legitimacy of state's concern for checking for licenses & registrations. DE v. Prouse (1979), 440 U.S. 648, 99 S. Ct. 1391, 59 L.Ed.2d 660. In Brown v. TX (1979), 443 U.S. 47, 99 S. Ct. 2637, 61 L.Ed.2d 357, U.S. S. Ct. set out 3 factors to be weighed in determining reasonableness of seizures that are less intrusive than traditional arrest: (1) gravity of public interests served by seizure; (2) degree to which seizure serves these interests; & (3) severity of interference with individual liberty. Both Prouse & Brown require that seizure be non-discretionary, with explicit, neutral limitations on conduct of individual officers. Here, roadblock stopped 5 consecutive cars, then waived through all cars for 2-3 minutes necessary to inspect 5 stopped. All stopped motorists were required to produce license or registration. If violation was suspected or alcohol consumption detected, driver was pulled over to adjacent lot. This procedure was not random or selective. Public interest in detecting & deterring DWI & underage drinking is great. SD v. Neville (1983), 459 U.S. 553, 103 S. Ct. 916, 74 L.Ed.2d 748. Evidence showed this roadblock advanced this public interest. Finally, interference with individual liberty was minimized since police detained only as many motorists as could be inspected within reasonable time. Gravity of public concern & degree to which this roadblock furthered it outweigh this minimal interference with individual liberty. Held, Tr. Ct. erred in suppressing evidence obtained through roadblock. DeBruler & Shepard DISSENT.

NOTE: This case *overrules* State v. McLaughlin, App., 471 N.E.2d 1125 & affirms State v. Garcia, App., 481 N.E.2d 148.

TITLE: State v. Gerschoffer

INDEX NO.: Z.4.c.

CITE: (3-5-02), Ind., 760 N.E.2d 960

SUBJECT: Sobriety checkpoints - constitutionality

HOLDING: Sobriety roadblocks do not violate Article I, Section 11 of Indiana Constitution per se. However, Tr. Ct. properly suppressed evidence obtained from roadblock in this case because procedures followed did not satisfy requirements of Section 11. A minimally intrusive roadblock designed & implemented on neutral criteria that safely & effectively targets a serious danger specific to vehicular operation is constitutionally reasonable, unlike the random & purely discretionary stops Ct. has disapproved. Baldwin v. Reagan, 715 N.E.2d 332 (Ind. 1999). Here, officer in charge testified that he followed written federal & state police guidelines, but those guidelines were not part of record so Ct. could not assess their efficacy. State offered montage of objectives, including the generic law enforcement goal of "making sure everybody is doing what they're supposed to." Ct. concluded that this was more like a generalized dragnet than a minimally intrusive, neutral effort to remove impaired drivers from roadways before they hurt someone.

To be constitutionally reasonable, location & timing of sobriety checkpoints should take into account police officer safety, public safety, & public convenience, & roadblock should also effectively target public danger of impaired driving. Here, State did not offer any evidence of objective considerations such as an unusually high rate of OWI-related accidents or arrests in chosen area. Thus, State did not show that this roadblock was sufficiently related to legitimate law enforcement purpose of combating drunk driving. Further, State failed to show that it provided sufficiently explicit guidance to ensure against arbitrary or inconsistent actions by screening officers. This very important factor weighed against reasonableness of roadblock. Reasonableness of detention period, four minutes, was questionable, & lack of demonstrated avoid ability & effectiveness of roadblock also weighed slightly against State. Held, transfer granted, Ct. App.' opinion at 738 N.E.2d 713 vacated, grant of motion to suppress affirmed; Dickson, J., concurring & dissenting.

RELATED CASES: Howard, App. 818 N.E.2d 469 (Gerschoffer was not applicable because seat belt enforcement zone did not randomly detain motorists without reasonable suspicion of criminal activity but only detained motorists who were observed driving without proper use of their seat belt); Sublett, App., 815 N.E.2d 1031 (although police could have used less intrusive means of observing drivers for signs of intoxication, Ct. held as reasonable sobriety checkpoint under Ind. constitution; factors listed in Gerschoffer are not required elements that must be satisfied in order for roadblock to be reasonable under Art. 1, ' 11).

TITLE: State v. Heapy

INDEX NO.: Z.4.c.

CITE: 113 Haw. 283, 151 P.3d 765 (Haw. 2007)

SUBJECT: No reasonable suspicion from turning away from sobriety checkpoint

HOLDING: Hawaii Supreme Court held that a law enforcement officer's observation that a driver turned off a roadway in an apparent attempt to avoid a sobriety checkpoint does not by itself support the reasonable suspicion needed for a vehicle stop under its state constitution. Majority explained that, to justify a traffic stop under Hawaii law, an officer must have a reasonable articulable suspicion that criminal activity is afoot. In this case, an officer saw a car turn away from a roadblock, but he did not observe any other activity that would have led him to believe that the driver was impaired. Court noted that a majority of other jurisdictions have held based on similar facts that officers may not pursue and stop drivers who appear to be avoiding sobriety checkpoints absent other indications of criminal activity. Court concluded that "it would be violative of the 'extensive right to privacy' guaranteed by the Hawaii Constitution for this court to permit seizures to occur on the basis of a suspicion that a motorist was avoiding a police confrontation by making a lawful turn." A dissenting opinion was entered arguing against adopting a bright-line rule, saying that an officer should be able to make a vehicle stop if all the circumstances give rise to a reasonable suspicion that the driver's turn is intended to avoid a checkpoint.

[Ed. **Note:** Compare to Snyder v. State, 538 N.E.2d 961 (Ind. Ct. App 1989) where in split decision Court of Appeals held that driver making U-turn to avoid a sobriety checkpoint justified a Terry stop.]

TITLE: U.S. v. Portillo-Aguirre
INDEX NO.: Z.4.c.
CITE: 311 F.3d 647 (5th Cir. 2002)
SUBJECT: Suspicionless roadblock stop improperly extended
HOLDING: A border patrol agent's routine practice of ending suspicionless immigration stops with questions aimed at drug interdiction improperly extends duration of stop in violation of 4th Amendment. Such practice amounted to attempt to circumvent rule in Indianapolis v. Edmonson, that police may not conduct suspicionless roadblock that is designed primarily to serve ordinary law enforcement purpose, such as drug interdiction.

Z. SEARCH AND SEIZURE

Z.4. Vehicles

Z.4.d. Stop (see also Z.7.a)

TITLE: Alexander-Woods v. State

INDEX NO.: Z.4.d.

CITE: (02/03/21), Ind. Ct. App., 163 N.E.3d 902

SUBJECT: Argument regarding police officer's qualifications to distinguish smell of marijuana from hemp waived on appeal

HOLDING: On appeal of his convictions and habitual offender enhancement for possession of a narcotic drug, carrying a handgun without a license and possession of marijuana, Defendant challenged the admission of evidence as unconstitutional, and the evidence of marijuana admitted in court was fundamental error because a police officer failed to show he was qualified to distinguish between the odors of illegal marijuana and legal hemp. Defendant's failure to raise the "hemp argument" or challenge the officer's qualifications in the trial court was fatal to his claim that the trial court fundamentally erred in finding probable cause for the vehicle search. Moreover, waiver notwithstanding, Court found that the facts and circumstances within officer's knowledge support the trial court's finding of probable cause for the vehicle search.

TITLE: Baldwin v. Reagan

INDEX NO.: Z.4.d.

CITE: (7-6-99), Ind., 715 N.E.2d 332

SUBJECT: Vehicle stops - stops for violation of seatbelt law

HOLDING: Although police officer may not stop motorist to enforce seat belt law unless officer observes circumstances that would cause ordinary person to agree driver or passenger is not wearing seat belt, Seatbelt Enforcement Act is not, on its face, unconstitutional under Ind. Constitution. Vehicle may be stopped to determine compliance with Seatbelt Enforcement Act. However, vehicle may not be inspected, searched, or detained solely because of violation of Seatbelt Enforcement Act. Ind. Code 9-19-10-3. However, under art. I, § 11 of Ind. Constitution, police may not detain individual during investigation unless officer reasonably suspects that individual is engaged in, or about to engage in, illegal activity. See Taylor, App., 639 N.E.2d 1052; Brown, 653 N.E.2d 77. Thus, police officer may not stop motorist for possible seat belt violation unless officer reasonably suspects that driver or passenger in vehicle is not wearing seat belt as required by law. This reasonable suspicion exists where officer observes driver or passenger under circumstances (e.g., bodily movement, distance, angle, lighting, weather) that would cause ordinary prudent person to believe that driver or passenger is not wearing seat belt as required by law.

Fact that police cannot stop motorist without reasonable suspicion required by art. 1, ' 11 does not render Seatbelt Enforcement Act unconstitutional. When party claims statute is unconstitutional on its face, claimant assumes burden of demonstrating that there are no set of circumstances under which statute can be constitutionally applied. Reno v. Flores, 507 U.S. 292 (1993). If there is more than one reasonable interpretation of statute, at least one of which is constitutional, Ct. will choose that path which permits upholding act. Price, 622 N.E.2d 954. As long as police comply with art. 1, § 11, Seatbelt Enforcement Act can be constitutionally applied. In addition, Ct. read Ind. Code 9-19-10-3 to limit police officer's power to use seat belt stop as opportunity to inspect, search, or detain on other grounds, even if federal constitutional law would permit such stop. Although Whren v. U.S., 517 U.S. 806, 116 S. Ct. 1769(1996), held that pretextual stops of motorists were constitutional, it is reasonable & constitutional reading of Ind. Code 9-19-10-3 of limiting officer's power to search car after making stop based on seat belt violation. Held, judgment affirmed & injunction dissolved.

Note: Argue that when officer stops vehicle for violation of seatbelt law, Ind. Code 9-19-10-3 prohibits officers later asking for consent to search car, asking investigatory questions or detaining vehicle while waiting for canine. The more the search resembles a pretext search, the more likely the Ct. must suppress any additional evidence obtained after initial stop.

RELATED CASES: Richardson, 927 N.E.2d 379 (Ind. 2010); Harper, 922 N.E.2d 75 (Ind. Ct. App 2010) (Court declined to extend the language in the seatbelt law to the traffic violation of failing to illuminate license plate); Taylor, 904 N.E.2d 259 (Ind. Ct. App 2009) (where officer searched D for his safety after completion of traffic stop due to seatbelt violation, Ind. Code 9-19-10-3.1 was not violated because the search was not solely due to the seatbelt violation); Kelver, App., 808 N.E.2d 154 (Ind. Code 9-19-10-2, which mandates seatbelt usage by front seat occupants of passenger motor vehicles, but exempts trucks, does not violate equal privileges & immunities clause of Indiana Constitution or D's right to substantive due process); Trigg, App., 725 N.E.2d 446 (officer properly searched driver after stopping him for seatbelt violation; officer feared for safety because he saw D attempt to place something under seat); Price, App., 724 N.E.2d 670 (statute does not violate equal privileges clause of Ind. Const.).

TITLE: Cato v. State

INDEX NO.: Z.4.d.

CITE: (1st Dist., 5-10-79), Ind. App., 389 N.E.2d 332

SUBJECT: Investigatory stop of vehicle upheld

HOLDING: Police had probable cause to make lawful investigatory stop, notwithstanding lack of probable cause to arrest. Police officers received radio dispatches to proceed to specified diner to investigate out-of-state car and its occupants. Unnamed source stated occupants were attempting to sell firearms from trunk of car. Officers proceeded to diner where they observed D open trunk, look inside it, and get into car and leave. Held, judgment affirmed as to D, reversed, and remanded as to other D.

RELATED CASES: Sell, App., 496 N.E.2d 799 (Investigatory stop reasonable, where trooper observed motorist driving 15-20 m.p.h. below speed limit for 2-3 minutes, backing up traffic behind him.).

TITLE: Clark v. State

INDEX NO.: Z.4.d.

CITE: (1st Dist., 3-3-04), Ind. App., 804 N.E.2d 196

SUBJECT: Vehicle stop based on seatbelt violation - requesting & obtaining consent to search

HOLDING: Tr. Ct. abused its discretion in denying D's motion to suppress marijuana found during search of his vehicle after he was stopped for a seatbelt violation. Ind. Code 9-19-10-3 provides that "a vehicle, the contents of a vehicle, the driver of a vehicle, or a passenger in a vehicle may not be inspected, searched, or detained solely because of a violation of this chapter." Under plain language of statute, a traffic stop based on failure of either driver or passenger to wear seatbelt does not, standing alone, provide reasonable suspicion for police to unilaterally expand their investigation & fish for evidence of other possible crimes. State v. Morris, 732 N.E.2d 224 (Ind. Ct. App 2000).

Here, when officer initiated traffic stop, he only had reasonable suspicion to believe that D had committed a seatbelt violation. There were not any facts known to officer that would have reasonably led him to believe that criminal activity had occurred or was about to occur when he asked for consent to search vehicle. During & after seatbelt stop, without independent, reasonable suspicion of another crime by D, officer was prohibited from seeking consent to search D's vehicle. Baldwin v. Reagan, 715 N.E.2d 332 (Ind. 1999). Search at issue therefore violated Article One, Section Eleven of Indiana Constitution. Held, reversed & remanded with instructions to grant D's motion to suppress.

RELATED CASES: Pearson, App., 870 N.E.2d 1061 (officer was not justified in asking D during pat-down search if he had anything on his person, which led to discovery of marijuana & methamphetamine; question was an attempt to "fish" for evidence of other crimes & went beyond the discretion afforded officers during traffic stops initiated under Ind. Code 9-19-10-3 solely for purposes of seatbelt enforcement).

TITLE: Corbin v. State
INDEX NO.: Z.4.d.
CITE: 85 S.W.3d 272 (Tex. Crim. App. 2002)
SUBJECT: Community Caretaking Stop - Driving Slowly Does Not Justify
HOLDING: Officer's subjective concern that driver was drunk or falling asleep, based on officer's observation of car traveling 53 mph in 65 mph zone, and crossing slightly over edge line onto shoulder for 20 feet, did not justify "community caretaking" stop. Although stops based on probable cause need not be objectively reasonable, stop based on Fourth Amendment "Community Caretaking" doctrine must be, according to Tex. Ct. Crim. App. To determine whether officer's belief that driver needed help is objectively reasonable, Court must look at (1) nature and level of distress exhibited by individual, (2) location of individual, (3) whether individual is alone and/or had access to other assistance, and (4) to what extent individual, if not assisted, presented danger to self or others.

TITLE: Darringer v. State
INDEX NO.: Z.4.d.
CITE: (11/13/2015), 46 N.E.3d 464 (Ind. Ct. App. 2015)
SUBJECT: Traffic stop based on unreasonable mistake of law - temporary license display in rear window

HOLDING: In operating while intoxicated prosecution, Tr. Ct. abused its discretion in admitting evidence obtained pursuant to a traffic stop, where the State failed to prove the stop was based on reasonable suspicion that D committed a traffic violation or that the law enforcement officer made an objectively reasonable mistake justifying the stop. Reasonable suspicion may rest on a mistaken understanding of the law as long as the mistaken understanding is objectively reasonable. Heien v. North Carolina, 135 S. Ct. 530 (2014).

Here, the officer pulled over D's car because it did not have a license plate on its bumper. However, after officer made the traffic stop, he noticed a temporary tag taped to the car's rear window but he mistakenly believed the statute required the tag to be placed on the bumper (see Ind. Code § 9-18-2-26 and 9-19-6-4(e)). Effective July 1, 2013, Ind. Code § 9-32-6-11 explicitly allows for interim license plates to be displayed on the left side of the rear window of vehicle that is clearly visible and unobstructed. Distinguishing Heien, Court concluded that officer stopped D's vehicle based on an unreasonable mistake of law.

Court also rejected State's assertion that stop was proper because the plate was not clearly visible. While the officer testified that he did not see a plate on the vehicle, he also repeatedly and specifically stated that he did not look in the rear window and did not look anywhere else other than the bumper. Accordingly, Court could not say that facts known to the officer would have otherwise provided a basis for the stop based upon the idea that the interim plate in the rear window was not clearly visible. Held, conviction reversed.

TITLE: Datzek v. State

INDEX NO.: Z.4.d.

CITE: (1st Dist., 12-14-05), Ind. App., 838 N.E.2d 1149

SUBJECT: Turn signal required from parking lot

HOLDING: Tr. Ct. did not abuse its discretion by admitting D's blood alcohol test results from a blood draw following a traffic stop. Officer properly stopped vehicle for failing to use his turn signal while leaving a gas station parking lot pursuant to Ind. Code 9-21-8-25. D argued that Ind. Code 9-21-8-25 was inapplicable & that Ind. Code 9-21-8-24 & 9-21-8-34 were the controlling statutes for a situation where an individual was pulling out of a parking lot. Ind. Code 9-21-8-25 states that a turn signal must be continuously given "during not less than the last two hundred (200) feet traveled by a vehicle before turning or changing lanes." D argued this was impossible before turning from the parking lot in this case & that Ind. Code 9-21-8-24, which dictates a turn by a vehicle from a direct course upon a highway cannot be made unless the movement can be made with reasonable safety & that an appropriate turn signal must be made if any other vehicle may be affected by the movement, controlled, as well as Ind. Code 9-21-8-34, which provides that a person entering a highway shall yield the right-of-way to all vehicles approaching on the highway. Ct. found D's arguments unavailing as "Cts. are obliged to respect the plain language of a statute" & when a statute is unambiguous, the plain & obvious meaning must be applied. Ct. notes that there are no restrictions that Ind. Code 9-21-8-24 only applies in certain situations or on certain roadways & to limit the statute would run counter to public policy in facilitating safe automobile traffic. Further, Ct. held that D's argument that he did not violate Ind. Code 9-21-8-24 was unavailing as in Love v. State, 741 N.E.2d 789 (Ind. Ct. App.2001) given that he violated Ind. Code 9-21-8-25 by failing to activate his turn signal. Held, judgment affirmed.

[**Ed. note:** Decision does not discuss the fact that in cases where a general statute & specific statute exist on the same subject, the more specific one should be applied. See Ross v. State, 729 N.E.2d 113 (Ind.2000). The second part of Ind. Code 9-21-8-25 increases the distance for which a turn signal must be used when somebody is driving over 50 miles per hour in a "speed zone," which would appear to indicate that the 200 feet requirement relates to somebody driving under 50 MPH in a speed zone. Further, Ct.'s decision would give no meaning to the language in Ind. Code 9-21-8-4 that a person turning from a side road must give a turn signal "if any other vehicle may be affected by the movement." As noted in the decision but not followed, the legislature is presumed to have intended the language used in the statute to be applied logically & not to bring about an unjust or absurd result. See Sales v. State, 723 N.E.2d 416 (Ind.2000).].

RELATED CASES: Quintanilla, 146 N.E.3d 982 (Ind. Ct. App. 2020) (rejecting D's argument that statute should apply only when it is unambiguous when the driver intends to turn); Alexander, (10/11/2019) 134 N.E.3d 470 (Ind. Ct. App.) (officer was justified in stopping D's vehicle, as there was no evidentiary dispute about whether D failed to signal his turn sufficiently in advance); Peak, 26 N.E.3d 1010 (Ind. Ct. App 2014) (duty to signal applies regardless of whether a stoplight or other traffic signal requires a complete stop before turning; although D may have formed intent to turn while stopped at traffic light, officer still had objective basis for the stop; see full review at Y.4.b.1).

TITLE: Denton v. State

INDEX NO.: Z.4.d.

CITE: (5th Dist., 4-6-04), Ind. App., 805 N.E.2d 852

SUBJECT: Unlawful investigatory stop - broken automobile window

HOLDING: Fact that vehicle D was driving had what appeared to be a broken rear window did not, without more, afford police a reasonable suspicion that vehicle was stolen so as to justify investigatory stop. "Reasonable suspicion" that criminal activity is afoot entails some minimum level of objective evidentiary justification. Delaware v. Prouse, 440 U.S. 648 (1979). Here, only factor articulated by police officer as justification for stop was that one of rear windows appeared to have been broken. Based upon this fact alone, officer suspected that vehicle had been stolen. There was no evidence suggesting that D displayed evasive or furtive gestures, that stop was made for a traffic or equipment violation, & there was no allegation that vehicle was unsafe. Further, there was no evidence demonstrating that any vehicles matching description of D's car had recently been reported as stolen. Although Ct. is deferential to police officer training & experience, officer's stated rationale for stopping this vehicle would support stopping any car with a broken window. Ct. rejected cases from other jurisdictions which held that broken automobile window alone is sufficient reasonable suspicion for stop. In this case, there was not an assessment based on training or experience that this particular broken window indicated that vehicle was stolen. Held, conviction reversed.

TITLE: Doctor v. State

INDEX NO.: Z.4.d.

CITE: (7/26/2016), 57 N.E.3d 846 (Ind. Ct. App. 2015)

SUBJECT: Vehicle stop and search upheld

HOLDING: Traffic stop for window tint violation did not run afoul of federal or state constitutions. Police received tips that D had a “hydraulic trap” installed in his Acura, and that he was moving large quantities of cocaine from Atlanta to Evansville. Based on this information, police obtained a warrant and placed a GPS tracking device on D's vehicle. When D returned from several days in Atlanta, an officer stopped him for a Window Tint Statute violation. While one officer conducted the traffic stop, another officer had a trained K9 sniff the exterior of the car. Police obtained another warrant, based on the dog's alert, and towed and searched the car, finding cocaine.

On interlocutory appeal, Court rejected D's argument that the window-tint violation was pretextual and violated his Fourth Amendment rights against unreasonable search and seizure. Detective who stopped D testified that he observed D's car drive by and could not see through the tinted side windows. This provided reasonable suspicion for stop. Sanders v. State, 989 N.E.2d 332 (Ind. 2013). No evidence was presented to establish that the 8-10-minute period to issue a warning citation while conducting the K9 sniff was an unreasonable amount of time for a traffic stop. Even though the officers took the additional step of obtaining a warrant prior to searching the vehicle, they would have been justified in conducting the search based on the dog's alert alone, which provided probable cause that the Acura contained illicit drugs. Likewise, the stop did not violate D's protection under Article I, Section 11 of the Indiana Constitution. Held, judgment affirmed.

TITLE: Dowdy v. State

INDEX NO.: Z.4.d.

CITE: (9/7/2017), 83 N.E.3d 755 (Ind. Ct. App. 2017)

SUBJECT: Traffic stop based on objectively reasonable mistake of law -expiration of vehicle registration

HOLDING: Tr. Ct. did not err in denying D passenger's motion to suppress evidence obtained as a result of traffic stop for expired vehicle registration. Police officer ran license plate on vehicle and the status for the registration plate "came up expired" on his mobile terminal. Information from the BMV also showed the vehicle registration expiration date as October 21, 2015, which was the date of the stop. Although no statute definitively controls the interpretation of when a vehicle's registration expires, Ind. Code § 9-18-2-50 indicates a vehicle's registration remains valid until midnight on the last day of the term of registration. D argued that traffic stop was unlawful because the vehicle's registration was valid until midnight on the same day the officer initiated the traffic stop and arrested him. Court held that even assuming officer mistakenly believed the license plate and registration expired, his traffic stop was based upon a good faith, objectively reasonable belief that a statutory infraction had occurred. Heien v. North Carolina, 135 S. Ct. 530 (2014). Thus, stop of vehicle and officer's request for D's identification (which resulted in discovery of arrest warrant and search incident to arrest) did not violate D's rights under Fourth Amendment. Court likewise concluded that under totality of circumstances, the stop was reasonable under Article 1, Section 11 of Indiana Constitution. Held, judgment affirmed.

HOLDING: White, 199 N.E.3d 1249 (Ind. Ct. App. 2022) (A traffic stop based on an "inactive" registration is not justified because the Legislature has not made "inactive" registration an infraction; unlike the mistake of law Ct. found to be reasonable in Dowdy, which concerned an officer's misunderstanding of the scope of a statute, the mistake here was not based on any statute at all. Rather, it was a mistake as to the existence of any law proscribing D's conduct).

TITLE: Harris v. State
INDEX NO.: Z.4.d.
CITE: (7/27/2016), 60 N.E.3d 1070 (Ind. Ct. App. 2015)
SUBJECT: Seat belt stop - mere fact motorist purchased pseudoephedrine does not provide reasonable suspicion justifying further investigation
HOLDING: Tr. Ct. erred in denying D's motion to suppress evidence obtained from a consent search during a seat belt enforcement stop, because police officer lacked reasonable suspicion justifying inquiry above and beyond the seat belt violation. Seatbelt Enforcement Act does not permit investigatory behavior based solely on a seat belt violation unless circumstances arise after the stop that independently provide police officer with reasonable suspicion of other crimes. State v. Richardson, 927 N.E.2d 379 (Ind. 2010).

While parked outside gas station, officer observed driver and passenger of a passing vehicle were not wearing seat belts. When officer pulled out of parking lot to initiate a traffic stop, D attempted to evade him by turning abruptly onto an adjacent street. Upon stopping D, officer immediately recognized her name appearing on National Precursor Log Exchange (NPLEx), which documents purchases or attempted purchases of over-the-counter medications containing ephedrine and pseudoephedrine. Upon questioning D, she appeared overly excited and unusually nervous. Officer then confirmed on NPLEx that both D and her passenger had made frequent and recent, albeit legal purchases of products containing pseudoephedrine. Officer obtained D's consent to search her vehicle and its contents, and discovered methamphetamine in D's purse.

Following Richardson, Court held that the mere fact that D purchased pseudoephedrine nine times in the past year did not provide an independent basis of reasonable suspicion that would justify further detention for a drug investigation. D pulled over when officer activated his emergency lights, and she produced a valid driver's license. Officer's subsequent questioning about D's destination, her recent cold medicine purchase, and whether she would consent to a search violated the Act. Held, judgment reversed; Najam, J., dissenting on basis that officer's immediate recognition of D's name on NPLEx, her post-stop behavior and evasive driving gave rise to reasonable suspicion of ongoing criminal activity.

TITLE: Heien v. North Carolina

INDEX NO.: Z.4.d.

CITE: (12/15/2014), 135 S. Ct. 530, (U.S. S. Ct. 2014)

SUBJECT: Stop May Be Based on Reasonable Mistake of Law

HOLDING: A mistake of law can provide reasonable suspicion for vehicle stop if the mistake itself is reasonable. Here, police officer stopped D because his left brake light was out. North Carolina's brake law statute provides that a vehicle must be "equipped with a stop lamp on the rear of the vehicle." D moved to suppress arguing that the law required only one working brake light. Tr. Ct. rejected his argument, but the N.C. Court of Appeals reversed, holding that only one brake light is required and that the stop was therefore objectively unreasonable. The N.C. Supreme Court reversed that decision, holding that the officer could have reasonably, even if mistakenly, read the statute to require that both brake lights work. U.S. S. Ct. affirmed, noting it has previously recognized that searches and seizures based on mistakes of fact can be reasonable, so long as the mistake was reasonable. "Reasonable suspicion arises from the combination of an officer's understanding of the facts and his understanding of the relevant law. The officer may be reasonably mistaken on either ground." Because the statute is confusing and had not previously been construed, the officer's mistake of law is objectively reasonable. The officer's mistake could not have supported a brake-light ticket, but it did provide him reasonable suspicion for the stop.

TITLE: Huey v. State

INDEX NO.: Z.4.d.

CITE: (2d Dist. 2/2/87), Ind. App., 503 N.E.2d 723

SUBJECT: Investigatory stops - D in auto; consensual encounters

HOLDING: D was lawfully detained; therefore, evidence of field sobriety & breathalyzer tests was admissible. Here, cab driver advised police he was being followed. When police arrived, D was parked behind cab. Officer instructed taxi to proceed & walked over to open window on driver's side of D's car. When asked why he was following cab, D responded, "On orders from the Treasury Department." D said he had no identification. Officer smelled alcohol on D's breath & observed that D's eyes were glassy. Officer asked D to step from vehicle & D stumbled & nearly fell. D failed field sobriety tests & agreed to take breathalyzer, registering .22 BAC. Not all police-citizen encounters implicate 4th Amend. interests. FL v. Rodriguez, (1984), 469 U.S. 1, 105 S. Ct. 308, 83 L.Ed.2d 165 (Ds were properly asked to step aside from airline ticket counter to talk with police). When officer encountered D, he was in his own car, he was not stopped by police, & questions asked of him did not relate to a crime. Encounter was not a seizure which required specific, articulable facts indicating that crime had been committed or was about to be committed. Officer did nothing to make D think he was not free to leave or that he had to answer officer's question. Held, no error.

TITLE: Johnson v. State

INDEX NO.: Z.4.d.

CITE: (12-18-95), Ind., 659 N.E.2d 116

SUBJECT: Investigatory stop illegal

HOLDING: Tr. Ct. erred in admitting evidence found during warrantless search of D & his car, because investigatory stop lacked probable cause & even reasonable suspicion. Police officer had been receiving information from another detective, who had seen D with brown Jaguar at certain gas station on several occasions. According to detective, D had displayed large amounts of cash, had indicated that he would be taking long trips, & that he was worried about his car's road worthiness. Police officer had been working on typical "profile" of narcotics trafficker & claimed that D satisfied this profile in at least three respects. On evening of D's arrest, officer received tip from confidential informant (CI) that D would be carrying cocaine in his brown Jaguar. Informant also said that if D did not have cocaine in his car, police should look down his pants. Police stopped D in area identified by informant, & after asking for identification, they told D that they had probable cause to believe he was transporting drugs. Police ultimately found marijuana in glove compartment & waistband of D's trousers.

Ct. found no evidence in record that CI was reliable. CI's tip was completely lacking in indicia of reliability & therefore inadequate to support investigatory stop, because it provided no specifics whatsoever by which it could be confirmed, & CI said nothing that was not easily knowable by many members of general public. Although fully developed drug trafficker profile, combined with tip, might have been sufficient to justify investigatory stop, U.S. v. Sokolow, 109 S. Ct. 1581, Ct. found no support in record for actions of police in this case. In so holding, Ct. distinguished case from decisions in Adams v. Williams, 92 S. Ct. 1921, & Alabama v. White, 110 S. Ct. 2410. Even under "clearly erroneous" standard of review, State failed to meet its burden to show that investigatory stop fell into exception to warrant requirement. Held, transfer granted, Ct. App. opinion at 617 N.E.2d 559 vacated, & remanded for suppression of evidence; Sullivan, J., & Shepard, C.J., dissenting.

RELATED CASES: Bovie, App., 760 N.E.2d 1195 (police officer's observations of D & his passenger, a known drug user & seller, leave known drug house, proceed to gas station, & stop their vehicle, did not rise to level of reasonable & articulable suspicion required in order to make investigatory stop).

TITLE: Kansas v. Glover

INDEX NO.: Z.4.d.

CITE: (4/6/20), U.S. Supreme Ct., 206 L.Ed.2d 412

SUBJECT: Traffic stop of car whose owner's license is suspended upheld, even if conducted before confirming driver's identity

HOLDING: When a police officer lacks information negating an inference that a person driving is the vehicle's owner, an investigative traffic stop made after running the vehicle's license plate and learning that the registered owner's driver's license has been revoked is reasonable under the Fourth Amendment. Traffic stops carried out after a license plate check reveals that the registered owner of vehicle has a revoked license are reasonable, even if the driver's identity is not confirmed in advance. Here, the police officer's assumption that the owner was driving was reasonable, given the officer had no reason to think the vehicle was being operated by someone else. When an officer lacks information negating an inference that the owner is the driver of the vehicle, the stop is reasonable. Kagan, J., joined by Ginsburg, J., concurring to emphasize that Court's decision should be read narrowly, noting that other traffic stops with constitutionally relevant distinctions may not "wind up in the same place." Sotomayor, J., dissenting, believes the majority opinion misapplied prior search-and-seizure rulings in a manner that "unnecessarily reduces the state's burden of proof," resulting in "absolv[ing] officers from any responsibility to investigate the identity of a driver where feasible...The majority...has paved the road to finding reasonable suspicion based on nothing more than a demographic profile."

TITLE: Lark v. State

INDEX NO.: Z.4.d.

CITE: (10-2-01), Ind. App., 755 N.E.2d 1153

SUBJECT: Investigatory stop - proper for stop to be several blocks away from scene of infraction

HOLDING: It was proper for police to both stop D's car after observing it obstruct traffic for 10-15 seconds & to search it after smelling marijuana emanating from car. It is well settled that police officer may stop vehicle when officer observes minor traffic violation. Ransom v. State, 741 N.E.2d 419 (Ind. Ct. App. 2000). Although police did not stop D until he had driven several blocks from scene of infraction, there is no authority for proposition that police must be within certain proximity to scene of violation, nor is there rationale for creating such rule. Further, after detecting odor of marijuana, police had reasonable suspicion that car contained narcotics which permitted search of car. Kenner v. State, 703 N.E.2d 1122 (Ind. Ct. App. 1999). Held, denial of motion to suppress affirmed; Sullivan, J., concurring; Riley, J., dissenting, believes that initial stop was not supported by reasonable suspicion in violation of Ind. Constitution.

RELATED CASES: Haynes, 937 N.E.2d 1248 (officer had reasonable suspicion to stop D where officer personally observed that D's car was illegally parked in a handicap spot, the car had no handicap license plate and no visible permits inside; by the time officer confirmed his suspicion, D backed out of the handicap spot and drove off onto the street before officer had opportunity to give him a ticket); Lark, App., 759 N.E.2d 275 (On rehearing of decision at 755 N.E.2d 1153, Ct. *clarified* that Indiana Constitution does require probable cause to justify valid search & seizure).

TITLE: Lewis v. State

INDEX NO.: Z.4.d.

CITE: 920 A.2d 1080, (Md. 2007)

SUBJECT: 'Almost committing' traffic violation not justification for stop

HOLDING: Maryland Court of Appeals held that police officers who observed a car almost strike their vehicle while pulling from the curb did not have the reasonable suspicion required by the Fourth Amendment to subject the driver to an investigative detention. Police were on the lookout for a rape suspect when they saw D in a sports utility vehicle parked on the side of the road. The officers pulled in front of the SUV, intending to ask D and his passenger some questions. When they did so, D signaled and pulled out into the street, narrowly missing the back of the police vehicle. The officers ordered D to stop, and the stop led to the discovery of marijuana used to convict D of a drug crime. "Almost committing a traffic violation . . . does not justify a traffic stop," Court noted. State argued that the near miss gave the officer reasonable suspicion to believe that D was driving recklessly or under the influence of intoxicants. "The State's proposed principle would permit the police to exercise unrestrained discretion when deciding to make a stop, based upon a belief that the driver has 'almost' been involved in a traffic accident. Such a standardless chimera practically destroys the objective basis of the reasonable suspicion requirement." Court added that "almost causing a traffic accident" could include "driving less than the speed limit, passing another car, or merely parallel parking." A dissent by three justices was entered in Maryland's highest court.

TITLE: Marshall v. State
INDEX NO.: Z.4.d.
CITE: (2/27/2019), 117 N.E.3d 1254 (Ind. 2019)
SUBJECT: Officer's testimony that he witnessed speeding alone sufficient reasonable suspicion for traffic stop
HOLDING: For a traffic stop to be valid, there must be reasonable suspicion a traffic law has been violated or other criminal activity is afoot. Here, police officer's calibrated radar gun indicated D's oncoming vehicle was speeding. The officer then verified the radar speed exceeded the posted speed limit, but he ultimately failed to document the excessive speed. He then initiated a traffic stop based upon his observation that the radar gun indicated the vehicle was speeding. The traffic stop evolved into a criminal investigation when the driver presented signs of intoxication. The police officer did not write a ticket for speeding and did not document the speeding. Months later, at deposition and suppression hearing, the police officer could not specifically recall or articulate the precise speed D was driving. Court held that the officer's belief that D was speeding, based upon the radar gun indication and his observation of speed limit sign, was sufficient reasonable suspicion for a traffic stop and neither the Federal nor Indiana Constitutions were violated. Held, transfer granted, Court of Appeals' opinion at 105 N.E.3d 218 vacated, denial of motion to suppress affirmed.

TITLE: McGaughey v. State
INDEX NO.: Z.4.d.
CITE: 37 P.3d 130 (Okla. Crim. App. 2001)
SUBJECT: Vehicle Stop Based on Mistaken Belief
HOLDING: A vehicle stop initiated by officer in reasonable belief that truck's taillights were not working should have ended as soon as officer learned he was mistaken. Stop was initially valid. However, once officer learned he was mistaken about taillights, stop was no longer "reasonably related in scope" to its initial justification. See also People v. Reddinger, 906 P.2d 81 (Colo. 1995); State v. Farley, 775 P.2d 835 (Or. 1989); U.S. v. McSwain, 29 F.3d 558 (10th Cir. 1994).

TITLE: Mercado v. State

INDEX NO.: Z.4.d.

CITE: (11/23/2022) 200 N.E.3d 463 (Ind. Ct. App. 2022)

SUBJECT: Denial of motion to suppress affirmed despite police officer's mistake of fact that road where traffic stop was initiated was a public road.

HOLDING: On interlocutory appeal from the denial of a motion to suppress. Police were investigating Defendant as a known drug dealer. Defendant's ex-girlfriend reached out to police stating she wanted to help get Defendant off the street and in exchange the officer reached out on her and her fiancé's behalf to the prosecutor in a neighboring county where they each had pending cases. Afterward, the officer asked the ex-girlfriend for information regarding Defendant's whereabouts because he knew Defendant had a suspended license and the officer wanted to initiate a traffic stop. The ex-girlfriend texted the officer that Defendant was on his way to pick her up at a local motel. The officer initiated a traffic stop on what he thought was a city street but was actually a private business service road leading the motel. During the traffic stop Defendant had a panic attack and an ambulance was called. The officer had a canine do a free air sniff and the canine alerted on the car. The officer applied for a search warrant for the car where drugs were located. The officer then applied for a second search warrant to search Defendant's person. On appeal, Defendant argued that the evidence should be suppressed due to the officer's mistaken belief that he was initiating a traffic stop on a publicly maintained street as required by statute to find Defendant was driving with a suspended license. Court of Appeals held that under the 4th Amendment, an officer's reasonable mistake of law may be sufficient to justify a traffic stop. And even though the Indiana Constitution offers more protection, here the officer was not mistaken about the law, but rather about the fact that the road was not public. And the State can demonstrate the only way Defendant could have gotten to the private road was by driving on a public highway, which is circumstantial evidence Defendant was driving with a suspended license. Defendant next argued the officer omitted material information in the application for the second search warrant. He omitted that the road was not public, that the ex-girlfriend had said Defendant had hidden drugs in his body cavity not his pants and that the ex-girlfriend had a criminal history and was working with law enforcement. The Court of Appeals agreed police should not withhold information but concluded the facts the officer provided in this case were sufficient for the second warrant. Also, because Defendant had been placed under arrest and a search of his person was inevitable as a search incident to arrest, the second search warrant was likely unnecessary. Held, denial of motion to suppress affirmed.

TITLE: Meredith v. State

INDEX NO.: Z.4.d.

CITE: 906 N.E.2d 867 (Ind. 2009)

SUBJECT: Traffic stop - improper display of temporary license plate

HOLDING: Police officer had reasonable suspicion to stop D based on unlawful display of his temporary license plate in rear window of his car. Officer stopped D because he could not read the expiration date on the temporary license plate in the car's window. Upon approaching the car on foot, the officer saw that the tag was valid. When the officer reached the car, he smelled alcohol and observed that D was "excessively nervous." D took a portable breath test which indicated that he had not been drinking. The officer then asked for permission to search the car, D consented and cocaine was found.

Court concluded that D's placement of his temporary paper plate in vehicle's back window amounted to a traffic infraction. Neither the statutes nor BMV regulations differentiate between the placement and, display requirements for a permanent and interim license plate, thus the interim plate must be mounted in the same fashion as the permanent plate. Ind. Code § 9-18-2-26 requires that license plates be securely fastened and displayed upon the rear of a vehicle, and Ind. Code § 9-19-6-4(e) requires that all "registration plate[s]" be illuminated so as to be visible from a distance of fifty feet. Here, officer was justified in stopping D by virtue of interim plate being both unilluminated and placed incorrectly. Court also held that D was not in custody at time he consented to search of his vehicle, thus no Pirtle/Sims warning re: right to consult with counsel was necessary. Held, *transfer granted*, Court of Appeals' opinion at 878 N.E.2d 453 and on rehearing at 886 N.E.2d 79 vacated, conviction affirmed; Rucker, J., dissenting.

NOTE: Effective July 1, 2013, Ind. Code § 9-32-6-11 allows for interim license plates to be displayed on the left side of the rear window of vehicle that is clearly visible and unobstructed.

See also: Young, 906 N.E.2d 875 (because temporary license plate was not illuminated and not mounted on rear of vehicle but rather was displayed inside rear window, officer had reasonable suspicion to initiate traffic stop).

RELATED CASES: Darringer, 46 N.E.3d 464 (stop of D's vehicle for not having temporary license plate affixed to its bumper was based on an unreasonable mistake of law, because statute enacted in 2013 allows for interim license plates to be displayed on the left side of the rear window of vehicle; see full review, this section); Porter, 985 N.E.2d 348 (Ind. Ct. App. 2013) (regardless of whether D's car met federal regulations and had not been altered in any way, the fact that the light did not illuminate the entire license plate such that it could be read from fifty feet constituted reasonable suspicion of an infraction).

TITLE: Merritt v. State
INDEX NO.: Z.4.d.
CITE: (06-17-05), Ind., 829 N.E.2d 472
SUBJECT: Traffic stop - display of license plate in rear window
HOLDING: Tr. Ct. did not err in admitting evidence resulting from traffic stop based upon display of a license plate in rear window of D's vehicle. Ind. Code § 9-18-2-26 requires that license plates be securely fastened and displayed upon the rear of a vehicle. Regardless of whether back window qualifies as the "rear of the vehicle," placement of a license plate on the *inside* of a back window clearly does not satisfy requirement that license plates be displayed "*upon* the rear of the vehicle." Further, Ind. Code § 9-19-6-4(e) requires license plate to be illuminated at night by a separate white light so as to be clearly legible from fifty feet.

It is common knowledge that automobile manufacturers equip vehicles with a rear bracket such that a license plate fastened thereon will be illuminated accordingly. As a result, compliance with Indiana statutory requirements concerning placement, secure attachment, illumination & legibility is obtained by proper mounting of license plate upon illuminated bracket provided by vehicle manufacturer. Any other method of license plate display may serve as basis for reasonable suspicion to make a traffic stop to ascertain whether display fully complies with all statutory requirements. Display inside a back window does not satisfy these requirements, thus officer was justified in stopping D in this case. Held, *transfer granted*, Ct. App. opinion at 803 N.E.2d 1212 vacated, judgment affirmed.

RELATED CASES: Darringer, 46 N.E.3d 464 (stop of D's vehicle for not having temporary license plate affixed to its bumper was based on an unreasonable mistake of law, because statute enacted in 2013 allows for interim license plates to be displayed on the left side of the rear window of vehicle; see full review, this section); State v. Phillips, 828 N.E.2d 441 (Ind. Ct. App, 2005) (Tr. Ct. erred in concluding that stop was invalid, where officer testified that temporary license plate in rear window was neither clearly visible nor clearly legible as required by Ind. Code § 9-18-2-26; Mathias, J., dissenting, argued there was no evidence that placement or condition of temporary tag violated statute).

NOTE: Effective July 1, 2013, Ind. Code § 9-32-6-11 allows for interim license plates to be displayed on the left side of the rear window of vehicle that is clearly visible and unobstructed.

TITLE: Moody v. State

INDEX NO.: Z.4.d.

CITE: (5/9/83), Ind., 448 N.E.2d 660

SUBJECT: Investigatory stop - vehicle; police dispatch

HOLDING: Police had probable cause to stop D's car, which matched description broadcast over police scanner; thus, Tr. Ct. did not err in allowing gun found in car into evidence. Here, Muncie police dispatch broadcast described car carrying robbery suspects who had held up & shot Muncie store owner. IN State Trooper heard dispatch, stopped & searched car matching dispatch description. D challenges sufficiency of probable cause to search car arguing state did not show reliability of informant who supplied information that robbery occurred (*citing Mooney*, App., 398 N.E.2d 698 - police lacked probable cause to search car when justification for search was teletype dispatch from GA State Police stating vehicle carried marijuana & teletype contained no information as to source of GA authorities' information other than unnamed sources in FL). Ct. overrules *Mooney* on this point & holds: "Where police officers in the street act in good faith reliance on a dispatch from their own or another police agency that a crime has been committed, there is no need to show the source of the dispatched information or the reliability of the dispatcher's informant." *See Benton* 401 N.E.2d 697; *Clark*, App., 358 N.E.2d 761. Held, no error.

RELATED CASES: *Murray*, App., 837 N.E.2d 223 (in order to rely on collective knowledge, the knowledge sufficient for reasonable suspicion must be conveyed to the investigating officer before the stop is made; *see* full review at Z.7.a); *Glass*, App., 769 N.E.2d 639 (to extent *Moody* suggests that every call to a police dispatcher is sufficient in itself to satisfy 4th Amendment, it paints 4th Amendment jurisprudence with too broad a brush); *Broadus*, 487 N.E.2d 1298 (stop & search of car was reasonable); *Jones*, 472 N.E.2d 1255 (Arrest 63.5(6); police stop of car was warranted where car had no rear license plate & D (passenger) was possible suspect in bank robbery).

TITLE: Osborne v. State
INDEX NO.: Z.4.d.
CITE: (11/29/2016), 63 N.E.3d 329 (Ind. 2016)
SUBJECT: Unlawful traffic stop despite police officer's "genuine desire to serve and protect"
HOLDING: State failed to carry its burden of showing that the police officer who stopped D had an objectively reasonable basis for believing that medical assistance was needed. See Michigan v. Fisher, 558 U.S. 45 (2009). Officer responded to a report that a woman was stuck underneath her car in the parking lot of a gas station. But as the officer approached the station, he learned that the woman had freed herself and saw her drive away without committing any traffic violations. Nevertheless, the officer stopped the woman because he feared for her well-being. As the officer was talking to the woman, he noticed several signs of impairment and eventually arrested her for operating while intoxicated.

Distinguishing Bruce v. State, 268 Ind. 180, 375 N.E.2d 1042 (1978), Court held that stop violated D's Fourth Amendment rights because there was no suspicion of criminal activity, nor any articulable facts prior to the stop to support the officer's belief that D was in immediate need of assistance. Court did not believe that officer's assertion that he feared for D's medical state was merely a pretext to conduct an investigatory stop, but his subjective intent is not decisive. "And in a close case on these unique facts, we err, if at all, on protecting the privacy rights of Hoosiers against intrusion by the State." Court found that officer's conduct was also impermissible under the Indiana Constitution. Held, transfer granted, Court of Appeals' opinion at 54 N.E.3d 428 vacated, Tr. Ct.'s denial of motion to suppress reversed and remanded for further proceedings.

Note: Court noted that "community caretaking" exception to warrant requirement did not apply to the facts of this case and expanding that doctrine in this context "is not warranted."

RELATED CASES: Randall, (4/26/2018), 101 N.E.3d 831 (Ind. Ct. App 2018) (warrantless search of D's car was justified under emergency aid doctrine; D behaved erratically and showed signs of physical distress; see full review, this section); Cruz-Salazar, 63 N.E.3d 1055 (Ind. 2016) (officer had objectively reasonable basis for warrantless entry into D's truck, where he found D asleep in his parked truck with engine running for 30 minutes in early hours of cold morning and did not respond to officer's flashlight or taps on window).

TITLE: Peck v. State

INDEX NO.: Z.4.d.

CITE: (5-5-99), Ind., 712 N.E.2d 951

SUBJECT: Vehicle stops - infraction

HOLDING: Tr. Ct. properly denied D's motion to suppress evidence obtained during traffic stop. Police may stop an individual who commits infraction. Person may not turn vehicle from direct course upon highway unless movement can be made with reasonable safety. Ind. Code 9-21-8-24. A signal of intention to turn right or left shall be given continuously during not less than last two hundred feet traveled by vehicle before turning or changing lanes. Ind. Code 9-21-8-25. Here, D failed to signal when turning a corner. Although D did not commit infraction under Ind. Code 9-21-8-24 because there was no evidence that anyone was around when D made the turn & thus the turn was made with reasonable safety, D did commit infraction under Ind. Code 9-21-8-25. Thus, the stop was not illegal. Held, transfer granted, Ct. App.' decision at 705 N.E.2d 188 vacated, Tr. Ct.'s judgment affirmed.

Note: Although Ct. App. decision was vacated due to Ct.'s failure to address infraction under Ind. Code 9-21-8-25, reasoning in Ct.'s opinion that infraction must be clear when committed in front of an officer is still arguable. S. Ct. did not address whether officer's mistaken belief about what constitutes infraction amounts to good faith justifying traffic stop.

RELATED CASES: Lynch, 961 N.E.2d 534 (Ind. Ct. App.2012) (officers had reasonable suspicion that D committed traffic violation and thus stop her where she made a left turn in a lane other than the turn-only lane); Geis, App., 779 N.E.2d 1194 (fact that D complied with Ind. Code 9-21-8-24 by making lane change with reasonable safety, not affecting any other driver was irrelevant, because statutes require turn signal at all times, not only when another vehicle will be affected). Pruitt, App., 934 N.E.2d 767 (officer was not mistaken that D committed traffic violation by failing to activate his headlights while driving after midnight in a private parking lot, even though statute requiring activation of headlights is limited to vehicles on public highways; see full review, this sections).

TITLE: Potter v. State

INDEX NO.: Z.4.d.

CITE: (4th Dist., 09-11-09), 912 N.E.2d 905 (Ind. Ct. App 2009)

SUBJECT: Traffic stop - officer's observations supported reasonable suspicion of impairment

HOLDING: A traffic violation is not a condition precedent to a stop otherwise supported by the facts. State v. Campbell, 905 N.E.2d 51 (Ind. Ct. App 2009). A police officer may make a Terry stop of a vehicle to investigate an offense other than a traffic violation, as long as officer has reasonable, articulable suspicion that a crime is being or has been committed. Here, officer testified that his law enforcement training and experience had taught him that erratic vehicle movements were "a telltale sign of impairment or [that] someone's ill or injured," and that after he observed D's vehicle continuously weave from side to side in its lane and nearly strike a concrete median when making a turn, he decided to stop the vehicle. These are articulable facts that support reasonable suspicion that D was operating his vehicle while impaired from intoxication. Thus, circumstances warranted a brief traffic stop to confirm or dispel officer's reasonable suspicion of driver impairment. Held, judgment affirmed.

RELATED CASES: Atkinson, 992 N.E.2d 899 (Ind. Ct. App. 2013) (even though D didn't commit traffic infraction, his erratic driving was consistent with someone driving while intoxicated, giving police reasonable suspicion to stop him); Bowers, 980 N.E.2d 911 (Ind. Ct. App. 2012) (officer's observation of D's ex-wife's intoxication and the fighting between the two provided reasonable suspicion that D was also intoxicated).

TITLE: Pridemore v. State

INDEX NO.: Z.4.d.

CITE: (2/24/2017), 71 N.E.3d 70 (Ind. Ct. App. 2017)

SUBJECT: Investigatory stop for driving outside right-hand lane

HOLDING: Police officers had reasonable suspicion to stop Defendant's vehicle for crossing the center line between opposite lanes of travel, a violation of Ind. Code § 9-21-8-2(a). Officer decided to initiate traffic stop when Defendant's tire went onto the yellow line and median separating north and south bound traffic, but her car did not enter into the other lane. Defendant cited no authority for her assertion that the driving left of center statute only applies when a motorist crosses into the opposite lane of travel. Rather, the statute plainly states that "a vehicle shall be driven upon the right half of the roadway." A motorist is not "upon the right half of the roadway" if she is driving in the median between two opposite lanes of travel. Held, denial of motion to suppress affirmed.

RELATED CASES: Toppo, 171 N.E.3d 153 (Ind. Ct. App. 2021) (a driver's tires crossing center line even briefly is traffic violation for which police may initiate traffic stop).

TITLE: Pruitt v. State
INDEX NO.: Z.4.d.
CITE: (10-04-2010), 934 N.E.2d 767 (Ind. Ct. App 2010)
SUBJECT: Operating while HTV - Terry stop in private parking lot
HOLDING: Tr. Ct. did not err in denying D's motion to suppress, even though the basis for the traffic stop-- failure to activate headlights-- occurred in the private parking lot of a Martinsville pub. D was eventually charged with operating a vehicle after driving privileges had been forfeited for life. Ind. Code 9-30-10-17. Ind. Code 9-21-18-4 provides, "A unit and the owner or lessee of a shopping center or private business property located within the unit may contract to empower the unit to regulate by ordinance the parking of vehicles and the traffic at the shopping center or private business property, subject to approval by the fiscal body of the unit by ordinance."

Here, there was no evidence the pub had contracted with the City of Martinsville to regulate traffic in its private parking lot. Nonetheless, Court did not read the statute "...to bar law enforcement officers from investigating violations on private property such as shopping centers in the absence of a contractual agreement with each and every such property." Furthermore, Ind. Code 9-30-10-17 does not explicitly limit its application to persons operating motor vehicles on public roads. Cf. Guidry v. State, 650 N.E. 2d 63, 66 (Ind. Ct. APP 1995). The legislature's choice to not limit the statute to public roads indicates that the danger to the public from habitual traffic offenders is as great on a private parking lot as it is on public highways. Held, denial of motion to suppress affirmed.

TITLE: Randall v. State
INDEX NO.: Z.4.d.
CITE: (4/26/2018), 101 N.E.3d 831 (Ind. Ct. App. 2018)
SUBJECT: Evidence admissible under emergency aid doctrine
HOLDING: Tr. Ct. did not abuse its discretion in denying D's motion to suppress drugs and paraphernalia found in his car because the warrantless search was justified under the emergency aid doctrine.

A deputy sheriff working as an off-duty security guard for a hospital observed D slumped over in his parked car. When deputy drove up to D's car and activated his lights, D abruptly exited his car and strode quickly toward the deputy. The deputy told D to return to his car; he complied. When he approached D, the deputy noticed D was sweating profusely and was "reaching around the car very nervously." Deputy asked D if he had drugs; he admitted he had both methamphetamine and marijuana pipes in his car. Once charged, D filed a motion to suppress. Relying on the community caretaking exception, the Tr. Ct. denied the motion.

The Tr. Ct. properly denied the motion to suppress but for the wrong reason. The evidence was admissible under the "emergency aid doctrine," not the community caretaking function, which applies only to inventory searches. The emergency aid doctrine applies here because it allows police to act without obtaining a warrant when they reasonably believe a person needs immediate help. See Mincey v. Arizona, 437 U.S. 385, 392 (1978). An officer may act without a warrant if he has "an objectively reasonable basis for believing that medical assistance [is] needed, or persons [are] in danger." Michigan v. Fisher, 558 U.S. 45, 49 (2009) (*quotations omitted*). Here, given D's physical condition and behavior, the deputy had an objectively reasonable basis to conclude D needed help. Thus, the evidence was admissible.

The outcome is the same under the Indiana Constitution. The degree of concern was high because D was slumped over his steering wheel, later acted erratically, and showed signs of physical distress. See Litchfield v. State, 824 N.E.2d 356, 361 (Ind. 2005) and M.O. v. State, 63 N.E.3d 329, 333 (Ind. 2016). The degree of intrusion was low because the deputy merely ordered D to return to his car, the place he had occupied mere moments before. See Litchfield, 824 N.E.2d at 361. Finally, while the extent of law enforcement needs were relatively low, the high degree of concern and the minimal intrusion weighed in favor of the brief seizure of D. Held, judgment affirmed.

TITLE: Robinson v. State

INDEX NO.: Z.4.d.

CITE: (3/25/2014), 5 N.E.3d 362 (Ind. 2013)

SUBJECT: Officer's observation of D drive over fog line twice justified traffic stop

HOLDING: Under both Fourth Amendment and Indiana Constitution Article 1, § 11, a car going over the fog line twice in a short period of time constituted reasonable suspicion of impaired driving, thus justifying traffic stop. Video showed D weaving onto the fog line but not off the road. Deference is given to Tr. Ct.'s weighing of credibility, even when video appears to conflict with testimony. Here, officer's testimony that D crossed the fog line twice - which Tr. Ct. appeared to find more credible than video - supports legal finding of reasonable suspicion for the traffic stop. Under totality of circumstances, officer's conduct was reasonable, and stop did not offend Article 1, § 11. Held, transfer granted, Court of Appeals' opinion at 985 N.E.2d 1181 vacated, denial of motion to suppress affirmed; Rucker, J., dissenting, agrees with Court of Appeals' conclusion that brief contact with fog line or swerving within a lane - without more - does not constitute reasonable suspicion.

RELATED CASES: Barrett, 837 N.E.2d 1022 (Ind. Ct. App 2005) (a driver drifting onto the fog line for thirty to fifty yards, along with a tip that cold medicine was purchased, constituted reasonable suspicion to stop D).

TITLE: Sanders v. State

INDEX NO.: Z.4.d.

CITE: (6/25/2013), 989 N.E.2d 332 (Ind. 2013)

SUBJECT: Reasonable suspicion to stop car based on violation of Window Tint Statute

HOLDING: Police officer had reasonable suspicion to stop D's vehicle based on tint of his rear window. Indiana Window Tint Statute, Ind. Code 9-19-19-4(c) prohibits operation of a motor vehicle that has windows tinted in such a way that "the occupants of the vehicle cannot be easily identified or recognized through [those] window[s] from outside the vehicle. Here, police officer testified that he initiated traffic stop because he believed window tint was so dark that he could not "clearly recognize or identify the occupant inside." Officer's belief that window tint on D's rear windows violated Window Tint Statute was later invalidated through inspection of vehicle by D's expert.

Distinguishing Ransom v. State, 741 N.E.2d 419 (Ind. Ct. App 2000), Court noted that although the officer was ultimately mistaken in his belief that a violation occurred, the traffic stop was based upon a good faith, reasonable belief that a statutory violation occurred, thus stop was justified. Held, transfer granted, Court of Appeals' opinion at 981 N.E.2d 616 vacated, denial of motion to suppress affirmed.

RELATED CASES: Veerkamp, 7 N.E.3d 390 (Ind. Ct. App. 2013) (where exhaust from truck obscured officer's visibility, officer's characterization of the exhaust as excessive was sufficient to make a traffic stop for an infraction under 9-19-8-5 prohibiting excessive exhaust); Johnson, 992 N.E.2d 955 (Ind. Ct. App. 2013) (even if degree of suspicion and needs of law enforcement were not overwhelming in this case, the relative lack of intrusiveness of traffic stop and officer's behavior led Ct. to conclude that his conduct was reasonable under totality of circumstances and did not violate Indiana Constitution).

TITLE: State v. Bouye
INDEX NO.: Z.4.d.
CITE: (1/10/2019), 118 N.E.3d 22 (Ind. Ct. App. 2019)
SUBJECT: Reasonable suspicion for stop - potential improper license plate registration
HOLDING: Potential improper license plate registration enough to create reasonable suspicion for traffic stop. Whether there was actually a violation is irrelevant to the constitutionality of the stop if the officer had a reasonable suspicion that a violation had occurred. Held, grant of motion to suppress reversed and remanded for further proceedings.

TITLE: State v. Britton
INDEX NO.: Z.4.d.
CITE: 604 N.W.2d 84 (Minn. 2000)
SUBJECT: Vehicle Stop -- Broken Window Insufficient Justification
HOLDING: Minnesota Supreme Court joins jurisdictions holding that a broken car window does not alone give rise to reasonable suspicion that criminal activity is afoot.

TITLE: State v. Burbach

INDEX NO.: Z.4.d.

CITE: 706 N.W.2d 484 (Minn. 2005)

SUBJECT: Vehicle Stop - Odor of Alcohol from Adult Passenger Not Reasonable Suspicion to Extend Stop for Search

HOLDING: The Minnesota Supreme Court holds that under its state constitution, the odor of alcohol emanating from an adult passenger does not justify extending a vehicle stop to conduct a search for open containers of alcohol. Officer here stopped vehicle for speeding. During stop, he noticed odor of alcohol coming from adult passenger. The officer then asked the driver if she had any illegal drugs in the car, and after she said she did not, he obtained her consent to search the car. The Court notes that the passenger volunteered that he had been drinking before getting in the car, and the officer knew that the driver had not been drinking.

TITLE: State v. Davis

INDEX NO.: Z.4.d.

CITE: (2/28/2020), Ind. Ct. App., 143 N.E.3d 343

SUBJECT: Turn signal statute does not apply to roundabouts

HOLDING: Traveling through a roundabout and then exiting the roundabout without signaling a turn is not a violation of Indiana Code § 9-21-8-25, which requires a turn signal to be continuously given "during not less than the last two hundred (200) feet traveled by a vehicle before turning or changing lanes." Court concluded this statute, which was drafted well before roundabouts became widespread in Indiana, "is a square peg that cannot fit into a roundabout hole." Thus, the police officer in this case did not have reasonable suspicion to initiate a traffic stop of Defendant's vehicle after the officer saw him fail to use a turn signal when exiting a roundabout. State failed to show that the officer's mistake of law in this case was objectively reasonable, thus his traffic stop of Defendant for exiting a roundabout without signaling a turn was invalid. Held, grant of motion to suppress affirmed.

TITLE: State v. Eilers

INDEX NO.: Z.4.d.

CITE: (2nd Dist., 7-28-98), Ind. App., 697 N.E.2d 969

SUBJECT: Illegal vehicle stop - investigating compliance with seat belt statute

HOLDING: Tr. Ct. did not err in granting D's motion to suppress evidence attained pursuant to illegal stop for failing to wear seat belt. Ind. Code 9-19-10-3 clearly provides that a person may not be stopped, inspected, or detained solely to determine compliance with seat belt regulations. Police officer testified that his primary objective at time he stopped D was to check specifically for seat belt violations. He did this by observing passing cars from thirty to forty feet. Watching for & then pulling over passing driver who is not wearing seat belt is clearly an "inspection" solely to determine compliance with Indiana's seat belt law. Held, judgment affirmed.

Note: Effective July 1, 1998, statute was amended to allow stops of vehicles to determine compliance with seat belt law. However, a vehicle, contents of a vehicle, the driver or passenger in vehicle may not be inspected, searched, or detained solely because of a violation of statute.

TITLE: State v. Howell

INDEX NO.: Z.4.d.

CITE: (3rd Dist., 2-11-03), Ind. App., 782 N.E.2d 1066

SUBJECT: Illegality of initial stop does not prevent State from pursuing charges against D

HOLDING: Tr. Ct. erred in granting D's motion to dismiss charges of resisting law enforcement, reckless driving & operating as habitual traffic violator. Officer attempted to stop D for having blue neon light on his vehicle that encircled license plate. Officer was under belief that such a light constituted an infraction. Although officer activated his emergency lights & siren, D did not stop, increased his speed & eventually stopped his vehicle & fled on foot. Person may not flee from or use force against police officer that orders a person to stop, regardless of lawfulness of officer's order. Lashley v. State, 745 N.E.2d 254 (Ind. Ct. App. 2001); Shoultz v. State, 735 N.E.2d 818 (Ind. Ct. App. 2000). Moreover, resisting law enforcement statute does not condition commission of offense upon enforcement of lawful order. Alspach v. State, 755 N.E.2d 209 (Ind. Ct. App. 2001). Affidavit executed by officer presented ample probable cause that D committed a number of criminal offenses. Thus, regardless of whether initial stop of D was justified, there was ample probable cause that D had committed charged offenses. Held, judgment reversed & remanded for trial.

RELATED CASES: State v. Serrano, 136 N.E.3d 249 (Ind. Ct. App. 2020) (D's actions after traffic stop of running from police, failing to comply with orders from police and fumbling with a handgun constitute a new crime exception to the exclusionary rule); Griffin, 997 N.E.2d 375 (Ind. Ct. App. 2014) (when evidence does not reflect any suggestion of criminal activity afoot, a citizen is free to terminate an encounter with a police officer by walking away); Ronco, App., 840 N.E.2d 368 *sum. aff'd*, 862 N.E.2d 257 (testimony concerning resisting charge was admissible even though it occurred following illegal stop); Dandridge, App., 810 N.E.2d 746.

TITLE: State v. Keck
INDEX NO.: Z.4.d.
CITE: (3/25/2014), 4 N.E.3d 1180 (Ind. 2014)
SUBJECT: Driving left-of-center to avoid potholes was not enough to stop car
HOLDING: Tr. Ct. did not err in concluding police officer did not have reasonable suspicion to stop D for driving left of center on a county road to avoid poor road conditions. Officer pulled D over after he observed him driving 12 miles per hour slower than the speed limit, come to a complete stop before turning left, and then driving down the middle of that county road. State argued that officer was justified in pulling over D after seeing him violate Ind. Code § 9-21-8-2(a), which provides that "all roadways of sufficient width, a vehicle shall be driven upon the right half of the roadway." But Ind. Code § 9-21-8-2(b) allows for someone to drive "as close to practicable on the right-hand curb or edge of the roadway" when a person is driving less than the normal speed of traffic at the time and place under conditions then existing.

At suppression hearing, D and his passenger testified as to the terrible condition of the road, and officer recalled at least two potholes in the road. Evidence supported Tr. Ct.'s conclusion that Ind. Code § 9-21-8-2(b) applies, D's compliance with subsection (a) was not possible, and he was not in violation. Held, transfer granted, Court of Appeals' opinion at 986 N.E.2d 847 vacated, grant of motion to suppress affirmed.

Note: Court reiterated that appellate courts are not in business of reweighing evidence when it comes to suppression issues. "Thus, unless [the] record leads us to conclude the trial judge made a clear error in his findings of fact, we will apply the law de novo to the facts as the Tr. Ct. found them."

TITLE: State v. Maddox
INDEX NO.: Z.4.d.
CITE: 2002 Ida. Lexis 153 (Idaho Ct. App. 2002)
SUBJECT: Community Caretaking Stop Must Be Based on Present, not Future, Danger
HOLDING: Officer's concern that car with low clearance might get stuck if it continued onto dirt road did not justify stop under 4th Amendment community caretaking doctrine. Community caretaking justifies stop only if there is a present need for assistance, according to Idaho Court of Appeals.

TITLE: State v. Massey

INDEX NO.: Z.4.d.

CITE: (2nd Dist., 05-30-08), Ind. App., 887 N.E.2d 151

SUBJECT: Reasonable suspicion to stop & detain for wearing seatbelt improperly

HOLDING: Police officers had reasonable suspicion to stop D's vehicle, where they could not see the shoulder belt going over across top of passenger's shoulder and could not determine if seat belt was unbuckled or was improperly on passenger. As vehicle approached second officer, he observed the front seat passenger reach behind her, grab the seatbelt and pull it down in front of her. The positioning of passenger's seatbelt combined with her potentially incriminating movements led officers to reasonably conclude that passenger was not wearing seatbelt. This provided requisite level of suspicion to stop D's vehicle.

Court also concluded that officer had statutory authority to detain D and ask for her driver's license because D violated Ind. Code 9-19-11-3.3 by having a child less than sixteen who is not properly fastened by a safety belt. Ind. Code 9-19-10-2 explicitly provides that an occupant must have a seatbelt "properly fastened about the occupant's body at all times when the vehicle is in forward motion." Legislature's decision to use the word "properly" with the phrase "about the occupant's body" leads to conclusion that it intended for an occupant to fasten lap belt and wear seatbelt's shoulder strap across his shoulder to comply with seatbelt statute. Given clear purpose of seatbelt statute, to promote highway safety and protect Indiana citizens, Court agreed with State that it would be illogical to construe statute as permitting an occupant to wear a seatbelt improperly. Held, grant of motion to suppress reversed and remanded for further proceedings.

TITLE: State v. Morris

INDEX NO.: Z.4.d.

CITE: (3rd Dist., 7-19-00), Ind. App., 732 N.E.2d 224

SUBJECT: Vehicle stop based on violation of seatbelt law

HOLDING: Tr. Ct. erred in granting D's motion to suppress evidence obtained during traffic stop made to investigate violation of Ind. Seatbelt Enforcement Act, Ind. Code 9-19-10-3. Officer stopped D because he observed that D was not wearing his seatbelt. While performing routine check of D's driver's license, officer learned that D's license was suspended. When D exited his vehicle upon officer's request, officer detected strong odor of alcoholic beverage on D's breath. D admitted he had been drinking & agreed to take chemical breath test, which revealed breath alcohol content of .10. In granting D's motion to suppress, Tr. Ct. focused on statutory language providing that: "a vehicle, the contents of a vehicle, the driver of a vehicle, or a passenger in a vehicle may not be inspected, searched, or detained solely because of a violation of this chapter. Ind. Code 9-19-10-3 (emphasis added).

Ct. concluded that plain language of this statute evidences legislative intent that traffic stop based on seatbelt violation, standing alone, does not provide reasonable suspicion for police to unilaterally expand their investigation & "fish" for evidence of other possible crimes. However, when circumstances arise after initial stop that create reasonable suspicion of other crimes, further reasonable inspection, search, or detention is no longer "solely" because of seatbelt violation & does not contravene plain language of statute. Officer may only expand his investigation subsequent to stop if other circumstances arise after stop, which independently provide officer with reasonable suspicion of other crimes. In this case, neither evidence regarding D's suspended license nor evidence of his intoxication were obtained as result of detention, search, or inspection solely because D was not wearing his seatbelt. Rather, evidence was obtained as result of independent circumstances that arose after proper initial stop, which independently justified officer's subsequent actions. Thus, Tr. Ct. erred when it granted D's motion to suppress. Held, judgment reversed; Friedlander, J., concurring.

RELATED CASES: Howard, App., 818 N.E.2d 469 (seat belt enforcement zone did not violate Ind. Constitution; officer was permitted to detain D based on his observations, & long enough to discovery D's true identity).

TITLE: State v. Rhodes

INDEX NO.: Z.4.d.

CITE: (06-14-11), 950 N.E.2d 1261 (Ind. Ct. App 2011)

SUBJECT: D not properly stopped for turn signal violation

HOLDING: Tr. Ct. properly granted D's motion to suppress evidence where State did not show that it was possible under the circumstances for D to comply with Ind. Code 9-21-8-25, which requires a turn signal to be continuously given "during not less than the last two hundred (200) feet traveled by a vehicle before turning or changing lanes." D drove his friend to an impound lot to recover his car. While there, the company employee believed D was intoxicated and called police officer who often worked off-duty for Angie's List, which was across the street from impound lot. Officer testified he saw D leave and followed him. D did not signal properly and made an abrupt left turn into the parking lot of Angie's List, so officer initiated a traffic stop. D contended that officer turned on his emergency lights as soon as he began following him, so he signaled to turn into the parking lot to stop. Officer estimated that D turned his signal on about 150 feet before turning, but the record did not reflect whether there was at least 200 feet between the place where he turned onto Market Street and place where he turned onto the parking lot. In addition, if Tr. Ct. credited D's testimony, once the officer turned on his emergency lights, D was required to pull over immediately.

Court also held that call from company employee did not give officer reasonable suspicion that D was operating while intoxicated. The record was vague as to what the caller told the officer regarding D or his vehicle. One other person also left the parking lot at the same time as D. Even if the employee's tip was sufficient to establish reasonable suspicion that someone was driving while intoxicated, there was not evidence that the officer had any basis to conclude that the person was D. Held, judgment affirmed

TITLE: State v. Richcreek

INDEX NO.: Z.4.d.

CITE: 187 Ariz. 501; 930 P.2d 1304 (Ariz. 1997)

SUBJECT: Stop of Motorist Not Suspected of Crime Violates 4th Amendment

HOLDING: Arizona Supreme Court holds that automobile stop based on anything less than reasonable suspicion of criminal activity violates 4th amendment. Here, police were investigating scene of one-car accident from which driver had departed when D drove by, briefly pulled over, then sped off. Officer, thinking D might be driver or at least have information about accident, followed and stopped D's car, and discovered that it was stolen. Even assuming that D knew something about accident, investigation of accident was not sufficient basis for officer to stop vehicle. Had D been stopped or on foot, officer could have approached him. However, vehicle stop is more intrusive and must be supported by reasonable suspicion of criminal activity.

TITLE: State v. Rincon

INDEX NO.: Z.4.d.

CITE: 125 Nev. 1170, 147 P.3d 233 (Nev. 2006)

SUBJECT: Stop not justified by slow driving alone

HOLDING: The Nevada Supreme Court held that driving significantly below the posted speed limit may contribute to the reasonable suspicion that a police officer must have in order to conduct a traffic stop for drunk driving, when it is combined with additional indicia of erratic driving or other unusual behavior, but it may not by itself justify such a stop. The Court added, however, that slow driving alone may justify an "inquiry" stop pursuant to an officer's community caretaking function, but it said that such a stop is permissible only in very narrow circumstances. A police officer on routine patrol observed the D in this case driving 48 mph in a 65-mph zone; stopped the vehicle and smelled alcohol with a subsequent blood draw confirming the D's blood alcohol level exceeded the legal limit. The Tr. Ct. suppressed the evidence and the Nevada Supreme Court agreed that the police officer lacked reasonable suspicion. "Reasonable suspicion is not a stringent standard, but it does require something more than a police officer's hunch." Slow driving, absent some other behavior indicating intoxication, does not rise to that standard. Other courts considering similar cases have held that reasonable suspicion arose when a motorist was driving well under the speed limit and other behavior indicated intoxication, such as swerving, driving on a shoulder, straddling a lane, crossing a center line, or weaving, the Court noted. However, the Court found no authority for the state's position that slow driving can suffice, in and of itself, to trigger a reasonable suspicion that a driver is intoxicated. Court noted there are times when it is prudent to drive below the speed limit. Hazardous road conditions and inclement weather, for example, may justify driving slowly. Therefore, absent evidence of another traffic violation, a court reviewing a stop for reasonableness should consider the road and weather conditions, the time of day, the driving pattern, the driver's behavior, and any other relevant circumstances that might indicate criminal activity.

The Court did note that in "very limited and narrow circumstances" a stop might be justified under a police officer's exercise of his community caretaking role. This exception would apply if the officer observed circumstances indicating that the driver was beset by a medical emergency or automotive malfunction. Court emphasized, however, that a community caretaking stop is justified "only where there are clear indicia of an emergency," such as "excessively slow" driving. Court remanded to determine whether such evidence or evidence of criminal activity existed because the record was unclear on this issue.

TITLE: State v. Torres

INDEX NO.: Z.4.d.

CITE: (12-17-2020), Ind. Ct. App., 159 N.E.3d 1018

SUBJECT: Concurring judge requests legislative review of turn signal statute noting, "[a]ll Hoosiers will appreciate and benefit from a traffic code that reduces the opportunity for arbitrary enforcement."

HOLDING: In a consolidated appeal, the Court of Appeals reversed the trial court's grant of two motions to suppress evidence obtained after traffic stops for failing to signal the intention to turn at least 200 feet in advance, as required by Ind. Code Section 9-21-8-25. Both defendants were driving on a city block approximately 500 feet in length, not speeding or driving erratically, and they both came to a complete stop and activated their turn signals before turning. The trial court determined that "in many circumstances within a normal city block it is impossible to comply" with that requirement. The Court of Appeals reversed, finding that whether or not compliance with the statute was possible under the circumstances, Defendants' failure to signal a turn until they reached a stop sign was enough for the officer, the same officer in both cases, "to establish a reasonable belief the statute had been violated, and that is all that is required."

Judge Mathias concurred, writing separately to express his frustration "to be required to apply a statute that authorizes a traffic stop on any city street if the driver does not continuously signal for at least 200 feet before turning or changing lanes" and noting "this precise statute appears to be employed often to make arbitrary traffic stops."

TITLE: State v. Voit

INDEX NO.: Z.4.d.

CITE: (3rd Dist., 5-27-97), Ind. App., 679 N.E.2d 1360

SUBJECT: Erroneous suppression of evidence from vehicle stop

HOLDING: Tr. Ct. erred in suppressing State's evidence, where ruling was based on fact that traffic stop was only pretext to investigate drug activity. Police may stop vehicle after observing minor traffic violations, regardless of police officer's subjective motives in stopping vehicle. State, App., 672 N.E.2d 427. Here, officers were requested to be on lookout for burgundy Chevrolet. Shortly thereafter, officers spotted vehicle matching this description, followed it, paced it at forty-five miles per hour in thirty mile per hour zone, & pulled car over. Distance from point D passed officers until D turned off road was approximately four or five blocks. Tr. Ct. found officer's testimony to be of dubious credibility, at best. However, nowhere in record was there finding that D was not speeding. Fact that officers were specifically watching for D & their primary motivation in pulling her over may have been to investigate drug activity does not convert valid traffic stop into unconstitutional search & seizure. Id.; Whren v. United States, 116 S. Ct. 1769 (1996). Held, grant of motion to suppress reversed; Najam, J., dissenting.

RELATED CASES: Santana, 10 N.E.3d 76 (Ind. Ct. App. 2014) (although police officer began following D's vehicle after he mistakenly ran the wrong license plate number, resulting traffic stop was based on reasonable suspicion because turn signal violation provided independent basis for stop).

TITLE: Staten v. State
INDEX NO.: Z.4.d.
CITE: (04-23-11), 946 N.E.2d 80 (Ind. Ct. App. 2011)
SUBJECT: Traffic stop legal even though insufficient evidence of failure to obey stop sign
HOLDING: Tr. Ct. did not abuse its discretion in admitting blood alcohol test results because officer's stop of D was legal. The officer was not mistaken about whether D committed a traffic infraction when D drove left of center and drove through a three-way stop sign without stopping or slowing down, even though the State conceded there was insufficient evidence to support D's conviction for failing to obey a stop sign under Ind. Code § 9-21-8-32, the statute under which D was charged. D's actions violated a different, albeit uncharged, statute, Ind. Code § 9-21-4-18, which requires "a person who drives a vehicle must obey the markings or signs posted under this chapter." The fact that D was charged under a different statute was irrelevant. Thus, the stop was legal, and the admission of the blood alcohol test results was not an abuse of discretion. Held, judgment affirmed on conviction for class A misdemeanor OWI Endangering a Person, Ind. Code § 9-30-5-2(b), and finding that D failed to obey a stop sign infraction was vacated. Crone, J., dissented, claiming the traffic stop was not valid because officer's mistaken belief that D committed an infraction under Ind. Code § 9-21-8-32 does not constitute good faith to justify the stop; such discretion is constitutionally impermissible. See Ransom v. State, 741 N.E.2d 419, 421 (Ind. Ct. App. 2009).

RELATED CASES: Geis, App., 779 N.E.2d 1194 (fact that D complied with Ind. Code 9-21-8-24 by making lane change with reasonable safety, not affecting any other driver was irrelevant, because statutes require turn signal at all times, not only when another vehicle will be affected). Pruitt, App., 934 N.E. 2d 767 (officer was not mistaken that D committed traffic violation by failing to activate his headlights while driving after midnight in a private parking lot, even though statute requiring activation of headlights is limited to vehicles on public highways; see full review, this sections).

TITLE: Turner v. State
INDEX NO.: Z.4.d.
CITE: (2nd Dist., 03-16-07), Ind. App., 862 N.E.2d 695
SUBJECT: Pretextual traffic stop of questionable validity unreasonable; attenuation doctrine
HOLDING: Tr. Ct. abused its discretion by admitting evidence obtained after a pretextual traffic stop, which was unreasonable under Article 1, Section 11 of the Indiana Constitution. A traffic stop is lawful if there is an objectively justifiable reason for it, regardless of whether police officer would have otherwise made the stop but for ulterior suspicions or motives. Jackson v. State, 785 N.E.2d 615 (Ind. Ct. App 2003).

Here, police officer had specific instructions to look for a traffic violation, so that another detective could talk to D about a series of residential burglaries. Based on police officer's training, he visually estimated D's speed at fifty-five miles per hour. However, officer did not know the exact speed limit in the area when he stopped D. Therefore, the admittedly pretextual stop was facilitated by a traffic violation of questionable validity & was not reasonable under the totality of circumstances. Given detective's intent & short amount of time that elapsed before the conversation with detective began, Court declined to hold D's initial agreement to talk was an intervening circumstance sufficient to remove the taint of the illegality of the traffic stop. Ransom v. State, 741 N.E.2d 419 (Ind. Ct. App 2000). Thus, any evidence gathered at the scene came from the exploitation of the unlawful traffic stop & must be suppressed. Court likewise suppressed D's subsequent videotaped statement at police station, as it could not say that the connection between the illegal traffic stop & D's confession "had been attenuated sufficiently." Held, conviction reversed & remanded.

RELATED CASES: Marshall, 117 N.E.3d 1254 (Ind. 2019) (when officer stops D for speeding, reasonable-suspicion standard does not require that the officer document the driver's speed; either pacing or radar indication provide sufficient indicia of reliability for a speeding assessment; see full review, this section).

TITLE: U.S. v. Arvizu
INDEX NO.: Z.4.d.
CITE: 534 U.S. 266; 122 S. Ct. 744; 151 L. Ed. 2d 740 (2002)
SUBJECT: Fourth Amendment, totality of the circumstances
HOLDING: "Totality of the circumstances" test involves an examination of all suspicious factors together. Multiple factors which might be innocent in isolation can, considered as a whole, cause reasonable suspicion for an investigatory stop. To justify a brief investigatory stop, a law enforcement officer must have a particularized and objective basis for suspecting legal wrongdoing. Terry v. Ohio, 392 U.S. 1, 88 S. Ct. 1868, 20 L.Ed.2d 889 (1968). Law enforcement officers may draw on their own experience and specialized training to make inferences from the cumulative information available. Ornelas v. U.S., 517 U.S. 690, 116 S. Ct. 1657, 134 L.Ed.2d 911 (1996); U.S. v. Cortez, 449 U.S. 411, 101 S. Ct. 690, 66 L.Ed.2d 621 (1981).

A Border Patrol agent stopped D while he was driving on an unpaved road in southeastern Arizona and found over 100 lbs. of marijuana in his minivan. At the suppression hearing, the agent testified that there were numerous factors leading him to suspect that the minivan might contain drugs: the road was often used by drug smugglers because it bypasses a nearby Customs checkpoint; the occupants of the vehicle avoided eye contact with him; shortly after he began following the minivan the children in the back seat began waving to him 'mechanically' as if they had been instructed to do so; smugglers often use minivans; and other factors. Held, under the 'totality of the circumstances' test, a law enforcement officer may consider all the relevant facts known to him in light of his own experience and training. Although each of the facts known to the officer in this case may have had an innocent explanation when considered individually, considered together, they justified an investigatory stop.

TITLE: United States v. Jenson

INDEX NO.: Z.4.d.

CITE: 462 F.3d 399 (5th Cir. 2006)

SUBJECT: Delay in pulling over does not equal reasonable suspicion

HOLDING: The U.S. Court of Appeals for the Fifth Circuit held that a motorist's 30- to 60-second delay in pulling over in response to a police cruiser's flashing lights, coupled with his unusually nervous demeanor during the ensuing traffic stop, did not add up to the reasonable suspicion of criminal activity necessary for the police officer to prolong the driver's detention beyond the time necessary to issue him a traffic ticket. The D moved to suppress evidence that was discovered during a pat down search after the state trooper who stopped him for speeding had determined that his license was clean. The Fifth Circuit ruled that the stop should have ended as soon as the officer learned of D's clean driving record and that the extension of the stop beyond that time was not justified. The trooper's conclusion that it is unusual to hesitate as long as the D did to pull over was entitled to "great respect," but "the modest delay in stopping time does not by itself . . . give rise to reasonable suspicion." The Court noted several reasons a driver may take additional time to pull over. Nor did the D's increasing nervousness as the stop continued provide an additional factor for a reasonable suspicion of criminal activity. Most importantly, there was no evidence of a nexus between the D's allegedly suspicious behavior and any specific criminal activity.

TITLE: United States v. Paniagua-Garcia

INDEX NO.: Z.4.d.

CITE: (2/19/2016), 813 F.3d 1013 (7th Cir. 2016)

SUBJECT: Invalid stop - suspected texting while driving

HOLDING: D was unlawfully stopped for suspicion of violating Indiana's "texting- while-driving" statute, Ind. Code § 9-21-8-59(a). A police officer, in the course of passing a car driven by D, saw that the driver was holding a cell phone in his right hand with his head bent toward the phone. The officer said he appeared to be texting, and while texting while driving is illegal in Indiana, all other phone uses are not, such as making calls, using GPS directions, playing music, watching movies, etc., and all of these activities would look the same from afar.

D denied that he was texting, and officer never explained what created the appearance of texting as distinct from any one of the multiple other lawful uses of a cellphone by a driver. The government conceded that D was not texting that as he told the officer he was just searching for music. In reversing denial of motion to suppress five pounds of heroin found in spare tire, Court noted that "[n]o fact perceptible to a police officer glancing into a moving car and observing the driver using a cellphone would enable the officer to determine whether it was a permitted or a forbidden use." Court rejected the government's argument that the possibility of unlawful use of the cellphone is enough to create reasonable suspicion to justify a stop. Held, judgment reversed.

TITLE: Whitehead v. State
INDEX NO.: Z.4.d.
CITE: 698 A.2d 1115; 116 Md. App. 497 (Md. Ct. App. 1997)
SUBJECT: Pretextual Traffic Stop -- Improper Extension
HOLDING: Officer who used traffic violation as pretext for stopping D violated Fourth Amendment by detaining D for purpose of gaining basis, either by developing probable cause or obtaining consent, on which to search vehicle for drugs. Officer had drug-sniffing dog with him, and was mainly interested in drug trafficking, not traffic violations. After getting slightly different responses from driver and passenger about purpose of trip, officer ran number of checks on car and driver which yielded nothing suspicious. However, when he offered driver consent to search form, driver became nervous and refused consent. On basis of this response, officer detained driver and had dog scan car, resulting in discovery of cocaine. Court reiterated that while Whren v. U.S., 116 S. Ct. 1769 (1996) upheld use of pretextual traffic stops, officers still may not detain drivers longer than is necessary to issue citation or warning. Officers are bound by pretext they employ and may not deliberately engage in activities not related to enforcement of traffic laws in order to develop sufficient indicia of other illegal activity. Further, Court said that use of invocation of right to refuse consent to search as basis for further detention and search violated Fourth Amendment and found that other factors relied upon did not provide sufficient basis.

TITLE: Williams v. State
INDEX NO.: Z.4.d.
CITE: (1st Dist. 9/18/89), Ind. App., 543 N.E.2d 1128
SUBJECT: Vehicle stop - acquittal on traffic violation
HOLDING: Acquittal on charge of driving left of center, which formed basis for stopping D, does not require reversal of driving with .10% alcohol conviction resulting from stop. Evidence discovered following illegal stop of automobile is subject to exclusion as fruit of poisonous tree. Porter, App., 512 N.E.2d 454. However, D failed to preserve any error, since his motion to suppress did not specifically mention intoxilyzer results & he did not object to their admission at trial. Even had D preserved error, he would not prevail. Test for determining reasonableness of vehicle stop is whether facts known to police are sufficient to cause individual of reasonable of caution to believe that investigation was appropriate. Luckett, 284 N.E.2d 738. Officers have duty to stop & investigate when they perceive possible traffic hazard. Castle, App., 476 N.E.2d 522. Facts known to officer who stopped D were sufficient to justify stop, based on testimony that he observed D drive left of center twice. Sufficiency is not diminished by D's subsequent acquittal on driving left of center charge, since quantum of evidence necessary to support stop is less than that required to support conviction. Acquittal signifies only that state has not met this higher burden. Held, conviction affirmed.

RELATED CASES: Darringer, 46 N.E.3d 464 (Ind. Ct. App. 2015) (distinguishing Heien, Ct. concluded that stop of D's vehicle for not having temporary license plate affixed to its bumper was based on an unreasonable mistake of law, because 2013 statute allows for interim license plates to be displayed on the left side of the rear window of vehicle; see full review at Z.4.d)

Z. SEARCH AND SEIZURE

Z.4. Vehicles

Z.4.e. Duty to impound

TITLE: Caldwell v. State

INDEX NO.: Z.4.e.

CITE: (6/4/87), Ind., 508 N.E.2d 27

SUBJECT: Vehicles - duty to impound

HOLDING: Where D abandoned his vehicle & fled on foot, officers had duty to impound vehicle. Officers also had duty to inventory contents of vehicle upon arriving at police station. Items obtained during inventory were properly admitted into evidence. SD v. Opperman (1976), 428 U.S. 364, 96 S. Ct. 3092, 49 L.Ed.2d 1000; Deneal 468 N.E.2d 1029. D was charged with possession with marijuana based upon marijuana found in thermos in vehicle at time of inventory. Held, no error in admission of evidence.

TITLE: Cooper v. California

INDEX NO.: Z.4.e.

CITE: 386 U.S. 58 (1967)

SUBJECT: Vehicles-Duty to impound

HOLDING: Though lawful custody of car by police officers does not of itself dispense with constitutional requirements of searches thereafter made of car, reason for & nature of custody may constitutionally justify search. Here, D was arrested for drug offense & his car was seized by police officers pursuant to state statute allowing seizure of car used to transport narcotics. Car was kept for about a week after D's arrest & officer searched car without warrant at police station. Ct. held search was not unreasonable because car was held for forfeiture. Search was not unreasonable. Held, judgment affirmed. Warren, C.J., Brennan, Douglas, & Fortas, JJ., dissented.

TITLE: U.S. v. Duguay

INDEX NO.: Z.4.e.

CITE: F.3d 346 (7th Cir. 1996)

SUBJECT: Impoundment of Vehicle Not Necessary Where Arrestee Can Have It Removed

HOLDING: Police may not impound vehicle pursuant to arrest of recent occupant unless there is probable cause to hold it for investigation or arrestee is unable to provide for its speedy removal from public ways. Here, police arrested D after he exited a car driven by his girlfriend. Officers attempted to impound car, but the driver refused to hand over the keys. The officers arrested her for obstruction of justice and then impounded the car. Held, because the driver could have removed the car, impoundment was not necessary, and police could not arrest the driver for refusing to cooperate with impoundment and render impoundment necessary. Evidence found during inventory search after impoundment should have been suppressed.

Z. SEARCH AND SEIZURE

Z.4. Vehicles

Z.4.g. Containers (see Z.8)

TITLE: State v. Nixon

INDEX NO.: Z.4.g.

CITE: (1st Dist. 06/15/92), App., 593 N.E.2d 1210

SUBJECT: Search & seizure - containers within vehicles

HOLDING: Tr. Ct. erred in granting D's motion to suppress evidence obtained in warrantless search of her purse, discovered in warrantless search of car. D was passenger in car parked in area where numerous incidents of cocaine & marijuana dealing had been reported. Officer & confidential informant (CI) went to scene, & officer observed several individuals, including CI, approach car & talk to driver. Officer saw someone outside car reach into car & saw movements between driver & person outside. CI informed officer that he saw driver with what looked like small packages of white powder but saw no money present or exchanged. Eventually occupants were told to exit car, & both were patted down. No weapons or contraband were found on occupants, but search of car revealed purse belonging to D on front passenger floorboard. Without D's consent, officer searched purse & found plastic bags of marijuana. Officer observed no physical or direct involvement by D in any illegal activity. Ct. App. found Tr. Ct. erred in suppressing evidence, relying primarily on California v. Acevedo 500 U.S. 565, 111 S. Ct. 1982, 114 L.Ed.2d 619 (1991), for proposition that officers may conduct warrantless search of vehicle if supported by probable cause, & that search may extend to containers found within vehicle.

Z. SEARCH AND SEIZURE

Z.4. Vehicles

Z.4.h. Occupants

TITLE: A.A. v. State

INDEX NO.: Z.4.h.

CITE: (4/15/2015), 31 N.E.3d 1046 (Ind. Ct. App 2015)

SUBJECT: Lawful patdown search of passenger during traffic stop

HOLDING: Tr. Ct. did not err in admitting handgun seized during lawful patdown discovered during investigatory traffic stop. Police officer approached an already-stopped vehicle while investigating reported gunfire in the immediate area just minutes before and ordered A.A. out of the car. The vehicle had passed by the officer very slowly and driver behaved unusually in pulling off the road after rolling through a stop sign. During the stop, the nervousness and avoidance of eye contact exhibited by A.A.'s driver was directly related to the officer's question concerning the presence of firearms inside the vehicle. After a pat-down of the driver revealed that he was unarmed, officer was unable to confirm A.A.'s identity based on the information that he provided, so he conducted a protective patdown of A.A., which revealed handgun.

Court "generally" agreed that a driver's suspicious conduct and demeanor cannot be attributed vicariously as support for finding of reasonable suspicion as to other occupants of vehicle, but such an inquiry would be "heavily fact-sensitive." Here, investigation of possession of possible firearm concerned all the vehicle's occupants. And numerous articulable facts and circumstances supported a finding that officer was acting on reasonable suspicion when he patted down A.A. Officer acted reasonably and did not violate A.A.'s rights under the Fourth Amendment or Article 1, Section 11 of the Indiana Constitution. Held, true finding that D committed dangerous possession of firearm affirmed.

TITLE: Arizona v. Johnson

INDEX NO.: Z.4.h.

CITE: (U.S.) (01/26/09), 129 S. Ct. 781

SUBJECT: Traffic stops - pat-down frisk of passengers & questions unrelated to justification for stop

HOLDING: Police officers conducting traffic stops may order passengers out of vehicle and conduct a "pat-down" frisk in the absence of reasonable suspicion that passengers are engaged in criminal activity, as long as officers have reason to believe that the passenger may be armed and dangerous. Here, D was a back-seat passenger in a car stopped for an insurance-related traffic violation. The officers conducting the stop were gang investigators, and officer's conversation with D gave her reason to believe that he was a member of a violent street gang whose members were frequently armed. Officer asked D to get out of the car in order to question him further. Because officer suspected that D was armed, she immediately patted him down for safety when he exited the car and found a gun.

Court held that encounter was not "consensual," and officers who conduct routine traffic stops may frisk drivers and passengers they have lawfully detained if officers have reasonable suspicion that they may be armed and dangerous. Brendlin v. California, 127 S. Ct. 2400 (2007). The temporary seizure of driver and passengers ordinarily continues, and remains reasonable, for the duration of the stop. Normally, the stop ends when police have no further need to control the scene and inform the driver and passengers, they are free to leave. Here, nothing in officer's conversation with D would have suggested that he was free to leave, so he remained seized when officer conducted pat-down.

Following reasoning in Muehler v. Mena, 544 U.S. 93 (2005), Court also held that Fourth Amendment allows officers to ask questions about drugs or make other inquiries unrelated to the traffic violation justifying the initial stop. This does not "convert the encounter into something other than a lawful seizure," so long as the inquiries unrelated to the traffic stop "do not measurably extend the duration of the stop." Held, Arizona Court of Appeals' decision reversed and remanded.

NOTE: The Court in Johnson reaffirmed the general rule that, with the exception of occupants in automobiles that have been lawfully stopped, a valid investigatory "stop and frisk" requires: 1) reasonable suspicion that the person stopped is committed or has committed a crime; and, to proceed from a stop to a frisk, 2) reasonable suspicion the person stopped is armed and dangerous. Johnson, slip op. at 1. In other words, a police officer involved in a "consensual encounter" cannot take safety measures such as patting someone down even if they have reason to believe the person is armed and dangerous. See State v. Atkins, 834 N.E.2d 1028 (Ind. Ct. App 2005) (officer safety is always a legitimate concern, but standing alone it cannot form the basis for a valid investigatory stop; a lawful stop, based on objective facts and reasonable suspicion, is the predicate for a pat down); Briggs v. State, 873 N.E.2d 129 (Ind. Ct. App 2007) (since police officers' encounter with D was "consensual," Fourth Amendment was not implicated and they had no authority to restrict D's movement in any way); Malone v. State, 882 N.E.2d 784 (Ind. Ct. App 2008) (at time police officers seized gun from D, they did not have information leading them to believe D had been convicted of any crime, which could render him a serious violent felon or his possession of a weapon illegal).

TITLE: Conwell v. State

INDEX NO: Z.4.h.

CITE: (5th Dist.; 8-9-99), Ind. App., 714 N.E.2d 764

SUBJECT: Search of vehicle occupants - no probable cause; choke hold excessive force

HOLDING: Officer did not have probable cause, nor did exigent circumstances exist which would justify choking D. Continued detention beyond initial traffic stop must be supported by probable cause & authorized by one of recognized exceptions to warrant requirement. Minnesota v. Dickerson, 508 U.S. 366, 113 S. Ct. 2130, 124 L.Ed.2d 334 (1993). Probable cause exists when facts & circumstances at time of arrest would lead reasonably prudent person to believe that suspect is committing or has committed crime. Here, officer stopped D who was speeding through bad area of town. Upon ordering D out of car & handcuffing D, officer found probation card in D's wallet & observed D making a chewing motion. Because officer knew that in high crime areas people hide drugs in their mouths, he placed D in a choke hold for ten to fifteen minutes & sprayed him with mace twice. Fact that D was probationer in high crime area did not constitute probable cause to justify search of D's mouth for drugs.

Despite fact that majority of state & federal jurisdictions hold that police may use considerable force in order to prevent suspect from swallowing evidence, Ct. held that officer's use of choke hold was excessive force. Reasonableness of force used in body search must be measured against: (1) extent to which procedure used may threaten safety or health of individual, (2) extent of intrusion upon individual's dignitary interests in personal privacy & bodily integrity, & (3) community's interest in fairly & accurately determining guilt or innocence. Winston v. Lee, 470 U.S. 753, 105 S. Ct. 1611, 84 L.Ed.2d 908 (1966). First, choke hold is very dangerous, & there is great risk that D could have been seriously injured by procedure. Second, because procedure took approximately fifteen minutes, invasion of D's bodily integrity was great. Third, because there are less dangerous ways to obtain evidence, risk of danger & violation of D's bodily integrity outweighed need to preserve evidence. Thus, D's right to be free of unreasonable searches was violated by use of choke hold. Held, judgment reversed.

RELATED CASES: Gaines, 973 N.E.2d 1239 (Ind. Ct. App 2012) (*distinguishing Conwell*, Ct. held officer did not use unreasonable force by ordering D to spit out contraband under the threat of being Tased).

TITLE: Eaton v. State

INDEX NO.: Z.4.h.

CITE: (9/28/2018) 111 N.E. 3d 1039 (Ind. Ct. App 2018)

SUBJECT: Detention of passenger and search incident to arrest upheld

HOLDING: Following Tawdul v. State, 720 N.E.2d 1211 (Ind. Ct. App 1999), police officer lawfully ordered D-passenger back into car for brief period to address safety concerns during a traffic stop. Officer's placement of his hand on D's chest to keep him in vehicle did not entail excessive use of force and was a reasonable attempt to control D, who failed to comply with commands to stop moving and remain in car. D's act of pushing back against officer's hand and struggle to get out of car provided probable cause for his arrest for resisting law enforcement before the officer drew his weapon. Subsequent search of D's person incident to arrest, which resulted in discovery of unlicensed handgun did not violate Fourth Amendment. Held, judgment affirmed.

TITLE: Grier v. State
INDEX NO.: Z.4.h.
CITE: (06-21-07), Ind., 868 N.E.2d 443
SUBJECT: Choke hold - excessive force under Indiana Constitution
HOLDING: Tr. Ct. erred in denying D's motion to suppress evidence obtained by the application of physical force to his throat to prevent him from swallowing suspected bag of drugs. Ct. construes Ind. Const. art. 1, § 11 liberally in favor of protecting individuals from unreasonable intrusions on their privacy. State v. Gerschoffer, 763 N.E.2d 960 (Ind. 2002). In assessing reasonableness of a search or seizure under totality of circumstances, consideration must be given both to the interests of the individual affected & those of law enforcement. In particular, Ct. considers: 1) degree of concern, suspicion, knowledge that a violation has occurred; 2) degree of intrusion the method of search or seizure imposes on citizen's ordinary activities, & 3) extent of law enforcement needs. Litchfield v. State, 824 N.E.2d 356 (Ind. 2005).

In Conwell v. State, 714 N.E.2d 764 (Ind. Ct. App 1999), Ct. noted the application of force to a person's throat invaded the person's bodily integrity, posed great health & safety risks to the detainee, & also was likely to incite violent resistance, thus presenting additional risks to safety of both detainee & investigating officer(s). Further, the need of police to preserve evidence & to protect the person from harmful ingestion is relatively insubstantial, largely because person can be taken into custody where police can allow drugs to pass through his system or be absorbed into bloodstream, permitting evidence to be taken in a less harmful & violent manner. Danger of gagging or choking may also be alleviated by common therapeutic maneuvers that serve to expel throat obstructions.

Above analysis & general rule from Conwell, although resulting from a claim under Fourth Amendment, is equally compelled under Section 11. The application of force to a detainee's throat to prevent swallowing of suspected contraband violates constitutional prohibitions against unreasonable search & seizure. Held, transfer granted, Ct. App.' opinion at 855 N.E.2d 1043 vacated, denial of motion to suppress reversed.

TITLE: State v. Mendez
INDEX NO.: Z.4.h.
CITE: 970 P.2d 722 (Wash. 1999)
SUBJECT: Ordering Passengers Out of Stopped Vehicle
HOLDING: As a matter of state constitutional law, Washington Supreme Court rejects holding of Maryland v. Wilson, 519 U.S. 408 (1997), that officers can order passengers out of stopped vehicle without particularized concern about safety. For purposes of satisfying state constitutional requirement, this particularized concern need not rise to level of "reasonable suspicion." Types of factors which would warrant ordering passengers out of vehicle include "the number of officers, the number of vehicle occupants, the behavior of the occupants, the time of day, the location of the stop, traffic at the scene, affected citizens, or officer knowledge of the occupants."

TITLE: State v. Gay

INDEX NO.: Z.4.h.

CITE: 748 N.W.2d 408 (N.D. 2008)

SUBJECT: Failure to remove passenger's handcuffs after frisk violated Fourth Amendment

HOLDING: North Dakota Supreme Court held police officers who were initially justified in handcuffing a passenger to protect their safety during a vehicle stop violated the passenger's Fourth Amendment rights by failing to remove the cuffs after they frisked him and determined that he was not a threat. D was a passenger in a vehicle stopped by police after they received a tip that the driver, who was on probation, was in route to a drug deal. They put both occupants in handcuffs, frisked them for weapons, and advised them of their rights. D remained in handcuffs for about 15 minutes while the officer's dealt with the probationer. An officer then returned to D, readvised him of his interrogation rights, and elicited statements D sought to suppress. Majority acknowledged that the Fourth Amendment allows police to place a motorist in handcuffs during a vehicle stop when they have cause to be concerned about their safety. Majority emphasized, however, that one of the findings made by the Tr. Ct. was that officers kept D in cuffs after they had frisked him and after their concerns about their safety had dissipated. Court also held that the interrogation warnings D received were insufficient to purge his statements of the taint of the unconstitutional use of the handcuffs. Two justices dissented on basis that simply because frisk did not turn up weapon did not mean D no longer posed a threat to the officers.

TITLE: Tumblin v. State

INDEX NO.: Z.4.h.

CITE: (2nd Dist.; 10-11-00), Ind. App., 736 N.E.2d 317

SUBJECT: Vehicle occupants - inquiry & search for guns

HOLDING: Gun obtained by police during pat down search should have been suppressed as result of unlawful search. D was passenger in car which officer stopped for traffic violation. After issuing citation, officer asked if occupants had any guns or drugs & if he could search car. Occupants said they did not have any guns or drugs & agreed to allow officer to search car. Once D exited vehicle, officer performed pat down search because D was acting nervous & did not make eye contact. These facts did not create reasonable suspicion that D was armed & dangerous, & thus, officer's pat down search was general exploratory search that violated Fourth Amendment. In addition, officer admitted that before he asked whether D had guns, purpose of traffic stop was completed & D was free to go. Thus, vehicle in which D was passenger was unlawfully detained beyond parameters of routine traffic stop. Held, denial of motion to suppress reversed.

NOTE: Tumblin also holds that State waives suppression argument by not raising it at Tr. Ct. level.

RELATED CASES: Washington, 898 N.E.2d 1200 (under both federal and state constitutions, a police officer, without reasonable suspicion, can inquire as to possible further activity when a motorist is stopped for a traffic infraction; see full review at Z.7.a).

TITLE: Walls v. State

INDEX NO.: Z.4.h.

CITE: (4th Dist.; 8-20-99), Ind. App., 714 N.E.2d 1266

SUBJECT: Vehicle occupants may walk away from vehicle stop

HOLDING: When passenger of car that has been stopped by police officer exits car & begins to walk away, officer may not as matter of course order passenger to return to vehicle. Police officer can, without warrant or probable cause, briefly detain person for investigatory purposes if, based on specific & articulable facts together with rational inferences from those facts, officer has reasonable suspicion that criminal activity may be afoot. Officer may also order passengers to exit lawfully stopped car as precautionary measure for officer's safety. Maryland v. Wilson, 519 U.S. 408, 117 S. Ct. 882, 137 L.Ed.2d 41 (1997). However, fact that one turns away from police in high crime neighborhood is not sufficient to establish reasonable suspicion of criminal activity. Tumblin, App., 664 N.E.2d 783. Here, D who was passenger exited car & started walking away when officer stopped car for making left-hand turn without turn signal. Officer ordered D to stop because he questioned why person, who was merely passenger in car, would walk away from scene after car was stopped. Because officer testified that he had no reason to believe that D posed threat or danger to him, stopping D could not be justified as precautionary measure for safety reasons. In addition, because there were no specific or articulable facts before officer justifying reasonable suspicion that D had been engaging or was about to engage in criminal activity, officer could not stop D for investigatory purposes. Thus, Tr. Ct. erred in denying motion to suppress evidence found as consequence of illegal stop. Held, judgment reversed; Sullivan, J., dissenting on basis that it is reasonable for police officer to control movements of individuals during traffic stop, including ordering passengers to remain at lawfully stopped vehicles.

RELATED CASES: Harper, 922 N.E.2d 75 (Ind. Ct. App 2010) (agreeing with Tawdul, officer had authority to order passenger who was walking up to motel room back to car in order to assess the situation, but did not have reasonable suspicion to search bag and pat down passenger and driver after both complied with all of officer's requests); Tawdul, App., 720 N.E.2d 1211 (disagreeing with Walls, Ct. held police may detain passenger for reasonable time in order to determine officer safety).

Z. SEARCH AND SEIZURE

Z.5. Arrest Warrant

Z.5.a. When needed

TITLE: Kirk v. Louisiana

INDEX NO.: Z.5.a.

CITE: 536 U.S. 635, 122 S. Ct. 2458 (2002)

SUBJECT: Fourth Amendment, search, and seizure, warrant requirement, exclusionary rule, exigent circumstances

HOLDING: After observing several apparent drug deals from Kirk's apartment, the police entered the apartment and arrested and searched Kirk without a warrant. The state appeals court held that because the police had probable cause to arrest Kirk, and conducted the search incident to the arrest, a warrant was not needed and there was no need to decide whether exigent circumstances existed. The U.S. Supreme Court reversed in a per curiam opinion, holding that under Payton v. New York, 445 U.S. 573 (1980) the Fourth Amendment draws a "firm line at the entrance to the house" which "may not reasonably be crossed without a warrant" in the absence of exigent circumstances.

Z. SEARCH AND SEIZURE

Z.5. Arrest Warrant

Z.5.a.1. D's home (Welsh v. Wisconsin; Payton v. New York)

TITLE: Adkisson v. State
INDEX NO.: Z.5.a.1.
CITE: (5th Dist.; 5-18-00), Ind. App., 728 N.E.2d 175
SUBJECT: Resisting law enforcement - insufficient evidence; arrest warrant needed to enter home
HOLDING: Where officer unlawfully entered home without arrest warrant, there was insufficient evidence to support D's conviction for resisting law enforcement. Although U.S. Supreme Ct. in U.S. v. Santana, 427 U.S. 38, 96 S. Ct. 2406 (1976) held suspect may not defeat arrest which has been set in motion in public place by expedient of escaping to private place, police may not cause suspect to come into public view, i.e., threshold of home, & then invoke Santana to enter home without warrant. There is greater privilege to resist unlawful entry into private premises than to resist unlawful arrest. Casselman, App., 472 N.E.2d 1310. Here, officer knocked on D's door to question her about alleged battery. Although D refused to allow officer to enter home, she stood at threshold of home & answered questions. Eventually, D attempted to close door, but officer placed his foot in door & told her that she was under arrest for battery. D retreated into her home. When officer followed her into home, she pushed officer down & ran out of home. Because officer caused D to come into public view by knocking on door to ask her questions & because no exigent circumstances existed, officer acted unlawfully when he forcibly entered D's residence to arrest her. Thus, officer was not lawfully engaged in execution of his duties as law enforcement officer. Because officer's means of effectuating arrest were unlawful, D had right to resist arrest. Held, conviction reversed.

Note: This case can be used to support argument that D has right to resist arrest when police use excessive force in effectuating arrest.

RELATED CASES: Jean-Baptiste, 71 N.E.3d 406 (Ind. Ct. App 2017) (a law enforcement officer who attempts to effect a civil arrest warrant is not "lawfully engaged in the execution of [his] duties" where, as here, he reaches across the threshold of a D's residence without permission or other legal justification and grabs D; see full review, this section aff'd____/____); Harper, 3 N.E.3d 1080 (2014) (officer's use of "ruse" to enter D's home is equivalent of the Adkisson's officer's decision to place his foot in doorway to prevent her from closing door; see full review at K.6.j); S.E., 744 N.E.2d 536 (App.) (evidence was insufficient to sustain Tr. Ct.'s finding of delinquency based on resisting law enforcement charge, because police officers who forcibly entered D's home were not lawfully engaged in execution of their duties).

TITLE: Cox v. State

INDEX NO.: Z.5.a.1.

CITE: (6-26-98), Ind., 696 N.E.2d 853

SUBJECT: Warrantless knock & arrest - threshold of home; federal constitutional analysis

HOLDING: In appeal of murder conviction, D argued that incriminating statements he made at police station should have been suppressed under fruit of poisonous tree doctrine because of unconstitutional warrantless arrest at his home. Under Payton v. New York, 445 U.S. 573, 100 S. Ct. 1371, 63 L.Ed. 639 (1980), police are not permitted to break threshold of home in order to make warrantless arrest, absent exigent circumstances. Under United States v. Santana, 427 U.S. 38, 96 S. Ct. 2406, 49 L.Ed. 2d 300 (1976), if police spot suspect & identify themselves when suspect is in view, they may pursue her into home to complete arrest. Unresolved questions are whether police may cause suspect to come into public view & then invoke Santana to invade home, & whether glass or screen door may be breached to drag suspect out. Here, D argued that police unconstitutionally crossed threshold of his home by opening screen door, forcibly preventing him from closing front door, & reaching into house to pull him out.

In Santana, Ct. did not hold that threshold of home was public place under Fourth Amendment per se. Opening door of home is not invitation to enter, but rather is common courtesy which entails ability to exclude those who are knocking, particularly where intervening screen or storm door remains closed. Although D makes plausible claim that warrant is required for suspect who responds to knock & then refuses entry, issue is of no moment to resolution of this case. Even if arrest was violation of federal constitution, D's statements to police were admissible because police had probable cause to arrest him. New York v. Harris, 495 U.S. 14, 110 S. Ct. 1640, 109 L.Ed.2d 13 (1990). Held, conviction affirmed.

RELATED CASES: Henderson, 769 N.E.2d 172 (D's subsequent statement in police custody was not rendered inadmissible by illegal warrantless home entry).

TITLE: Jean-Baptiste v. State
INDEX NO.: Z.5.a.1.
CITE: (2/24/2017), 71 N.E.3d 406 (Ind. Ct. App 2017), *sum aff'd* 82 N.E.3d 878
SUBJECT: Resisting law enforcement - right to reasonably resist officer's unlawful crossing of home's threshold
HOLDING: A law enforcement officer who attempts to effect a civil arrest warrant is not "lawfully engaged in the execution of [his] duties" where, as here, he reaches across the threshold of a defendant's residence without permission or other legal justification and grabs the defendant. Casselman v. State, 472 N.E.2d 1310 (Ind. Ct. App 1985). Legislature recently reaffirmed its commitment to the Castle Doctrine as the policy in Indiana. See Ind. Code § 35-41-3-2(a) and 35-41-3-2(i) (permitting a person to exercise reasonable force to prevent or terminate an unlawful entry by a public servant into his home).

Here, officer attempting to serve a civil arrest warrant on Defendant was outside the residence while Defendant was inside the residence when officer, without permission or other legal justification, reached across the threshold and grabbed Defendant. Defendant pulled away, so officer entered the home and placed him in custody. As the officer was not lawfully engaged in the exercise of his duties, as a matter of law Defendant had the right to reasonably resist him, and State failed to present sufficient evidence to support Defendant's resisting law enforcement conviction. Held, judgment reversed.

TITLE: McClish v. Nugent

INDEX NO.: Z.5.a.1.

CITE: 483 F.3d 1231 (11th Cir. 2007)

SUBJECT: Warrant needed to arrest person who opens door to home

HOLDING: Eleventh Circuit Court of Appeals held the Fourth Amendment rule that police need a warrant to arrest someone in his home applies even where the suspect exposes himself to public view by voluntarily opening his door in response to police knocks. State and federal courts across the country are divided on the issue. In a civil rights lawsuit, Court used opportunity to also take a position on a circuit-splitting issue related to the rule from Heck v. Humphrey, 512 U.S. 477 (1994), that requires dismissal of civil rights actions that call into question the validity of a criminal conviction.

In Payton v. New York, 455 U.S. 573 (1980), U.S. Supreme Court held that police must have a warrant before entering a suspect's home to arrest him. However, in United States v. Santana, 427 U.S. 38 (1976), the court held that an individual who was voluntarily standing in the open doorway of her home was outside rather than inside the home for purposes of the Fourth Amendment. Santana concluded that such an individual has knowingly exposed himself to "public view, speech, hearing, and touch" just as if he were standing outside, in a public place.

Court here disagreed with other circuits applying Santana in situation where individual answers officers' knock by opening the door, e.g., U.S. v. Vaneaton, 49 F.3d 1423 (9th Cir. 1995); McKinnon v. Carr, 103 F.3d 934 (10th Cir. 1996). Court here emphasized that Santana was decided before Payton and is primarily a "hot pursuit" case. More specifically, Court noted that in one of the consolidated cases addressed in Payton, the D was visible to the officers on the doorstep after a family member had opened the door. Moreover, in Kyllo v. U.S., 533 U.S. 27 (2001), Supreme Court described Payton as establishing a bright-line rule that "any physical invasion of the structure of the home, 'by even a fraction of an inch,' [is] too much."

TITLE: Mowrer v. State

INDEX NO.: Z.5.a.1.

CITE: (4th Dist. 4/19/83), Ind. App., 447 N.E.2d 1129

SUBJECT: Arrest warrant - D's home; hotel room is transitory home

HOLDING: Where D had spent night & eaten meal in hotel room, room was home for 4th Amend purposes. (Cites omitted.) Hotel room did not cease to be home because D conducted business from it. Here, police received 2 tips from different informants that Jerry Mowrer would arrive in Indianapolis from CA, stay in plush hotel near airport & sell drugs to Roy Burger of Jasper, IN. Police located D by checking hotel registers. For 12 hours, police watched D's room at Hyatt. Police observed D leave room & reenter with 2 men. Next time door opened, police burst into room, arrested & searched D. Police then obtained search warrant. LSD & diazepam tablets were found in D's suitcase. Ct. finds D's convictions must be overturned because his warrantless arrest in hotel room was illegal. Also, affidavit used to secure warrant did not satisfy Aguilar or Spinelli. Thus, search warrant was invalid & evidence found in D's room & suitcases should have been suppressed. Held, reversed. DISSENT by Conover would hold arrest legal because (1) D had no expectation of privacy once occupants opened door & (2) hotel room was a place of business, not a home. Conover would hold search lawful because evidence indicates statements in affidavit were independently verified.

RELATED CASES: Haley, App., 696 N.E.2d 98 (D may have reasonable expectation of privacy in tent).

TITLE: Payton v. New York

INDEX NO.: Z.5.a.1

CITE: 445 U.S. 573, 100 S. Ct. 1371, 63 L.Ed.2d 639 (1980)

SUBJECT: Arrest warrant - When needed - D's home

HOLDING: Fourth Amendment prohibits police from making warrantless & nonconsensual entry into suspect's home in order to make routine felony arrest. Physical entry of home is chief evil against which wording of Fourth Amendment is directed. Fourth Amendment has drawn firm line at entrance to house. Absent exigent circumstances, that threshold may not be reasonably crossed without warrant. For Fourth Amendment purposes, arrest warrant founded on probable cause implicitly carries with it limited authority to enter dwelling in which suspect lives when there is reason to believe suspect is within. Reasons for upholding warrantless arrests in public place contained in U.S. v. Watson, 423 U.S. 411, do not apply to warrantless invasions of privacy of home. Held, judgment reversed & remanded. Blackmun, J. concurred. White, J., & Burger, C.J., dissented. Rehnquist, J., dissented.

TITLE: State v. Blake

INDEX NO.: Z.5.a.1.

CITE: (1st Dist. 9/17/84), Ind. App., 468 N.E.2d 548

SUBJECT: Arrest warrant - D's home

HOLDING: Tr. Ct. erred in granting D's motion to suppress evidence obtained pursuant to D's arrest for resisting law enforcement & DWI. Here, police clocked car traveling 74 in a 55. Police pursued car with red lights & siren. Car increased speed to 90 mph. Police followed car into trailer park & ordered 5 occupants to stop as they got out of car. D entered his mobile home. Officer followed him & arrested D for resisting. Officer brought D outside, verified his status as driver, smelled alcohol on his breath, gave him chemical test (.18%), charged him with DWI & gave him speeding citation. Officer can arrest for misdemeanor (resisting) committed in presence. Ind. Code 35-44-3-3. Ct. finds officer had probable cause to believe D was driving fleeing car. Armed with probable cause, officer could pursue D into private place to effect arrest, under common law theory of hot pursuit. Ind. Code 35-33-3-5. Ct. distinguishes Welsh v. WI (1984), U.S., 104 S. Ct. 2091, 80 L.Ed.2d 732, based on officer's "immediate & continuous pursuit ... from scene of crime." In Welsh, officer entered D's home without warrant on third party information to arrest D for non-jailable civil infraction (DUI). Exigency distinguishes case from Payton v. NY. Ct. cites cases from other jurisdictions upholding home entry in similar situations, including US v. Santana (1976), 427 U.S. 38, 96 S. Ct. 2406, 49 L.Ed.2d 300. Held, reversed.

RELATED CASES: Lander, 762 N.E.2d 1208 (D's warrantless arrest in his home was proper because police officers conducting arrest had both probable cause & valid consent from D's father to be inside D's home); Phillips 492 N.E.2d 10 (Arrest 68.5(1,7); where police were given valid & voluntary consent to enter D's home (by mother with whom he lived), arrest of D without warrant was proper).

TITLE: State v. Smith
INDEX NO.: Z.5.a.1.
CITE: 208 Ariz. 20, 90 P.3d 221 (Ariz. Ct. App. 2004)
SUBJECT: Reason to Believe Target of Arrest Warrant is in Home
HOLDING: Arizona Court of Appeals holds that the 4th Amendment rule, set out in Payton v. New York, 445 U.S. 573 (1980), that police officers must have "reason to believe" that subject of arrest warrant is in a particular home before they may enter it, requires a level of "reasonable believe similar to that required to support probable cause."

TITLE: United States v. Reeves

INDEX NO.: Z.5.a.1.

CITE: 524 F.3d 1161 (10th Cir. 2008)

SUBJECT: Payton v. New York violated where D emerged from home due to police harassment

HOLDING: Tenth Circuit Court of Appeals held D was subjected to a de facto warrantless arrest in his home, in violation of Fourth Amendment, when he emerged from his home at the request of officers who made telephone calls to his home and repeatedly knocked at his door in the wee hours of the morning. In Payton v. New York, 445 U.S. 573 (1980), U.S. Supreme Court decided that "the Fourth Amendment has drawn a firm line at the entrance to the house," and it established a general rule that police must have a warrant to arrest someone in his or her home. Court noted that although the arresting officers remained outside D's residence, it is the location of the arrested person, not the officers, that determines the place of arrest for Payton purposes. Although there was no direct evidence that the officers ordered D to open the door, their actions amounted to such a command.

TITLE: Welsh v. Wisconsin

INDEX NO.: Z.5.a.1.

CITE: 466 U.S. 740, 104 S. Ct. 2091, 80 L.Ed.2d 732 (1984)

SUBJECT: Arrest warrant - When needed - D's home

HOLDING: Warrantless, nighttime entry of D's home to arrest him for civil, nonjailable traffic offense, was prohibited by special protection afforded individual in his home by Fourth Amendment. Before agents of government may invade sanctity of home, burden is on government to demonstrate exigent circumstances that overcome presumption of unreasonableness that attaches to all warrantless home searches. Important factor to be considered when determining whether any exigency exists for making warrantless arrest is gravity of underlying offense. In context of home entry, application of exigent circumstances exception to arrest warrant requirement should rarely be sanctioned when there is probable cause to believe that only minor offense has been committed. Here, individual's warrantless arrest could not be justified on basis of "hot pursuit" doctrine since there was no immediate or continuous pursuit of individual from scene of crime. Nor could arrest be justified on basis of threat to public safety, since individual had already arrived home after he had abandoned car at scene of accident. Finally, individual's arrest could not be justified as necessary to preserve evidence of individual's BAC, even assuming underlying facts would have supported finding that exigent circumstance, given fact that State had chosen to classify first offense for OVWI as noncriminal. Held, judgment vacated & remanded. Blackmun, J. & Burger, C.J., concurred. White & Rehnquist, JJ. dissented.

RELATED CASES: Stanton v. Sims, 134 S. Ct. 3 (2013) (Welsh did not establish categorical rule that officers could never enter a home without a warrant to search for suspect for a minor offense).

Z. SEARCH AND SEIZURE

Z.5. Arrest Warrant

Z.5.a.2 Third Party Home

TITLE: Duran v. State

INDEX NO: Z.5.a.2.

CITE: (06-30-10), 930 N.E.2d 10 (Ind. 2010)

SUBJECT: Unlawful entry into third party's home

HOLDING: On interlocutory review, Indiana Supreme Court ruled that Tr. Ct. should have granted D=s motion to suppress because uncorroborated information from anonymous source mistakenly identifying suspect's apartment as apartment with a green door did not provide reasonable belief under federal or state constitution that suspect resided in that apartment and could be found in the apartment at that time. Court also found that under the Indiana Constitution, the degree of intrusion of officers' actions - shattering D's door in the middle of the night and drawing weapons on D - was of the highest order. See Litchfield v. State, 842 N.E.2d 356, 360 (Ind. 2005). Degree of intrusion was not reduced by possibility that police might have ended up breaking down D's door even if they had more reliable information or had obtained a warrant because degree of intrusion is viewed from perspective of occupants or owners of residence. "All citizens have a very strong interest in protecting the sanctity of the home from unannounced midnight invasions." Cf. Johnson v. United States, 333 U.S. 10, 14 (1948) (assuming sufficient evidence exists to issue a warrant justifies warrantless search "would reduce the Fourth Amendment to a nullity and leave the people's home secure only in the discretion of police officers.")

Here, officers tried to execute arrest warrant for Nelson Hernandez at address listed on warrant, but Hernandez's mother told officers that Hernandez had moved to "the Harbor," a different part of East Chicago. Later that night, officers spoke to another officer, who said he had dropped off Hernandez at 2001 Broadway, an address within the Harbor. The officer had driven Hernandez from the hospital after he was released with a full leg cast resulting from an accident that ended a police chase. Sometime after midnight, the officers tried to serve the warrant at 2001 Broadway, a small building housing several apartments and a tavern, but the exterior door was locked, and officers had no information about which apartment was Hernandez's apartment. Sometime later, an unidentified man emerged from the building. After officers showed him a picture of Hernandez, the man directed officers to an upstairs apartment with a green door.

After knocking on green door for several minutes and hearing noises in the apartment, officers broke down D's door, entered his apartment, and held him at gunpoint. Hernandez was not in the apartment. The officers found cocaine, and D was later charged with class A felony dealing in cocaine and class C felony possession of cocaine. Held, transfer granted, Court of Appeals' opinion at 909 N.E.2d 1101 vacated, denial of motion to suppress reversed. Shepard, C.J., concurring in result with separate opinion.

RELATED CASES: Carpenter, 974 N.E.2d 569 (Ind. Ct. App 2012) (officers had legitimate reason to be on D's property and curtilage and had reason to believe subject of arrest warrant was present when they attempted to serve it); Foster, 950 N.E.2d 760 (Ind. Ct. App 2011) (balancing Litchfield factors, Ct. found warrantless entry and in-home arrest was unreasonable and violated Indiana Constitution; while police

had a high degree of concern that a violation occurred, the degree of intrusion was also high, and law enforcement needs did not require a warrantless entry).

Z. SEARCH AND SEIZURE

Z.5. Arrest Warrant

Z.5.b Requirements for obtaining Arrest Warrant

Z.5.b.1. Probable cause

TITLE: Kinnaird v. State

INDEX NO.: Z.5.b.1.

CITE: (12-17-68), Ind., 242 N.E.2d 500

SUBJECT: Arrest warrant - Requirements for obtaining - Probable cause

HOLDING: Mere allegation, without more, that D whose arrest is sought has committed crime is insufficient basis upon which to issue arrest warrant. Affidavit will be deemed sufficient if allegation supported by enough underlying facts and circumstances to allow neutral and detached magistrate to draw conclusion as to existence of probable cause. Here, affidavit merely stated conclusion of affiant and did not represent independent determination of neutral and detached magistrate. Held, judgment reversed and remanded. Arterburn, J., dissented.

TITLE: State v. Belt

INDEX NO.: Z.5.b.

CITE: 285 Kan. 949, 179 P.3d 443 (Kan. 2008)

SUBJECT: Arrest warrant based on DNA failed to adequately describe DNA profile

HOLDING: Kansas Supreme Court held a "John Doe" arrest warrant based on a perpetrator's DNA profile failed to adequately describe DNA profile for the warrant to toll the limitations period. Court threw out seven cases filed against an accused serial rapist saying that a warrant's referencing of a DNA autoradiograph on file with the FBI and its identification of loci on the DNA molecule where unique variations occurred were not specific enough to satisfy the particularity requirements of the Fourth Amendment and the state's statute governing the issuance of arrest warrants. D was charged with seven rapes committed between 1989 and 1997. Although suspicion had focused on D as early as 1991, the state lab mislabeled DNA samples sent to the FBI, which resulted in a mistaken exclusion of D as a possible perpetrator. In 2002, police got a break when D was arrested for capital murder, and his DNA matched the profiles for the rapes. D, however, was able to get some of the cases thrown out after he presented expert testimony that the coded references to the DNA loci in the warrants and supporting materials merely described places on the human DNA molecule rather than variations in his DNA. Court looked to decisions in California and Wisconsin that concluded that warrants that describe the people to be arrested by their unique DNA profile, or by incorporating by reference affidavits containing such profiles, were sufficient to satisfy both the Fourth Amendment's particularity requirement and the identification requirements of applicable state statutes. Court "did not disagree" with this approach "in the abstract"; nevertheless, it stressed that, in this case, "neither the John Doe warrants nor the affidavits supporting them set forth the unique DNA profile of their subject." The infirmity in the warrants was not the sort of "mere technical irregularity" that state statutes allow a court to overlook. "The infirmity was a near complete lack of identifying information." Court also noted that perpetrator's unique DNA profile was known to state authorities and that there was no reason they could not have particularly described it in the warrants or their supporting affidavits. Nor does the fact that the profile would need to be verified scientifically once D was seized "eliminate the need for this baseline to be drawn in the warrant in the first place. The affidavits references to unattached, unsworn, extrinsic evidence were insufficient to fulfill the constitutional and statutory requirements and cure the defective warrants."

TITLE: Stickrod v. State

INDEX NO.: Z.5.a.2.

CITE: (8/3/2018), 108 N.E.3d 385 (Ind. Ct. App 2018)

SUBJECT: Home entry to execute arrest warrant did not violate Fourth Amendment

HOLDING: Police officers' entry into D's house did not violate the Fourth Amendment, and trial court did not err in admitting evidence discovered on his person after entering the house. Officers were at the home to execute warrants to arrest D for failing to appear at court hearings in two criminal cases. D's mother owned the house, but one of the officers knew D lived there because he had arrested D at that address a few weeks before this incident. A light was on in D's bedroom. D's girlfriend answered the door and said D was not home, but she had previously lied to the officer about D's whereabouts. As they talked, the officer heard a "thud" coming from the attached garage where officer had found D hiding during the prior arrest. Distinguishing Duran v. State, 930 N.E.2d 10 (Ind. 2010), Court held there was "ample reason to believe" that D lived at the house and was present in that house on the night of the incident at issue.

Court also rejected D's comparisons of the criminal arrest warrants with the civil writs at issue in Casselman v. State, 472 N.E.2d 1310 (Ind. Ct. App 1985). Casselman was a D in a civil suit subject to a writ of attachment, but D was on probation in two criminal cases when he failed to appear in court. Held, judgment affirmed in part, reversed and remanded in part on other grounds.

TITLE: United States v. Shaw

INDEX NO.: Z.5.b.1.

CITE: 464 F.3d 615 (6th Cir. 2006)

SUBJECT: Probable cause not established by mom's child abuse allegation

HOLDING: The Sixth Circuit U.S. Court of Appeals held that a mother's report to police that her three-year-old had made statements indicating that he had been sexually abused by a relative did not furnish police with probable cause to arrest the person named by the child. In the absence of any corroboration of the child's statements, a second-hand report of what the child said was not enough to satisfy the Fourth Amendment's probable cause requirement. The issue arose from D's challenge to the admission of evidence from his post-arrest confessions to molesting his cousin's children. A medical examination produced no physical signs of trauma or sexual penetration, but the hospital personnel alerted police to the mother's report. Investigators located the D and brought him in for questioning in circumstances the majority decided qualified as an arrest. After recognizing that victims' and eyewitnesses' uncorroborated statements have generally been deemed sufficient to establish probable cause, the majority noted, "We are not aware, however, of any situation in which the uncorroborated hearsay statement of a child as young as three, standing alone, has been considered sufficient to establish probable cause." The problem in not interviewing the child in this case was that the hearsay statement of the young child was "not sufficiently trustworthy to justify the seizure." The majority noted it was not establishing a rule that the child must be interviewed in every sexual abuse case before making an arrest or that an accusation of child molestation reported by parents will never suffice to establish probable cause. "We hold only that the mother's bare-bones hearsay accusation in this case, with no corroborating evidence, did not suffice to establish probable cause, and that the ensuing arrest was therefore unlawful." The majority opinion noted it believed the district court's ruling was based more on the type of crime involved and difficulty in detecting such crimes and stated it would not "carv[e] out what would amount to an exception to the probable-cause requirement in child molestation cases."

Z. SEARCH AND SEIZURE

Z.5. Arrest Warrant

Z.5.b.3. Staleness

TITLE: Bell v. State

INDEX NO.: Z.5.b.3.

CITE: (3rd Dist., 7-15-75), Ind. App., 330 N.E.2d 752

SUBJECT: Arrest Warrant - Staleness

HOLDING: Ct. ruled warrant not stale even though officer relied information received 30 days prior to arrest. Information relied upon to support issuance of search warrant, acquired day before D's arrest for possession of marijuana and related equipment, constituted proper basis for finding of probable cause. No testimony was presented contradicting officer's statement in affidavit that he witnessed sale of marijuana at residence of D on day he submitted affidavit supporting issuance of warrant. Held, judgment affirmed.

RELATED CASES: Bedford v. U.S. 519 F.2d 650 (7th Circ. 1975) (evidence was admissible when seized with search warrant executed 8 days after being issued, even though "forthwith" was on warrant; although searches made with stale search warrants are void, search here was valid.) Jones, App., 324 N.E.2d 828 (warrant based on information 4-18 days old deemed not stale; while prompt action is necessary for movable or destructible objects, evidence was not so stale in this case as to require exclusion.) Raymer, 482 N.E.2d 253 (lapse of three days between receipt of information upon which affidavit supporting search warrant based and execution of affidavit did not render information too stale to support finding of probable cause. Stale information only gives rise to mere suspicion, and not reasonable belief, especially when items to be obtained in search are easily concealed and moved).

Z. SEARCH AND SEIZURE

Z.5. Arrest Warrant

Z.5.c. Service

Z.5.c.1. Execution of warrant - in general (Ind. Code 35-33-2-3)

TITLE: Robinson v. State

INDEX NO.: Z.5.c.1.

CITE: (5/30/89), Ind., 538 N.E.2d 932

SUBJECT: Civil attachment - authority of officers

HOLDING: Tr. Ct. did not err in permitting officers to testify concerning their entry into D's home to serve civil body attachment. D had appeared in municipal Ct. several times in conjunction with complaints filed against him for health & environmental code violations. When he failed to respond to another summons, civil body attachment issued. Officers arrived at D's home, knocked & announced that they were police officers. When they received no reply, they were instructed to enter D's home & serve attachment. While doing so, 2 officers were wounded by D's gunfire, & D was charged with resisting arrest. D argues that officers had no authority to forcefully enter his home to execute civil attachment, *citing Casselman*, App., 472 N.E.2d 1310. In *Casselman*, Ct. App. correctly noted that civil attachment statute, Ind. Code 34-4-9-2.1, did not specifically authorize breaking & entering, as does criminal arrest warrant statute at Ind. Code 35-33-2-3(b). However, civil statute authorizes officer to serve writ & take subject into custody, & Ind. S. Ct. finds that legislature intended to empower officer to carry out these duties. Held, conviction affirmed. Shepard, J., CONCURS IN RESULT; DeBruler, J., DISSENTS.

TITLE: U.S. v. Albrektsen
INDEX NO.: Z.5.c.1.
CITE: 151 F.3d 951 (9th Cir. 1998)
SUBJECT: Execution of Arrest Warrant -- Entry Not Required
HOLDING: Where D answered door of motel room where police knocked to serve warrant, officer's entry into apartment and subsequent search were unlawful. Entry was not required in order to serve arrest warrant, nor was entry lawful as part of search incident to arrest, since it went far beyond D's person and area within his immediate control.

Z. SEARCH AND SEIZURE

Z.5. Arrest Warrant

Z.5.c.3. Knock and Announce (Ind. Code 35-33-2-3-(b))

TITLE: Mazepink v. State

INDEX NO.: Z.5.c.3.

CITE: 987 S.W.2d 648 (Ark. 1999)

SUBJECT: Knock & Announce - Standing to Challenge

HOLDING: A person need not have been home at the time of a police entry to assert a violation of the knock-and-announce requirement for serving a search warrant. Testimony showed that officers knew that D was not home when they served warrant, but that co- D and her daughter were home. Officers knocked on door and shouted "police, search warrant," then waited 2 -3 seconds and broke open the door with a battering ram. They testified that this was their routine manner of executing "drug" warrants. The state argued that D lacked standing to challenge the execution of the warrant because he was not home when it was executed. The Arkansas S. Ct. rejected this argument, holding that an individual's legitimate expectation of privacy in his home extends to his family and invitees, and ss not affected by his absence from the home. Turning to the merits of D's challenge to execution of the warrant, the Court held that technical compliance with the knock-and-announce requirement means nothing if police do not give occupants a reasonable time to admit them. The state further argued for a more limited remedy than exclusion of drugs and paraphernalia found during the search, but the Court held that exclusion is "the only practical remedy for such police misconduct."

TITLE: State v. Kubit
INDEX NO.: Z.5.c.3.
CITE: 627 N.W.2d 914 (Iowa 2001)
SUBJECT: Arrest Warrant - No Entry Where D Arrested on Threshold
HOLDING: The Iowa Supreme Court has held that an arrest warrant does not authorize officers to enter a residence when the target can be arrested on the threshold. Fact that residence was motel room rather than private home did not matter.

TITLE: United States v. Banks
INDEX NO.: Z.5.c.3.
CITE: 540 U.S. 31 (2003)
SUBJECT: Search warrants, knock and announce
HOLDING: Serving a search warrant for cocaine, police officers arrived at Banks' apartment, called out "police search warrant," and knocked loudly on the door. Banks, who was in the shower at the time, did not respond (and later testified that he did not hear the police), and after 15-20 seconds the police broke open the front door with a battering ram. The search turned up cocaine and weapons. Banks moved to suppress the evidence obtained in the search, arguing that in serving the warrant, the officers waited an unreasonably short time before forcing the door, in violation of the Fourth Amendment.

Although "the common-law knock and announce principle is one focus of the reasonableness enquiry," Wilson v. Arkansas, 514 U.S. 927 (1995), officers are not required to knock and announce their presence at all in cases where they have a reasonable suspicion that it would be dangerous or futile or would permit the destruction of evidence. Richards v. Wisconsin, 520 U.S. 385, 394 (1997). In those exigent circumstances, the police may damage the premises to the extent necessary to enter without knocking, U.S. v. Ramirez, 523 U.S. 65, 70-71 (1998).

In Ramirez the warrant expressly authorized a no-knock entry. In this case, the prosecution argued that the exigency arose after the warrant was issued: when the police knocked and announced their intent, Banks could have responded by destroying evidence, flushing the cocaine down the toilet. The decisive issue in this case is whether it was reasonable for the police to suspect that loss of the evidence was imminent after waiting 15 to 20 seconds after knocking and announcing their presence. The U.S. Supreme Court held, 9-0, that considering the totality of the circumstances, under the facts of this case, a 15 to 20 second delay between the officers' knocking and announcing their intent and forcing an entry was reasonable.

The government also argued that police officers' need to damage property in order to enter and execute a search warrant should not be part of the analysis of whether the entry was reasonable, a view the Court rejected: "One point in making an officer knock and announce [is] to give a person inside the chance to save his door."

TITLE: United States v. Collins

INDEX NO.: Z.5.c.3.

CITE: 510 F.3d 697 (7th Cir. 2007)

SUBJECT: Circumstances did not justify 'emergency' entry without a warrant

HOLDING: Seventh Circuit Court of Appeals held law enforcement did not have the justification required by the Fourth Amendment to make a warrantless entry of a suspected "drug house" after they knocked on the door, waited 20 seconds, and heard the sounds of movement and someone saying, "The police are at the door." Rather than treating the case as one in which the officers were deemed to have manufactured their own exigent circumstances, Court concluded that the circumstances did not establish an emergency. Court was willing to assume that the officers, at some point, would be reasonable in inferring from the failure to answer the door that the people they knew were inside might be busy destroying evidence or arming themselves to violently resist entry by the police. Court also acknowledged that the U.S. Supreme Court suggested the police need not hold off for more than 15 or 20 seconds. See U.S. v. Banks, 540 U.S. 31 (2003). Seventh Circuit itself has upheld a delay of as little as seven seconds before a forced entry. In present case, however, Court noted officers had time to obtain a warrant and no reason to believe that anyone inside was aware of their investigation before they knocked. Unlike other circuits, Court did not address issue in terms of police "manufacturing" exigency, noting that the "manufacturing metaphor is misleading." Instead of treating the officers' actions before the entry as misconduct, Court discussed them in terms of a legitimate gamble by investigators. Court noted that the police had the time to initiate the warrant process and that, "if something happened before the warrant was issued to create a grave concern about the possible destruction of evidence they could have moved in at once." "It is the fact that nothing happened, rather than the 'manufacture of exigent circumstances,' that undermines the government's position."

TITLE: U.S. v. Dice

INDEX NO.: Z.5.c.3.

CITE: 200 F.3d 978 (6th Cir. 2000)

SUBJECT: Knock & Announce & Hasty Entry Triggers Exclusionary Rule

HOLDING: Sixth Circuit refuses to create exception to exclusionary rule where police serving search warrant knock and announce but do not wait reasonable period before forcibly entering residence. Government argues that failure to wait is not as egregious as failure to knock and announce, but Court finds waiting to be integral part of knock-and-announce requirement. Interests served by rule, including reducing potential for violence caused by forcible entry of dwelling, curbing needless destruction of property, and protecting right of privacy inside home, are all contravened by failure to wait as well as by failure to knock and announce. Government also argues that because officers had a valid warrant when they violated the knock-and-announce rule, the independent source doctrine should render evidence found on entry admissible. Court rejects this argument, as well, reasoning that independent source doctrine applies only in cases where there is a second, properly conducted search, not where a valid warrant is illegally executed in a single search.

Z. SEARCH AND SEIZURE

Z.6. Warrantless Arrest

TITLE: Atwater v. Lago Vista

INDEX NO.: Z.6.

CITE: 532 U.S. 318, 121 S. Ct. 1536, 149 L.Ed.2d 549 (2001)

SUBJECT: Warrantless arrest, traffic offense, Fourth Amendment

HOLDING: Fourth Amendment does not prohibit warrantless arrest for a minor criminal offense, even one so minor that it carries only a fine and not a jail sentence. The petitioner in this case was arrested by a Lago Vista police officer for driving with her seatbelt unfastened, a minor traffic offense which, under Texas law, was a crime carrying no jail time. She filed suit under 42 U.S.C. § 1983 alleging that her Fourth Amendment rights were violated by the warrantless arrest. If an officer has probable cause to believe that an individual has committed even a minor criminal offense, he may arrest the offender.

TITLE: U.S. v. Alarcon-Gonzalez
INDEX NO.: Z.6.
CITE: 73 F.3d 289 (10th Cir. 1996)
SUBJECT: Order to Freeze Made Encounter Seizure
HOLDING: Workplace encounter that officers intended as consensual became seizure when officer ordered one individual to “freeze.” Officers operating on tip that roofing company hired illegal aliens went to worksite intending to initiate consensual encounters with workers. However, when one officer spotted roofing worker holding roofing tool, he ordered him to freeze. After tool was identified as harmless, officers questioned workers about their immigration status. Despite initial intentions of officers to conduct consensual questioning, order to freeze transformed encounter into seizure.

TITLE: U.S. v. Brumfield
INDEX NO.: Z.6.
CITE: 910 F. Supp. 1528 (D. Colo. 1996)
SUBJECT: Ordering Passengers to Leave Bus and Expose Bags to Drug Sniffing Dog Constitutes Seizure
HOLDING: Ordering passengers off bus during stop-over and forcing them to expose luggage to drug sniffing dog constituted seizure for 4th amendment purposes. Although passengers would have had to get off to change buses anyway, proper inquiry is whether reasonable person would have felt free to decline to depart bus in particular method and manner directed by officer. Officers issued orders, not requests, and did not tell passengers they were free to decline. Further, officers controlled only exit. As to reasonableness, officers' only justification for detention was that bus originated in drug source city. Weighed against intrusiveness of seizure, such justification does not render it reasonable.

TITLE: U.S. v. Stephens

INDEX NO.: Z.6.

CITE: 206 F.3d 914 (2000)

SUBJECT: Bus Search -- Involuntary Abandonment

HOLDING: In circumstances surrounding officers' encounter with D on inter-city bus, particularly their failure to announce that passengers were free to remain on bus and still not answer questions, turned encounter into "seizure" of D for 4th Amendment purposes. Seizure was unconstitutional and rendered D's abandonment of gym bag involuntary. In context of bus encounter, seizure inquiry is not whether individual would feel free to leave, but rather whether she would feel free to decline officers' requests or otherwise terminate encounter. Florida v. Bostick, 501 U.S. 429 (1991). Officers were positioned at three places in bus aisle, nearly blocking exit, and told passengers they were free to leave bus but not that they were free to otherwise refuse to answer officers' questions. Particularly in light of U.S. Supreme Court's recent decision in Illinois v. Wardlow, 528 U.S. 119 (2000), holding that unprovoked flight from police in high crime area created grounds for Terry stop, choice between staying and participating in search or leaving bus was no choice at all.

Z. SEARCH AND SEIZURE

Z.6. Warrantless Arrest

Z.6.a. When made (Ind. Code 35-33-1-5)

TITLE: Commonwealth v. Ramos

INDEX NO.: Z.6.a.

CITE: 721 N.E.2d. 923 (Mass. 2000)

SUBJECT: Keeping Person from Leaving or Staying in Home Without Interference Is Seizure

HOLDING: Under Massachusetts constitution, police seized D when they congregated outside her apartment, refused to go away until she came out, and threatened to use force to enter the premises. Police suspected D of being woman who sold crack cocaine to undercover officer but had no photograph to show officer for purposes of identification. Officers went to apartment where sale had taken place and engaged in behavior described above until D came outside and provided identification and allowed herself to be photographed. Circumstances would have led reasonable person to believe that "he would not be free to leave the area (or to remain there) without first responding to a police officer's inquiry."

TITLE: Dunaway v. State

INDEX NO.: Z.6.a.

CITE: (10/22/82), Ind., 440 N.E.2d 682

SUBJECT: Warrantless arrest - when made; freedom to leave

HOLDING: Test for determining whether one is "seized" for 4th Amend purposes: whether, considering all circumstances surrounding police-citizen encounter, D entertained reasonable belief he/she was not free to leave. US v. Mendenhall (1980), 446 U.S. 544, 100 S. Ct. 1870, 64 L.Ed.2d 447; Barber, App., 418 N.E.2d 563. Here, Ct. finds D voluntarily accompanied officers to station, had previous experience with the law, was friends with one of the officers, & requested to see girlfriend "before he was arrested," thus supporting conclusion D did not believe he was under arrest when transported to station. Held, no error.

RELATED CASES: Roberts, 599 N.E.2d 598 (arrest occurs when police officer interrupts freedom of accused & restricts his liberty of movement); Phillips 492 N.E.2d 10 (because police told D they would arrest him if he did not come with them, Ct. finds D was under arrest).

TITLE: Ferris v. State

INDEX NO.: Z.6.a.

CITE: 735 A.2d 491 (Md. 1999)

SUBJECT: Questions at End of Traffic Stop Amounted to Seizure

HOLDING: State trooper's questions about drugs after conclusion of traffic stop constituted seizure for 4th Amendment purposes. Officer had stopped D for speeding, and after issuing ticket and returning D's documentation, he asked D if he would mind stepping out of the car. D accompanied officer to back of car, where officer asked him if he had smoked any drugs prior to stop and obtained consent to search trunk. Court finds that traffic stop concluded when officer returned documentation to D. At that point, officer's actions amounted to second detention, rather than a mere continued encounter to which the D consented. In reaching this conclusion, Court noted that U.S. Supreme Court, in Ohio v. Robinette, 519 U.S. 33 (1996), had rejected bright line test requiring officer to tell motorist that he is free to go at end of traffic stop before continued encounter could be deemed consensual. However, Court reasoned that the moment at which a traffic stop ends is a difficult legal question, not readily discernible to a layperson, and it will set high standard for demonstrating that encounters at end of traffic stop are consensual.

TITLE: Keenom v. State
INDEX NO.: Z.6.a.
CITE: 83 S.W.3d 417 (Ark. 2002)
SUBJECT: Nighttime "Knock & Talk" Resulted in Seizure
HOLDING: Where large group of officers conducted "knock and talk" at D's home at 11:30 p.m. and refused to leave or to allow D to go inside to put clothes on, conduct was "functional equivalent of physical restraint, " and D was seized for purposes of 4th Amendment analysis. Under circumstances, reasonable person would not have felt free to ignore police.

TITLE: State v. Dahl

INDEX NO.: Z.6.a.

CITE: 323 Ore. 199; 915 P.2d 979 (Ore. 1996)

SUBJECT: Seizure -- Order to Exit House with Hands Up

HOLDING: Oregon Supreme Court has determined that under Oregon constitution, individual is seized when (a) law enforcement intentionally and significantly restricts, interferes with, or otherwise deprives individual of liberty or freedom of movement; or (b) whenever individual believes that (a) has occurred and that belief is subjectively reasonable under the circumstances; and officer engages in conduct significantly beyond that accepted in ordinary social intercourse. Pivotal factor is whether officer, even if making inquiries a private citizen would not, has otherwise conducted him/herself in manner which would be perceived as offensive if it occurred between two ordinary citizens. Here, officers had surrounded suspect's house and barricaded streets, then ordered him to exit house with hands up. Suspect was seized at time order was shouted, and because police lacked probable cause at that point, seizure was improper. Further, because suspect was inside home, probable cause alone would not have been sufficient. Warrant or exigent circumstance would also have been required.

TITLE: Walker v. State

INDEX NO.: Z.6.a.

CITE: (2nd Dist., 3-12-02), Ind. App., 764 N.E.2d 741

SUBJECT: Warrantless arrest for misdemeanor offense - commission in officer's presence

HOLDING: Tr. Ct. did not err in denying D's motion to suppress, where police officer had probable cause to believe D was committing misdemeanor offense of minor consumption in his presence. While explaining portable breath test, officer detected odor of alcohol on D's breath. While they were waiting for results to register, D voluntarily stated that he had consumed alcohol that evening. After D's breath test registered blood alcohol level of .025%, officer arrested D for minor consumption of alcohol. During search incident to arrest, officer discovered crack cocaine in D's pocket. D argued that his warrantless arrest for misdemeanor offense of minor consumption was unlawful because offense was not committed in officer's presence as required by Ind. Code 35-33-1-1(a)(4).

Ct. disagreed, noting that minor consumption is unlike many other misdemeanor offenses that end after a specific act is performed. Here, direct evidence of offense still exists & commission of offense in a sense continues while alcohol is in minor's body. It would be futile to require officer to actually observe a minor put alcohol to his lips & swallow when, for a period of time thereafter, officer can personally observe effects of alcohol on offender. Therefore, presence requirement is fulfilled when evidence of consumption is readily apparent from minor's person to officer in minor's presence. In this case, officer not only received admission from D that he had been drinking alcohol that evening, despite being underage, but also smelled alcohol on D's breath & obtained a positive breath-test result from him. Held, judgment affirmed.

RELATED CASES: Whitt, 91 N.E.3d 1082 (Ind. Ct. App 2018) (Irrelevant whether Indiana officers lacked authority under Kentucky law to stop and search D after pursuing him from Indiana to Kentucky; a violation of state law is usually irrelevant under 4th Amendment; see full review, this section).

Z. SEARCH AND SEIZURE

Z.6. Warrantless Arrest

Z.6.b. Probable cause (Ind. Code 35-33-1-1)

TITLE: Andrews v. State

INDEX NO.: Z.6.b.

CITE: (5th Dist. 03/25/92), Ind. App., 588 N.E.2d 1298

SUBJECT: Warrantless arrest - probable cause not stale

HOLDING: In June 1988, drug task force arranged for confidential informant (CI) to buy cocaine from D under surveillance of 2 detectives. D was not arrested after that sale. In 9/88, CI informed police that D had called him wanting to sell him ounce of cocaine. Controlled buy was arranged, & when D arrived at agreed location he was ordered from truck at gunpoint & arrested without any drug transaction taking place. After arrest, D & truck were searched, & officers found small packet of cocaine on D, as well as several packets of cocaine in truck. In context of allegation of ineffective assistance of counsel for failing to object to admission of evidence on ground of illegal search & seizure, Ct. found that because police had probable cause to believe crime had been committed by D about 3 months earlier, warrantless arrest was not improper. Therefore, admission of evidence from search & seizure accompanying arrest was not error. While acknowledging that obtaining arrest warrant would have been better practice, Ct. held that passage of 3 months from date of drug sale to arrest did nothing to eliminate probable cause as grounds for warrantless arrest. Held, convictions affirmed.

RELATED CASES: Decker, 19 N.E.3d 368 (Ind. Ct. App 2014) (even though Tr. Ct. dismissed charge, it did not negate probable cause to arrest D for that charge; thus, dismissal of charge did not require Tr. Ct. to suppress evidence acquired for related charges; see full review, this section).

TITLE: Andrews v. State

INDEX NO.: Z.6.b.

CITE: (11/3/82), Ind., 441 N.E.2d 194

SUBJECT: Warrantless arrest - probable cause

HOLDING: Probable cause exists when facts & circumstances within officers' knowledge & of which officers have reasonably trustworthy information are sufficient in themselves to warrant person of reasonable caution believing offense has been or is being committed. Brinegar v. US (1949), 338 U.S. 160, 69 S. Ct. 1302, 93 L.Ed. 1879; Taylor 406 N.E.2d 247. Here, officer investigated pickup truck after observing traffic violations. Officer's conversation with occupants aroused his suspicion & he asked them for identification which they were unable to produce. Officer observed D throwing papers out of truck window which turned out to be \$12,000 in cashier's checks. Officer ordered youths out of the truck, patted them down & arrested them. Held, officer had probable cause for investigation/arrest.

RELATED CASES: Roberts, 599 N.E.2d 595 (probable cause to arrest may exist even though police officer's subjective evaluation leads officer to conclude that officer did not have enough information to establish probable cause at that particular time); Poore 501 N.E.2d 1058 (police had probable cause to arrest Ds where Ds' car was in vicinity of crime at time of commission & co-D was seen loading stolen goods into car, *citing Funk* 427 N.E.2d 1081, which also took into account D's history as known burglar); Shepard 500 N.E.2d 1172 (probable cause existed to arrest D where co-D admitted involvement & implicated D; Ct. finds co-D's statement sufficiently reliable to establish probable cause since it was a statement against self-interest); Whitt 483 N.E.2d 49 (police had probable cause to pursue D, who accelerated & squealed his tires during turn at intersection; police believe D was going too fast & was reckless given traffic conditions; held, convictions affirmed); State v. Johnson, App., 503 N.E.2d 431 (probable cause can be established by evidence inadmissible at trial, *citing Layman*, App., 407 N.E.2d 259; here, odor of alcohol plus results of alco-sensor test established probable cause for DWI arrest); Jones, App., 467 N.E.2d 1236.

TITLE: Brown v. State

INDEX NO.: Z.6.b.

CITE: (12/29/82), Ind., 442 N.E.2d 1109

SUBJECT: Warrantless arrest - probable cause; misdemeanor observed by police

HOLDING: Police officer has authority to make arrest for misdemeanor committed within view. Ind. Code 35-33-1-1(4). Works 362 N.E.2d 144; Hart (1924), 195 Ind. 384; Britt, App., 395 N.E.2d 859. Existence of probable cause to arrest is determined upon basis of collective information known to law enforcement organization (Owens 427 N.E.2d 880; Benton 401 N.E.2d 697) & observance of misdemeanor may be part of that collective information (Britt). Here, D had moved for suppression of evidence, arguing arrest was illegal because arresting officer did not observe offense being committed. Motion denied. Ct. finds off-duty officer observed D (20) drinking (misdemeanor) & advised uniformed officer who arrested D after D left premises. Held, arrest legal; no error in denial of suppression motion.

RELATED CASES: Hampton, App., 468 N.E.2d 1077 (D's behavior provided probable cause for police to arrest him for public intoxication).

TITLE: Decker v. State
INDEX NO.: Z.6.b.
CITE: (10/28/2014), 19 N.E.3d 368 (Ind. Ct. App 2014)
SUBJECT: Dismissal of one charge did not negate probable cause
HOLDING: Tr. Ct. did not err in denying D's motion to suppress evidence found in his home that supported charges for child molesting and performing sexual conduct in presence of a minor.

Workers at a Bloomington library observed D at a computer viewing and downloading onto a thumb drive pictures of nude and partially nude children. Officers arrested D at the library, and based on his statement, the officers obtained and executed warrants to search D's home, his thumb drive, and the library computer. The search yielded incriminating evidence supporting the more serious charges. D moved to dismiss the possession of child pornography charge, arguing that as a matter of law, the pictures did not constitute child pornography. The Tr. Ct. granted the motion.

Dismissal of the possession charge does not mean officers lacked probable cause to arrest D. The evidence required to establish guilt is not necessary for probable cause to arrest. Roberts v. State, 599 N.E.2d 595, 598 (Ind. 1992). "In addition, because the situations that officers face 'in the course of executing their duties are more or less ambiguous,' probable cause allows for reasonable mistakes by the officer." United States v. Moore, 215 F.3d 681, 686 (7th Cir. 2000) (*quoting Gerstein v. Pugh*, 420 U.S. 103, 112, 95 S. Ct. 854 (1975)). Thus, even though the Tr. Ct. dismissed the possession charge, the facts reported to the officers gave them probable cause to arrest D for that charge. Because there was probable cause, Tr. Ct. did not err in denying D's motion to suppress evidence found in his home, on his thumb drive, and on the library computer. Held, judgment affirmed.

TITLE: District of Columbia, et al. v. Wesby
INDEX NO.: Z.6.b.
CITE: (1/22/2018), 138 S. Ct. 577 (2018)
SUBJECT: Officers had probable cause that partygoers had no permission to enter vacated home
HOLDING: Washington D.C. officers had probable cause to arrest 21 partygoers for unlawful entry into an abandoned home, so the officers were entitled to summary judgment on the partygoers' § 1983 lawsuit.

Probable cause existed for several reasons. Officers received a complaint about loud music and illegal activities in a home. When they knocked on the door, they saw a man look out the window and then run upstairs. Once let in the home, they found a home in "disarray," looking like a vacated property. There was nearly no furniture, and the floor was filthy. Also, the officers smelled marijuana; they found a make-shift strip club in the living room; they witnessed a naked woman with several men in an upstairs bedroom, which was littered with opened condom packages and at least one used condom. Also, the partygoers gave vague and implausible answers to several questions. For instance, several said they had been invited to a bachelor party but none could name the bachelor. Partygoers also said "Peaches," also known as "Tasty," owned the property and had invited them over, but when questioned by officers, Peaches admitted she had no authority over the property. The partygoers were charged with disorderly conduct, but the charges were dismissed. Sixteen of the 21 partygoers then filed a §1983 lawsuit. The District Court found the officers did not have probable cause that the partygoers "knew or should have known" that there were not allowed in the home. It also found the officers lacked qualified immunity. The D.C. Circuit affirmed.

The officers reasonably inferred the partygoers knew they did not have permission to enter the home. Maryland v. Pringle, 540 U. S. 366, 372 (2003). The condition of the home and the conduct of the partygoers allowed the officers to make "common-sense conclusions about human behavior." Illinois v. Gates, 462 U. S. 213, 231 (1983). Because most homeowners do not live in such conditions or allow such activities in their homes, the officers could believe the partygoers knew the party was not authorized. The partygoers' vague and implausible answers also gave the officers reason to infer that the partygoers were lying and that their lies suggested a guilty mind. Cf. Devenpeck v. Alford, 543 U. S. 146, 149, 155–156 (2004).

In affirming the District Court, the Circuit Court erred two ways. First, it viewed each fact "in isolation, rather than as a factor in the totality of the circumstances." Pringle, 540 U.S. at 372, n. 2. Second, it believed it could dismiss any circumstances that were "susceptible of innocent explanation." United States v. Arvizu, 534 U. S. 266, 277 (2002). Instead, it should have asked whether a reasonable officer could conclude there was a "substantial chance of criminal activity." Gates, 462 U.S. at 244, n. 13.

(Note: The Court also found the officers were entitled to qualified immunity). Held, cert. granted, D.C. Circuit's opinion at 765 F.3d 13 reversed, and remanded. Sotomayor, J., concurring with opinion; Ginsburg, J., concurring with opinion, questioning whether it was time to revisit Whren v. United States, 517 U. S. 806 (1996), which held that "an arresting officer's state of mind . . . is irrelevant to the existence of probable cause."

TITLE: Haller v. State

INDEX NO.: Z.6.b.

CITE: (4th Dist. 9/20/83), Ind. App., 454 N.E.2d 76

SUBJECT: Warrantless arrest - probable cause (P.C.)

HOLDING: Police had P.C. to arrest D where information supplied by reliable informant was buttressed by police investigation (IL v. Gates (1983), U.S., 103 S. Ct. 2317, 76 L.Ed.2d 527), thus, evidence found in search incident to arrest was properly admitted. Here, 2 informants independently advised police that a man from CA was coming to Indianapolis to sell drugs to Burger. Police had no description of Burger. Police verified other information provided by informants. CA man's (Mowrer) hotel room was placed under surveillance. Police observed Mowrer leave his room & return with 2 men. When door was opened (for men to leave) police entered room, arrested occupants & searched them. Weapons search of D revealed LSD & cocaine. Police had P.C. to believe felony would be/was taking place in Mowrer's room. D was arrested because he was 1 of 4 participants in conspiracy, not because he was Burger. Ct. rejects D's contention that absent information regarding his specific participation, police had no P.C. to arrest him. Police are not required to know exact identities of persons committing crimes. Held, no error.

TITLE: J.G. v. State
INDEX NO.: Z.6.b.
CITE: (1/31/2018), 93 N.E.3d 1112 (Ind. Ct. App 2018)
SUBJECT: Officer didn't need probable cause to detain juvenile by pulling gun on juvenile and handcuffing him

HOLDING: Pulling a gun on a juvenile and handcuffing him did not constitute an arrest, which would have required probable cause. Instead, the police officers had reasonable suspicion that criminal activity was afoot, and under the circumstances, the officer's coercive techniques were permissible to execute a Terry stop. Police responded to a police dispatch that two people were pacing back and forth in front of a Mexican restaurant located in a strip mall. There had been several attempted robberies of the restaurant in the last few years. One restaurant employee told the investigating officers that two African-American males wearing black jackets ran behind the strip mall, and when one of the officers went to investigate, he saw two men matching the description running toward an apartment complex, which is in a "fairly high crime area." The officer told the men to stop. Even though the dispatch said nothing about the suspects carrying guns, the officer pulled his gun on the suspects and handcuffed them. The officer asked the two how old they were; they both said they were juveniles. After a series of events involving each juvenile's parent, both admitted they had a gun and showed the officers where to find it. J.G. was eventually adjudicated as a delinquent for dangerous possession of a firearm and carrying a handgun without a license, both class A misdemeanors if committed by an adult.

While there was no probable cause the juveniles committed an offense, pulling a gun on the juveniles and handcuffing them did not make the stop an arrest that required probable cause. Instead, the officers did have reasonable suspicion that the juveniles committed an offense, and under some circumstances, use of a gun or handcuffs is reasonable to effect and achieve the purposes of a Terry stop. "Fourth Amendment jurisprudence has long recognized that the right to make an arrest or investigatory stop necessarily carries with it the right to use some degree of physical coercion or threat thereof to effect it." Shotts v. State, 53 N.E.3d 526, 532 (Ind. Ct. App. 2016) (*quoting* Graham v. Connor, 490 U.S. 386, 396 (1989)), *trans. denied*. Here, the restaurant had been the target of robberies in the past and the officer was alone when he encountered the two juveniles.

The officer's actions were also reasonable under Article 1, § 11 of the Indiana Constitution. First, the degree of suspicion that the juveniles were about to rob the restaurant was high. See Mitchell v. State, 745 N.E.2d 775, 786 (Ind. 2001) (detentions to investigate possible future criminal activity are reasonable under the Indiana Constitution). Second, the degree of intrusion was not high because: 1) the juvenile "should not have been roaming the streets at 1:30 a.m.," 2) there had been a rash of robberies in the area, and 3) the officer "didn't know if weapons were involved." Third, the officer's need for law enforcement to use coercive techniques was high, again because the juveniles could have been armed; further, the fact that the juveniles were fleeing accentuated the officer's need to use coercive techniques. Held, judgment affirmed.

TITLE: Scarborough v. State

INDEX NO.: Z.6.b.

CITE: (4th Dist., 6-28-02), Ind. App., 770 N.E.2d 923

SUBJECT: Warrantless arrest for misdemeanor committed out of officer's presence - probable cause for felony

HOLDING: Tr. Ct. did not err in denying D's motion to suppress evidence from warrantless arrest & search. Victim heard noises outside his house & saw D through window. Victim called 911 after hearing windows being broken. Officers responded & arrested D for criminal mischief, a misdemeanor. Search incident to arrest revealed crack cocaine in D's pocket. D argued that search incident to arrest was invalid because arrest itself was invalid based on IND. CODE 35-33-1- 1(a)(4), which permits police officer to arrest person for misdemeanor only when person is committing or attempting to commit misdemeanor crime in officer's presence.

Here, D was walking down alley when officers arrested him. Ct. relied on Ind. Code 35-33-1- 1(a)(2), which provides that arrest is proper if officer has probable cause to believe person has committed or attempted to commit or is committing or attempting to commit a felony. Despite officer's statement that arrest was for criminal mischief, facts known to officer at time supplied sufficient probable cause to believe D had attempted to break & enter victim's home, which constituted class D felony. Therefore, pursuant to Ind. Code 35-33-1-1(a)(2), warrantless arrest of D was legal. Held, judgment affirmed.

TITLE: Shelton v. United States

INDEX NO.: Z.6.b.

CITE: 929 A.2d 420 (D.C. 2007)

SUBJECT: Hand-to-hand transaction did not provide probable cause for search

HOLDING: District of Columbia Court of Appeals held a police officer's observation of a hand-to-hand transaction in which a motorist stopped and handed a pedestrian cash in exchange for a small object of some sort did not, by itself, give the officer probable cause to arrest and search the motorist immediately thereafter. Court noted that officer's observations of a two-way transaction have been held to give rise to probable cause in certain other situations. However, there were "additional contextual factors" in those other cases beyond the transactions themselves that could have led reasonable officers to believe they were witnessing a crime. Here, "the observed transaction is capable of numerous innocent circumstances" and Court held that crack cocaine found on the motorist in the wake of his arrest should have been suppressed.

TITLE: State v. Hornick

INDEX NO.: Z.6.b.

CITE: (3d Dist. 7/17/89), Ind. App., 540 N.E.2d 1256

SUBJECT: Probable cause for misdemeanor arrest based upon collective knowledge of police

HOLDING: D's warrantless arrest was supported by probable cause, & Tr. Ct. erred in suppressing evidence gathered as fruit of arrest. D scheduled meeting with professor, who requested presence of police officer because of previous problems. Two officers responded. One officer had run routine check on D in conjunction with previous problems & had discovered that D's driver's license was suspended. Second officer ran new check on day of meeting & discovered that D's license was still suspended. During meeting, one officer sat in professor's outer office, while other officer sat in car outside building. After meeting, officer positioned outside saw D get in car & drive away. Officer then radioed request for marked car to stop D for suspended license, giving description of D's car. Officers who stopped D confiscated fictitious license. D argues that officers who stopped him had not observed him in commission of crime, nor did they have reasonable grounds to believe that he had committed one. At trial, officers who stopped D testified that they had heard dispatches regarding check of D's license & result of check, as well as request to stop D for license suspension. It is well settled that police officers may rely upon dispatches from their own & other departments. Francis, App., 316 N.E.2d 416; Benton 401 N.E.2d 697. Officer has authority to make arrest for misdemeanor when misdemeanor is committed within his view, & observance of misdemeanor may be based on collective knowledge of law enforcement organization. Brown 442 N.E.2d 1109. Held, arrest was proper. Tr. Ct's suppression of evidence is reversed.

TITLE: State v. Steelman
INDEX NO.: Z.6.b.
CITE: 125 S.W.3d 447 (Tex. Crim. App. 2002)
SUBJECT: Odor of Marijuana in Air -- No Probable Cause for Entry, Arrest
HOLDING: Mere odor of marijuana in air did not give police probable cause to enter apartment and arrest and search occupants. Police were conducting a "knock and talk" in response to unsubstantiated anonymous tip that drugs were being dealt from apartment. D answered door and stepped into hall, closing door behind himself. Officers testified that they smelled marijuana "in the air and not coming from the D's clothes." At most, these facts gave officers probable cause to believe that someone, somewhere was or had been smoking marijuana. Majority also agreed with People. Harshbarger, 321 N.E.2d 138 (Ill. App. Ct. 1974) that detecting odor of marijuana coming from particular place, but not knowing which of multiple occupants of that place may be smoking, does not establish probable cause to arrest and search occupants.

TITLE: State v. Stevens

INDEX NO.: Z.6.b.

CITE: (6/12/2014), 33 N.E.3d 1200 (Ind. Ct. App 2015)

SUBJECT: Probable cause to arrest D for attempt to purchase pseudoephedrine despite database error

HOLDING: Police had probable cause to arrest D for buying pseudoephedrine at drug store even though the suspect had not been convicted of a prior methamphetamine charge, as the Indiana Data and Communication System (IDACS) reported. Ind. Code § 35-48-4-14.5(h)(1)(a) makes it a Class D felony for a person convicted of dealing in methamphetamine to knowingly or intentionally possess pseudoephedrine. The IDACS entry was wrong in this case, because D had been convicted of dealing Xanax. However, under the Fourth Amendment and art. 1, § 11 of the Indiana Constitution, it was reasonable for police officers to believe the information they received from IDACS was accurate and gave them probable cause to believe D was committing a crime when he tried to purchase pseudoephedrine. See Moody v. State, 448 N.E.2d 660 (Ind. 1983) (officers acted with good faith reliance in determining probable cause). Officers regularly rely on the IDACS, and nothing indicates that they are or should be expected to confirm or research data generated by it, particularly absent any evidence of intentional misconduct with respect to use or maintenance of the system. Held, denial of motion to suppress reversed.

TITLE: Williams v. State

INDEX NO.: Z.6.b.

CITE: (3rd Dist., 03-10-94), Ind. App., 630 N.E.2d 221

SUBJECT: Stop was arrest, not investigatory, & no probable cause existed

HOLDING: Where officers with guns drawn stopped D, ordered him out of car & onto ground with hands behind head, stop was equivalent to arrest, & fact D was unrecognized black male driving in vicinity of burglary, with in-county license plate, was insufficient to support probable cause. About half hour after store was burglarized, officers received report that two black males were seen fleeing east of store. No detailed description of individuals was given. About hour later, officers observed car with in-county license plate mile west of store, occupied by two black males. They detained car approximately 1 1/2 miles east of store. When they stopped car, officer drew his weapon, ordered passengers out, & told them to get on ground with hands behind heads. Search of vehicle revealed broken steering column & D was convicted of auto theft after Ct. denied motion to suppress. Ct. found circumstances of D's detention could not fairly be characterized as "small intrusion on individual privacy, of limited duration, reasonably related in scope to the justification for its initiation," as required of investigatory stop, Gipson, 459 N.E.2d 366. Therefore, stop was arrest & Ct. found probable cause for warrantless arrest was lacking. At suppression hearing officer testified that there was nothing to make him believe D had committed criminal act, & that he stopped him because he was black male driver he didn't know, with in-county plates on car & that black male population in county was probably 30 at most. With this information, Ct. could not conclude that facts would lead reasonably prudent person to believe car's occupants had committed crime, & therefore Tr. Ct. erred in denying motion to suppress.

Z. SEARCH AND SEIZURE

Z.6. Warrantless Arrest

Z.6.c. Hot pursuit/exigent circumstances (Ind. Code 35-33-3)

TITLE: Carranza v. State
INDEX NO.: Z.6.c.
CITE: 266 Ga. 263; 467 S.E.2d 315 (Ga. 1996)
SUBJECT: Electronic Surveillance - Crime Committed Within Presence of Officer
HOLDING: Police who are “present” by means of electronic surveillance when crime is committed within home may not make immediate warrantless entry absent consent or exigent circumstances. Privacy protections of federal constitution outweigh officers state law authority to make warrantless arrest for crime committed in their presence.

TITLE: Hamlet v. State

INDEX NO.: Z.6.c.

CITE: (3/26/86), Ind., 490 N.E.2d 715

SUBJECT: Warrantless arrest - exigent circumstances

HOLDING: Warrantless arrest of Ds by police was not unlawful where exigent circumstances existed & evidence could be destroyed. Dorman v. US (D.C. Cir. 1970), 435 F.2d 385. Here, after bank robbery & based upon description by witnesses & informant's tip re previous burglaries, officer went to D's girlfriend's house. Car observed at scene of previous robberies was parked in front of house with engine still warm. Officer believed Ds' were in house; went to door & knocked. After no one responded, officer yelled that dogs would be unleashed into house if no one came out. One suspect exited, was handcuffed & held. Officer again repeated statement & 2 others emerged & were secured by police. Witnesses were brought to address & identified 2 of 3 Ds. After identification by witnesses, police placed all 3 under arrest. Police found large sums of money in their pockets. Ct. finds officer had sufficient facts to detain Ds & did not act unreasonably in ordering Ds from residence under circumstances. Exigent circumstances existed because robbery had been committed with handguns & police & others could be harmed if Ds attempted to escape. Ct. also finds potential for destruction of evidence. Identification of witnesses together with other facts & circumstances known to officers gave them sufficient probable cause to arrest D. Searches incidental to arrest were also reasonable & necessary for security reasons. Held, no error.

TITLE: Holloway v. State
INDEX NO.: Z.6.c.
CITE: (1/19/2017), 69 N.E.3d 924 (Ind. Ct. App 2017)
SUBJECT: Exigent circumstances justified warrantless search of car
HOLDING: Suspicion that Defendant's car contained a methamphetamine lab created exigent circumstances and thus obviated the need for a search warrant.

After leading detective on a high-speed chase, Defendant eventually pulled over. Other officers arrived and became concerned that, based on prior experience with the Defendant and his passengers, there might be a meth lab in the car. Their concerns increased when one passenger admitted that "there may be something methamphetamine related in the vehicle." A State Police officer experienced with meth investigations arrived a few minutes later. He found a glass meth pipe on the ground just outside the car. He soon realized that he was already investigating Defendant and his passengers for meth activity, having already learned they bought meth precursors one week earlier. Thus, he was afraid the car might contain a meth lab, which created the danger of explosion, especially because the high-speed chase may have jostled the meth lab. Therefore, he searched the car and removed a zipped bag, which contained chemicals often used to make meth. However, he did not discover an active meth lab.

Exigent circumstances justified the search of the car because the officers had probable cause it contained a meth lab. See Clark v. State, 994 N.E.2d 252, 260 (Ind. 2013). The State Police officer knew the suspects from prior and contemporaneous meth investigations and knew that Defendant bought precursors the week before. Also, the statement by one of the suspects that the car might contain meth-related items and the discovery of the glass meth pipe outside the car contributed to the existence of probable cause. Held, judgment affirmed.

TITLE: Ingram v. City of Columbus

INDEX NO.: Z.6.c.

CITE: 185 F.3d 579 (6th Cir. 1999)

SUBJECT: Hot Pursuit -- May Not Waive Need for Knocking & Announcing

HOLDING: Police officers who are justified in making warrantless entry pursuant to "hot pursuit" exception to 4th Amendment warrant requirement may not be justified in not complying with 4th Amendment's "knock and announce" requirement. Purpose of warrant requirement is to interpose judicial determination of probable cause between zealous officer and citizen, whereas knock and announce rule is aimed at avoiding needless destruction of property and giving citizens opportunity to prepare for entry of police. In addition, delay occasioned by compliance with knock and announce rule is much shorter than delay involved in obtaining warrant. Separate inquiry is required to determine whether failure to knock and announce was justified.

TITLE: Kentucky v. King
INDEX NO.: Z.6.c.
CITE: (05-16-11), 131 S. Ct. 1849 (U.S. 2011)
SUBJECT: Whether police caused exigent circumstances irrelevant unless 4th Amendment violated
HOLDING: Where police conduct triggers, exigent circumstances used to justify warrantless entry into a residence to investigate a potential drug offense, the exigent circumstance exception to the Fourth Amendment's warrant requirement still applies, unless police use or threaten a violation of the 4th Amendment to gain entry into the residence.

Here, officers followed a suspected drug dealer into an apartment building. The officers were unsure which apartment the suspect entered, but they smelled marijuana from one apartment. The police knocked on the door and identified themselves. When the police heard shuffling noises inside the apartment, they believed that evidence was being destroyed and entered the apartment without a warrant. Inside, they did not find the suspect but instead found King along with drugs and drug paraphernalia.

The Court explained that its test will still provide "ample protection for the privacy rights that the Amendment protects." Police can knock and announce their presence at a dwelling, as any private citizen can do. If a suspect inside starts to destroy evidence, and the officers hear it, the sound of the evidence being destroyed is not a police-created emergency. However, police cannot threaten to break in if the person will not open the door. Breaking in would be a Fourth Amendment violation, so the officers cannot create exigent circumstances by threatening to break in. "Occupants who . . . elect to attempt to destroy evidence have only themselves to blame for the warrantless exigent- circumstances search that may ensue." Held, Ninth Circuit reversed. Ginsburg, J., DISSENTING, noting that if the police had not knocked on the door the D would likely not have destroyed the evidence, and the police could have obtained a warrant. She said the majority "arms police with a way to routinely ignore the Fourth Amendment's requirement in drug cases," and she asked if police, with no warrant, "can [now] pound on doors at will and, on hearing sounds indicative of something moving, forcibly enter and search for evidence of unlawful activity[.]"

TITLE: Kirk v. Louisiana

INDEX NO.: Z.6.c.

CITE: 536 U.S. 635, 122 S. Ct. 2458 (2002)

SUBJECT: Fourth Amendment, search, and seizure, warrant requirement, exclusionary rule, exigent circumstances

HOLDING: After observing several apparent drug deals from Kirk's apartment, the police entered the apartment and arrested and searched Kirk without a warrant. The state appeals court held that because the police had probable cause to arrest Kirk, and conducted the search incident to the arrest, a warrant was not needed and there was no need to decide whether exigent circumstances existed. The U.S. Supreme Court reversed in a per curiam opinion, holding that under Payton v. New York, 445 U.S. 573 (1980) the Fourth Amendment draws a "firm line at the entrance to the house" which "may not reasonably be crossed without a warrant" in the absence of exigent circumstances.

TITLE: State v. Blake
INDEX NO.: Z.6.c.
CITE: (1st Dist. 9/17/84), Ind. App., 468 N.E.2d 548
SUBJECT: Warrantless arrest - hot pursuit
HOLDING: Tr. Ct. erred in granting D's motion to suppress evidence obtained pursuant to D's arrest for resisting law enforcement & DWI. Here, police clocked car traveling 74 in a 55. Police pursued car with red lights & siren. Car increased speed to 90 mph. Police followed car into trailer park & ordered 5 occupants to stop as they got out of car. D entered his mobile home. Officer followed him & arrested D for resisting. Officer brought D outside, verified his status as driver, smelled alcohol on his breath, gave him chemical test (.18%), charged him with DWI & gave him speeding citation. Officer can arrest for misdemeanor (resisting) committed in presence. Ind. Code 35-44-3-3. Ct. finds officer had probable cause to believe D was driving fleeing car. Armed with probable cause, officer could pursue D into private place to effect arrest, under common law theory of hot pursuit. Ind. Code 35-33-3-5. Ct. distinguishes Welsh v. WI (1984), U.S., 104 S. Ct. 2091, 80 L.Ed.2d 732, based on officer's "immediate & continuous pursuit ... from scene of crime." In Welsh, officer entered D's home without warrant on third party information to arrest D for non-jailable civil infraction (DUI). Exigency distinguishes case from Payton v. NY. Ct. cites cases from other jurisdictions upholding home entry in similar situations, including US v. Santana (1976), 427 U.S. 38, 96 S. Ct. 2406, 49 L.Ed.2d 300. Held, reversed.

Z. SEARCH AND SEIZURE

Z.6. Warrantless Arrest

Z.6.d. Citizen's arrest (Ind. Code 35-33-1-4)

TITLE: Fitzgerald v. State
INDEX NO.: Z.6.d.
CITE: (2/12/2015), 26 N.E.3d 105 (Ind. Ct. App 2015)
SUBJECT: "Citizen's arrest" unlawful, but State disproved D's self-defense claim
HOLDING: In intimidation prosecution, State presented sufficient evidence to disprove D's self-defense claim. The charge stemmed from the staging of a fake robbery to cover up stolen funds from an employer. A Good Samaritan (Bingham) intervened to thwart the apparent robbery, and chased after D. After Bingham caught up with D and cornered him in a parking lot, D pulled a knife out of his pocket and told Bingham to "get the f*** away from me...it's not what you think." Court held that Bingham's detention of D based on mistaken belief that he had committed a robbery did not amount to a lawful "citizen's arrest" pursuant to Ind. Code § 35-33-1-4(a), because no robbery had in fact been committed. See U.S. v. Hillsman, 522 F.2d 454 (7th Cir. 1975).

However, State presented sufficient evidence to disprove D's self-defense claim. Although he had the right to be in the public parking lot where Bingham cornered him, he was not without fault. From Bingham's perspective, it appeared that D had committed a robbery. Moreover, record did not support he acted out of reasonable fear or apprehension of bodily harm. Bingham always remained five or six feet behind D and backed up once D pulled out a knife. Tr. Ct. was not obligated to believe D's self-serving testimony that he pulled knife because he was afraid of Bingham and had no intention of cutting or stabbing him. Held, conviction affirmed.

TITLE: Sizemore v. State

INDEX NO.: Z.6.d.

CITE: (10/2/85), Ind., 483 N.E.2d 56

SUBJECT: Warrantless arrest - citizen's arrest; seizure of property

HOLDING: Actions of K-Mart security guards who followed Ds to several stores, observed them make purchases with credit card verified to be stolen & seized wallet containing stolen cards & loose stolen cards from Ds in car in parking lot "were clearly reasonable under Ind. Code 35-41-3-3(a) which authorizes citizen arrest of individual in act of committing felony." See Sports, Inc. v. Gilbert, App., 431 N.E.2d 534. Here, guards turned seized property over to sheriff. Held, no error in denial of motion to suppress evidence; convictions affirmed.

RELATED CASES: Thrash, App., 690 N.E.2d 355 (citizen's arrest statute was not intended to provide solace to those who find themselves wronged while breaking law); Walker 503 N.E.2d 883 (Arrest 71.1(12); IL officers who made citizen's arrest of Ds in Ind., properly seized items from Ds & from bags in open trunk at time of arrest).

TITLE: State v. Hart

INDEX NO.: Z.6.d.

CITE: (1st Dist., 7-30-96), Ind. App., 669 N.E.2d 762

SUBJECT: DWI constitutes "breach of peace" for purposes of citizen's arrest statute

HOLDING: Because D was subject of valid citizen's arrest pursuant to Ind. Code 35-33-1-4, Tr. Ct. erred when it granted D's motion to suppress. Statute provides that any person may arrest any other person if "...a misdemeanor involving a breach of peace is being committed in his presence & the arrest is necessary to prevent the continuance of the breach of peace." Ind. Code 35-33-1-4(a)(3). Here, prior to arresting D, citizen observed him weaving in & out of traffic, & crossing center line into oncoming traffic. Ct. held that person who operates motor vehicle while intoxicated commits breach of peace, whether such conduct in particular case consists of actual or threatened violence. Accordingly, citizen in proper circumstances may make lawful arrest for DWI. Held, judgment reversed.

Z. SEARCH AND SEIZURE

Z.6. Warrantless Arrest

Z.6.e. Police powers

TITLE: Baker v. State
INDEX NO.: Z.6.e.
CITE: (4th Dist. 10/8/85), Ind. App., 483 N.E.2d 772
SUBJECT: Warrantless arrest - police powers; training requirement
HOLDING: Legislature intended newly hired law enforcement officers to have arrest powers before completion of mandatory training. Ct. reaches conclusion by looking to Ind. Code 5-2-1-9(b) as a whole, to rule promulgated by Law Enforcement Training Board, 250 IAC 1-2-3 & to needs of community for protection during 8-week training period. Rule provides that officers lose their powers after one year of employment if they fail to complete mandatory basic training by that time. Here, D contends statute requires officer to successfully complete training before he/she is authorized to enforce laws. Arresting officer had not completed training. Held, arrest proper. Miller CONCURS IN RESULT. Young DISSENTS without opinion.

TITLE: Fields v. State

INDEX NO.: Z.6.e.

CITE: (12/22/2017), 91 N.E.3d 597 (Ind. Ct. App 2017)

SUBJECT: Officer's failure to take statutory oath did not invalidate traffic stop - "de facto officer" doctrine

HOLDING: The de facto officer doctrine confers validity upon acts performed by a person acting under the color of official title, even though it is later discovered that the legality of that person's appointment is deficient. Ryder v. United States, 515 U.S. 177 (1995). The purpose of this doctrine is to protect the public by insuring the orderly functioning of the government despite technical defects in title to office. Here, police officer who had not taken the statutory oath for law enforcement officers pursuant to Ind. Code Ind. Code § 5-4-1-1(a) pulled over D and arrested him for operating while intoxicated and intimidation. D filed a motion to dismiss charges, arguing that the de facto officer doctrine does not apply to grant legal authority to a purported officer to make a stop and arrest. But the officer's failure to take the oath is a technical defect in his title to office, as the record shows he claimed the office, was in possession of it, and performed its duties under the color of appointment. Accordingly, he was acting as a de facto officer at the time of the traffic stop. Held, denial of motion to dismiss affirmed.

TITLE: Hatcher v. State

INDEX NO.: Z.6.e.

CITE: (2-4-02), Ind. App., 762 N.E.2d 189

SUBJECT: Arrest by plain clothes officer proper when accompanied by uniformed officer

HOLDING: It is proper for plain clothes officer to issue traffic citation where uniformed officer is present. D argued that because police officer was not in uniform or in marked police vehicle at time citations for infractions of speeding & unsafe lane movement were issued & because he was not under arrest, there was insufficient evidence to support judgments against him. Ind. Code 9-30-2-2 provides that officer may not arrest or issue traffic information & summons to person for violation of Indiana law unless at time of arrest officer is wearing distinctive uniform & badge or operating clearly marked police vehicle. This section does not apply to officer making arrest when there is uniformed officer present at time of arrest. D argued that this exception to application of Ind. Code 9-30-2-2 only applies if he were under arrest. While Ct. acknowledged that legislature dropped clause "or issue traffic & information & summons" after its first use, every subsequent use of word "arrest" was intended to incorporate situation where traffic information & summons is issued without accompanying arrest. Because two uniformed officers accompanied plain clothes officer when issuing citations, stop was proper. Held, judgment affirmed.

TITLE: James v. State

INDEX NO.: Z.6.e.

CITE: (4th Dist., 10-28-93), Ind. App., 622 N.E.2d 1303

SUBJECT: Stop by non-uniformed officer proper - not arrest

HOLDING: Where officer originally stopped D's car to investigate erratic driving, stop was not "taking of a person into custody." Stop therefore was not arrest as defined in Ind. Code 9-30-2-2, & Tr. Ct. did not err in denying motion to suppress evidence due to illegal arrest. Non-uniformed officer in unmarked car noticed D exceed speed limit & fail to signal turn. Officer stopped D's car & when he approached to ask for license & registration, he noticed rolled marijuana-like cigarette in ashtray. After examining cigarette, officer arrested D. Ct. rejected argument that stop was in violation of Ind. Code 9-30-2-2 (prohibiting officers from making traffic arrest when they are not wearing distinctive uniform or driving marked car). Although D argued that if reason for stop was truly based on traffic violations, officer should have summoned uniformed officer to assist him, court found stop was not equivalent to arrest for purposes of statute. Ind. Code 35-33-1-5 defines arrest as "taking of a person into custody, that he may be held to answer for a crime." Although stop of D was detention & therefore "arrest" in technical sense, it was not "taking of a person into custody." Ct. found that while better procedure would have been for officer to ask for assistance of uniformed officer; because stop was not "arrest," Tr. Ct. did not err in refusing to suppress evidence. Held, conviction reversed on other grounds, see card at O.4.d.1.

TITLE: Jones v. State

INDEX NO.: Z.6.e.

CITE: (5/17/2016), 54 N.E.3d 1033 (Ind. Ct. App 2016)

SUBJECT: Butler University police had jurisdiction for welfare check

HOLDING: Butler University Police Officer did not exceed the jurisdiction of his department when he conducted a welfare check of D's home where, moments after she was arrested, she told officer that her three young children were unattended at home. When officer conducted the welfare check, he found the children safe and secure but also found marijuana and a growing lab. Ind. Code § 21-27-5-5(b) authorizes Butler officers to exercise general jurisdiction over the university's buildings and adjacent streets. However, the university may broaden its jurisdiction by Board resolution, which it did by extending the department's jurisdiction throughout Marion County for certain situations, including when the officer "observes a situation where there is danger to the personal or public safety arising out of criminal or non-criminal circumstances and immediate action would help alleviate the danger" or the officer "provides aid to members of the community during an emergency." Because officer's entry into the home was justified by an emergency situation - checking on the welfare of three young minor children unattended in their home in the middle of the night - his actions fell squarely with his department's extended jurisdiction of providing aid to members of the community. Held, judgment affirmed.

TITLE: Maynard v. State

INDEX NO.: Z.6.e.

CITE: (5th Dist., 01-18-07), Ind. App., 859 N.E.2d 1272

SUBJECT: Uniform/marked vehicle statute does not apply where officer has no contact with D

HOLDING: Ind. Code 9-30-2-2 provides that a law enforcement officer may not arrest or issue a traffic information & summons to a person for violation of Indiana law unless at the time of the arrest the officer is wearing distinctive uniform & badge or operating a clearly marked police vehicle. Here, town marshal, out of uniform & without a badge, spotted D driving a blue Cadillac while he was walking his rounds in community. As he believed D's driving privileges to be revoked, marshal drove to sheriff's department, confirmed that D's driver's license was forfeited for life, completed a probable cause affidavit & issued a ticket. At no time did marshal attempt to stop D or present him personally with summons or traffic ticket.

Ct. held that because there was no contact between the parties, Ind. Code 9-30-2-2 does not apply. Purpose of statute is to protect drivers from police impersonators & to protect officers from resistance should they not be recognized as officers. Here, any possibility of danger was non-existent as there was no contact between the officer & driver. Accepting D's invitation to construe the word "issue" to mean that each time an officer writes a probable cause affidavit & issues a summons, the officer must be in uniform with a badge, regardless of any contact between the officer & citizen, would not effectuate the intent of the legislature. Accordingly, marshal did not violate Ind. Code 9-30-2-2. Held, judgment affirmed.

RELATED CASES: Ervin, 968 N.E.2d 315 (Ind. Ct. App 2012) (Ind. Code 9-30-2-2 was not implicated because officer did not arrest D for violating a law regulating the use of a motor vehicle; rather, it is apparent that officer's acts of drawing his weapon and pointing it at D were in response to the threatening and aggressive behavior that D initiated, and his purpose was to keep D away from his family to ensure their safety).

TITLE: Myers v. State
INDEX NO.: Z.6.e.
CITE: (3d Dist., 7-22-99), Ind. App., 714 N.E.2d 276
SUBJECT: University police officers - lack of training; general police powers
HOLDING: Tr. Ct. did not err in admitting evidence of chemical breath test & testimony concerning D's intoxication, where police officer employed by private university did not complete training conducted by Ind. Law Enforcement Academy. At time of arrest, officer had not taken nor completed necessary training required of police officers pursuant to Ind. Code 5-2-1-9(d). Statute provides that officer may not make arrest, conduct search or seizure of person or property, or carry firearm unless officer successfully completes basic training requirements at board- certified law enforcement academy. "Law enforcement officer" means appointed officer or employee hired by state or any of its political subdivisions. I.C 5-2-1-2. As private institution, Valparaiso University is not political subdivision of State. Thus, as employee of University, officer in this case was not type of law enforcement officer regulated by Ind. Code 5-2-1-1 et seq. Rather, as a Valparaiso University police officer, officer possessed general police powers including power to arrest, without process, all persons who within his view commit any offense. Ind. Code 20-12-3.5-2(a). Held, conviction affirmed; Sullivan, J., concurring, encouraging legislature to address legislative oversight at earliest opportunity.

TITLE: Richard v. State

INDEX NO.: Z.6.e.

CITE: (1st Dist. 8/28/85), Ind. App., 482 N.E.2d 282

SUBJECT: Conservation officer is law enforcement officer

HOLDING: Pursuant to Ind. Code 14-3-4-9(b), Ct. holds that conservation officer is law enforcement officer. Statute gives conservation officers power to enforce all laws of IN & to arrest without warrant persons who commit offenses in their presence. Ct. reaches this conclusion before addressing merits of Ds' appeal of convictions relating to unlawful deer hunting. Although Ind. Code 14-2-9-1 grants conservation officers "power & authority to search ... when he has good reason to believe that he will secure evidence of a violation [of conservation laws]," Ct. finds conservation officers may act only upon probable cause. Here, Ct. determines that conservation officer lacked probable cause for search. Held, convictions reversed. Ratliff CONCURS but would declare Ind. Code 14-2-9-1 unconstitutional insofar as it purports to confer upon conservation officer's authority to enter upon private property without warrant simply upon having good reason to believe they will secure evidence of violation of certain game laws. Legislature may not extend authority which transcends constitutional limitations.

RELATED CASES: Alter, 953 N.E.2d 1182 (Ind. Ct. App 2011) (Ind. Code 14-22-39-3 does not allow conservation officer to detain or seize D in violation of Fourth Amendment).

TITLE: State v. Caplinger

INDEX NO.: Z.6.e.

CITE: (2nd Dist., 7-15-93), Ind. App., 616 N.E.2d 793

SUBJECT: Arrest by off-duty officer illegal

HOLDING: Tr. Ct.'s suppression of breathalyzer test results due to illegal arrest was proper. Off-duty officer, traveling in personal vehicle, observed D swerve & cross center line. After she turned, officer followed her. D continued to drive erratically, & officer followed her from Madison County into Hamilton County. While following D, officer notified Madison County Police that he was following possible drunk driver. He was connected with Hamilton County authorities, & while talking to them, he saw D stop in yard & pulled in behind her. He exited his car, & when he smelled alcohol coming from her car, officer reached in & turned off ignition, took keys, & identified himself as officer. Officer was not in uniform nor in marked vehicle. When Hamilton County deputy arrived at scene, he conducted field sobriety tests, & after being advised of implied consent law, D agreed to breathalyzer test. Test showed .17% BAC & D was charged with operating vehicle while intoxicated.

D moved to suppress results of breathalyzer & all events after stop by first officer, on grounds that initial detention was illegal arrest pursuant to Ind. Code 9-4-8-1 (1988) [now Ind. Code 9-30-2-2 (1992 Supp.)] because officer was not in uniform or driving marked car. Ind. Code 9-4-8-1 provided that officers did not have authority to arrest anyone for violations of laws relating to use & operation of motor vehicles unless officers were wearing distinctive uniform & badge of authority or were driving clearly marked police vehicle. Provision did not apply to officers making arrests when uniformed officer was also present at time.

Because first officer was not in uniform or driving police car, he clearly did not have authority to arrest D. Although State argued that his actions did not constitute formal arrest, but merely "investigative detention," Ct. found issue was whether his "detention" constituted "arrest." Ct. observed that "[a]n arrest has occurred when police officers 'interrupt the freedom of an accused & restrict his liberty of movement.'" (*citing to Phillips*, 492 N.E.2d 10, 17 (*overruled* on other grounds, *Moore*, 498 N.E.2d 1), which quoted *Armstrong*, 429 N.E.2d 647, 651). Ct. concluded D was indeed "arrested" by first officer. He took keys to prevent her from driving, identified himself as officer, & said she was not free to leave, thus effectively interrupting her freedom & restricting liberty of movement. Situation was in accord with *State v. Whitney*, App. 377 N.E.2d 652, *trans. denied*. Fact D was not informed she was under arrest was irrelevant, as advisement is not necessary to effectuate arrest. Because initial "arrest" of D was illegal, Tr. Ct. did not err in suppressing all evidence obtained after she was stopped. Officer's testimony as to observations both prior to & contemporaneous with arrest of D, however, would be admissible.

RELATED CASES: *Davis*, App., 858 N.E.2d 168 (officer's attire, consisting of dark hooded sweatshirt, jeans, badge on his shoulder, & a vest that said "POLICE" in plain white letters, was not a "uniform" for purposes of stopping someone under Ind. Code 9-30-2-2); *Williamson*, App., 852 N.E.2d 962 (D was not detained for purposes of an arrest although police officer without uniform would have prevented D from entering her home if she had tried to & second uniformed officer at scene described first officer as "detaining" D); *Bowie*, App., 760 N.E.2d 1195 (because officer was not wearing uniform & was not in clearly marked police vehicle there could be no legitimate stop for headlight violation; officer showing badge was not enough); *Thompson*, App., 702 N.E.2d 1129 (fact that officers were neither in uniform

nor driving marked police vehicle at time of D's arrest is of no moment, because D was not arrested or charged with violating law regulating operation & use of motor vehicle); Miller, App., 641 N.E.2d 64 (conviction for OWI & operating with BAC > .10 reversed where D was stopped by non-uniformed officer driving unmarked vehicle; Ct. rejected State's argument that special deputy status is excluded from uniform and/or marked car requirements of Ind. Code 9-30-2-2, concluding that special deputies have powers of law enforcement officer under Ind. Code 36-8-10-10.6); Samaras, App., 640 N.E.2d 770 (Tr. Ct. properly granted motion to suppress evidence gained from illegal arrest; D was arrested, not merely detained).

TITLE: State v. Russ
INDEX NO.: Z.6.e.
CITE: (4th Dist. 7/16/85), Ind. App., 480 N.E.2d 248
SUBJECT: Warrantless arrest - police powers; infraction outside jurisdiction
HOLDING: Tr. Ct. erred in granting D's motion to suppress evidence obtained during his arrest by uniformed officer in marked police vehicle allegedly acting outside his jurisdiction. Ind. Code 34-4-32-2 provides that law enforcement officers may, at any time, detain persons suspected of committing infraction & does not state any jurisdictional limitation on officer's authority. Here, officer from Lake Station observed D disregard automatic signal & exceed posted speed limit in Hobart. He stopped D & determined that he had probable cause to arrest him for DWI. Held, suppression order reversed; remanded for trial. Conover CONCURS IN RESULT without opinion.

TITLE: State v. Oddi-Smith

INDEX NO.: Z.6.e.

CITE: (01-09-08), Ind., 878 N.E.2d 1245

SUBJECT: Police officers transitioning into consolidated department need not be re-sworn

HOLDING: Ind. Code 5-4-1-1(a) provides that "every officer and every deputy, before entering on the officer's or deputy's official duties, shall take an oath to support the Constitution of the United States and the Constitution of the State of Indiana, and that the officer or deputy will faithfully discharge the duties of such office." The consolidation of the Indianapolis Police Department (IPD) and the Marion County Sheriff's Department (MCSD) into the Indianapolis Metropolitan Police Department (IMPD) did not create a requirement to re-swear the officers. Their previously sworn status carried forward to the newly created IMPD. Moreover, internal IMPD directive does not require a second oath for transitioned officers, as it is aimed at personnel new to law enforcement. Thus, Tr. Ct. erroneously suppressed evidence from D's drunk driving arrest because arresting officer was recruited, trained, and sworn as an IPD officer and "took all that with him to the IMPD" Held, Tr. Ct.'s suppression and dismissal reversed and remanded for further proceedings.

RELATED CASES: Fields, 91 N.E.3d 597 (Ind. Ct. App 2017) ("de facto" officer's failure to take oath did not invalidate traffic stop; see full review, this section).

TITLE: Walker v. State

INDEX NO.: Z.6.e.

CITE: (2/9/87), Ind., 503 N.E.2d 883

SUBJECT: Warrantless arrest - police powers; can make citizen's arrest

HOLDING: Although Chicago police officers were outside their jurisdiction, they had authority to arrest Ds under citizen arrest statute. Ind. Code 35-33-1-4. Had officers been in fresh pursuit of Ds, pursuing them into IN to effect arrest, Ind. Code 35-33-3-1 would have granted them authority to make arrest. Here, all activity concerning instant crime was perpetrated in IN. Chicago police officers had Ds under surveillance & followed them into IN. Police observed Ds commit burglary. Held, arrest upheld.

Z. SEARCH AND SEIZURE

Z.7. Investigatory stops/ searches/detentions

TITLE: Buckley v. State

INDEX NO.: Z.7.

CITE: (2nd Dist., 05-01-08), Ind. App., 886 N.E.2d 10

SUBJECT: Being prime suspect in recent murder does not justify substantial detention

HOLDING: Tr. Ct. abused its discretion in admitting evidence of a handgun which was unconstitutionally seized under Article I, Section 11 of the Indiana Constitution. Rather than looking to federal requirements such as warrants and probable cause when evaluating Section 11 claims, we place the burden on the State to show that under the totality of the circumstances its intrusion was reasonable. State v. Bulington, 802 N.E.2d 435 (Ind. 2004). Here, D was a prime suspect in a homicide which occurred two days prior to the police surveillance of D's home. When D left his home, the undercover police noticed a few infractions and radioed a marked car to stop D. About ten to fifteen minutes later, the detectives arrived. Without probable cause for arrest, the detectives had D exit his car, patted him down, handcuffed him, transported him to the police station, placed him in an interview room, and towed his car. D was detained in the room for a few hours without being informed he was free to leave while the detective secured search warrants. Although the State had reasonable suspicion at the time of the stop that D committed the homicide two days earlier, this was not sufficient to support the actions taken by the detectives. The degree of intrusion on D's ordinary activities was clearly substantial. There was no shortage of time or emergency. The police knew the location of D who had made no apparent effort to flee or hide. Thus, State did not carry its burden under article I, section 11 of the Indiana Constitution. Held, judgment reversed and remanded.

TITLE: Commonwealth v. Vasquez

INDEX NO.: Z.7.

CITE: 703 A.2d 25 (Pa. Super. Ct. 1997))

SUBJECT: Seizure -- Boarding Bus, Requesting Consent to Search

HOLDING: Pennsylvania Superior Court holds that officers who boarded bus during scheduled layover and asked passenger for consent to search her luggage seized the passenger for purposes of state constitutional counterpart to 4th Amendment. Officers did not block door to bus but were stationed both in front of and behind passenger, and officer with dog was outside door. Further, passenger knew trip would not continue until officers left bus. In these circumstances, reasonable person would have believed her liberty was being restrained by officers. Because the D was detained without reasonable suspicion, her consent did not support the search of her luggage. Contents should have been suppressed.

TITLE: McGee v. Commonwealth

INDEX NO.: Z.7.

CITE: 25 Va. App. 193, 487 S.E.2d 259 (Va. Ct. App. 1997)

SUBJECT: Seizure -- Uniformed Officers Telling D he was Suspected of Selling Drugs

HOLDING: Where several uniformed police officers pulled up in front of D's home in marked police cars, came up on his porch and told him he matched description of person they were told had been selling drugs on nearby street corner, D was effectively seized. Under circumstances, reasonable person would have believed that he was not free to leave and that he had no choice but to submit to search. Uncorroborated anonymous tip did not provide probable cause for such seizure.

TITLE: Michigan v. Chesternut
INDEX NO.: Z.7.
CITE: 486 U.S. 567, 108 S. Ct. 1975, 100 L.Ed.2d 565 (1988)
SUBJECT: Investigatory detention - what constitutes seizure
HOLDING: All interaction between police/citizenry does not constitute "seizure." Terry v. OH (1968), 392 U.S. 119, 88 S. Ct. 1868, 20 L.Ed. 2d 889. When officer, by physical force or show of authority, in some way restrains liberty of citizen, seizure has occurred. Id. Police have seized individual within meaning of 4th Amend. "only if, in view of all the circumstances surrounding the incident, a reasonable person would have believed that he was not free to leave." U.S. v. Mendenhall (1980), 446 U.S. 544, 560, 100 S. Ct. 1870, 64 L.Ed.2d 497. What constitutes restraint on liberty sufficient to prompt person to conclude he/she is not free to leave will vary with particular police conduct at issue & with setting in which conduct occurs. Test is objective. Here, D ran at sight of police who then followed him "to see where he was going." While driving alongside D for short distance police observed D discard packets which were later determined to contain contraband. Police conduct here would not have communicated to reasonable person attempt to capture or intrude on freedom of movement. Police did not activate siren or flashers, command D to halt, display any weapon, operate car in aggressive manner to block D's course, nor speed of D's movement. Held, D was not unlawfully "seized" during police pursuit. Kennedy, joined by Scalia, CONCURS.

TITLE: Ornelas v. U.S.

INDEX NO.: Z.7.

CITE: 517 U.S. 690, 116 S. Ct. 1657 (1996)

SUBJECT: Stops & Warrantless Searches -- Appellate Review

HOLDING: Appellate Cts. should conduct de novo review of Tr. Ct.'s determinations of reasonable suspicion to make stops & probable cause to make warrantless searches, after reviewing findings of historical fact for clear error & giving due weight to inferences. While it is impossible to define precisely what reasonable suspicion or probable cause mean, it is clear that inquiry for determining either has two parts. The first part is a determination of the historical facts -- the events leading up to stop or search. The second part is a mixed question of law & fact -- determining whether historical facts found satisfy legal standard of reasonable suspicion or probable cause. Ct. has never, when reviewing probable cause or reasonable suspicion determinations, expressly deferred to Tr. Ct.'s determination. Policy of sweeping deference would lead to inconsistent rulings, whereas independent appellate review is necessary to enable the appellate Cts. to maintain control of & clarify legal principles involved. Such unified precedent will come closer to providing law enforcement officers clearly defined set of rules from which to operate & make their own correct determinations. Therefore, as general matter, appellate Cts. should conduct de novo review of determinations of reasonable suspicion & probable cause. In doing so, they should review findings of historical facts regarding events leading up to stop or search only for clear error. They should further give due deference to inferences drawn from those facts by resident judges & local law enforcement officers. Scalia, J., DISSENTS.

RELATED CASES: Brown, 929 N.E.2d 204 (Ind. 2010) (error in ruling on a motion to exclude improperly seized evidence is not per se fundamental error; but, where there is a claim of fabrication of evidence, willful malfeasance on the part of the investigating officers or that the evidence is not what it appears to be, a fair trial may be impossible, making the admission of the evidence fundamental error).

TITLE: People v. Garry

INDEX NO.: Z.7.

CITE: 2007 Cal. App. LEXIS 1962, 67 Cal.Rptr.3d 849 (Cal. Ct. App. 2007)

SUBJECT: Aggressive actions by officer constitutes seizure

HOLDING: California Court of Appeals held that a police officer seized a pedestrian within the meaning of the Fourth Amendment when he illuminated him with a patrol car spotlight and exited the car, briskly walked toward him, and asked him if he was on probation or parole. Because the officer had no basis at that point to reasonably suspect that the pedestrian was involved in criminal activity, evidence that he discovered on the man following the detention must be suppressed. Court agreed with D that the officer's initial encounter with him amounted to a seizure despite the fact that the officer uttered no verbal commands. Court concluded that the manner in which an officer approaches a person can carry greater weight in determining whether a detention has occurred than the nature of any questions or requests verbalized by the officer. Using that stand, Court noted "no matter how politely [the officer] may have stated his probation/parole question, any reasonable person who found himself in D's circumstances, suddenly illuminated by a police spotlight with a uniformed, armed officer rushing directly at him asking about his legal status, would believe themselves to be 'under compulsion of a direct command by the officer.'"

TITLE: Rich v. State
INDEX NO.: Z.7.
CITE: (4th Dist., 04-26-07), Ind. App., 864 N.E.2d 1130
SUBJECT: Motion to suppress - timeliness
HOLDING: In public intoxication trial, Tr. Ct. erred when it determined D's challenge to police officer's testimony was untimely. Officer was dispatched to scene where off-duty detective had stopped D. When officer arrived, he noticed D had poor balance, an odor of alcohol on his breath, blood-shot & watery eyes, & slurred speech. At trial, after officer began testifying, D moved to suppress further testimony on basis that detective's initial stop of D had been without reasonable suspicion D was engaged in criminal activity. Tr. Ct. held D waived his suppression argument by failing to present it before officer testified. To assert error in admission of evidence, a party must make a timely objection stating the specific ground of objection. Ind. Evid. Rule 103(a)(1). An objection is generally timely if it is made before the answer is given. Fleener v. State, 656 N.E.2d 1140 (Ind. 1995). Rejecting State's waiver argument, Ct. App. noted there is no precedent to the effect a motion to suppress is untimely just because a witness has begun testifying.

Thus, Court suppressed remainder of officer's testimony. Detective was only person who could explain the facts & circumstances that led to his stop of D, but State did not request detective's presence at trial. Without this testimony, Court had no basis for holding that detective had reasonable suspicion criminal activity was afoot when he stopped D. Held, conviction reversed.

TITLE: State v. Donahue
INDEX NO.: Z.7.
CITE: 742 A.2d 775 (Conn. 1999)
SUBJECT: Late Night Parking in Area Experiencing Increase in Crime
HOLDING: Officer's testimony that drug buyers and "johns" in area experience increase in late night drug dealing and prostitution frequently parked in lots of nearby businesses that were closed for night was not enough to make his observation of D parking in this area in business lot after hours amount to reasonable suspicion. Stop was based on nothing more than location of D's vehicle at late hour of night. These factors alone neither constitute criminal activity, nor do they provide reasonable suspicion to justify stop. There is no evidence even of furtive gestures or other unusual circumstances to support reasonable suspicion. Majority expresses concern that this 'raises the insidious specter of 'profiling': the criminalizing of locations, neighborhoods or even individuals due to generalized perceptions of supposedly identifying and suspicious characteristics."

TITLE: State v. Henage
INDEX NO.: Z.7.
CITE: 143 Idaho 655, 152 P.3d 16 (Idaho 2007)
SUBJECT: Admission of possessing knife not sufficient for frisk
HOLDING: The Idaho Supreme Court held that a motorist's admission during a traffic stop that he has a knife did not, by itself, provide the basis required by the Fourth Amendment and Terry v. Ohio, 392 U.S. 1 (1968), to conduct a weapons frisk of the motorist.

D in this case was the passenger in a vehicle stopped for having a broken taillight. Although both the driver and D were polite and cooperative, D seemed to the officer to be overly nervous. When the officer asked if he was carrying any contraband, D admitted that he had a knife. The officer conducted a pat down search and found the knife, which he returned to the passenger. He continued the search and found a glass pipe and a rock later identified as methamphetamine.

Terry allows police officers to frisk a suspect whenever there are facts that support an objectively reasonable belief that the suspect is armed and poses a risk of danger to himself or others. Court rejected State's argument that D's admission that he possessed the knife was not enough to give rise to a reasonable suspicion that D was a threat. Under the totality of the circumstances, Court noted that D, although nervous, remained polite and cooperative and did not make any furtive movements. Court added that the officer returned the knife to D before concluding the search and distinguished this case from one where an officer had a reason to believe that a suspect was under the influence of illegal substances. A concurring opinion noted that the fact that someone carries a knife, a nail file, or a permitted concealed weapon does not make that person dangerous. A second concurrence stressed that this was a consensual encounter and not one where reasonable suspicion of criminal activity was present.

TITLE: State v. Johnson

INDEX NO.: Z.7.

CITE: 729 N.W.3d 182 (Wis. 2007)

SUBJECT: Reach under front seat did not equal reasonable suspicion

HOLDING: Wisconsin Supreme Court held that police officers' observation that the driver of a car they had just pulled over leaned down momentarily and seemed to reach under the front seat was not enough to give the officers the reasonable suspicion necessary to perform a protective search of the interior of the vehicle after removing the occupants. At suppression hearing, officers testified that based on their training and experience they believed the movement was consistent with an attempt to conceal contraband or weapons. Analyzing case in relation to Michigan v. Long, 463 U.S. 1032 (1983), Court acknowledged that a surreptitious movement by a suspect in a vehicle immediately after a traffic stop could be a substantial factor in establishing that officers had reason to believe that the person was armed and dangerous. However, other cases in which Court has found reasonable suspicion involved additional factors, such as a driver suspected of selling drugs or the smell of alcohol, or that the stop took place in an area in which the officers were in a more vulnerable position than the officers were in present case.

Here, Court noted D was initially suspected of driving a vehicle with a registration that was suspended for an emissions violation and failing to signal for a turn. Driver proved that he had fixed the emissions problem, so all the officers had on him was a minor traffic violation and a "head and shoulders movement." To conclude this provided reasonable suspicion, Court noted would be to authorize frisks of drivers who are observed merely making an innocuous movement such as reaching for a wallet or a purse or turning off the radio. Two justices dissented on grounds that majority should not have substituted its judgment for that of experienced police officers.

Z. SEARCH AND SEIZURE

Z.7. Investigatory stops/ searches/detentions

Z.7.a. Investigatory stop (Terry v. Ohio)

TITLE: Alabama v. White

INDEX NO.: Z.7.a.

CITE: 496 U.S. 325, 110 S. Ct. 2412, 110 L.Ed.2d 301 (1990)

SUBJECT: Use of anonymous tip to establish reasonable suspicion

HOLDING: Anonymous tip, corroborated in part by independent police work, may provide sufficient indicia of reliability to provide reasonable suspicion justifying investigatory stop. Here, police received anonymous tip that D was leaving particular apartment at particular time in particular automobile. Tipster additionally stated D was going to Dobey's Motel & would be in possession of 1 oz. of cocaine. Officers observed D leave described apartment building & get into described auto. Officers followed D take most direct route to described motel. As D turned onto street motel was on, police stopped vehicle, obtained consent to search, & found marijuana & 3 milligrams of cocaine. Tipster's "veracity," "reliability," & "basis of knowledge" are highly relevant in determining value of report. Tip alone seldom demonstrates informant's basis of knowledge or veracity. Tip which does not supply basis of knowledge or veracity standing alone would not warrant person of reasonable caution in belief that stop appropriate. However, police here verified enough information from tipster to establish reasonable suspicion. Officer's corroborated that woman left described apartment building in described vehicle & took most direct route toward described motel. Court distinguishes tips involving information easily observable by general public (e.g., make & color of vehicle) from tips predicting future behavior. Where significant aspects of tipster's predictions are verified, there is reason to believe tipster honest & well informed. Held, although "close case," stop supported by reasonable suspicion. Stevens, joined by Brennan & Marshall, DISSENTING.

TITLE: Arizona v. Johnson

INDEX NO.: Z.7.a.

CITE: (U.S.), (01/26/09), 129 S. Ct. 781

SUBJECT: Traffic stops - pat-down frisk of passengers & questions unrelated to justification for stop

HOLDING: Police officers conducting traffic stops may order passengers out of vehicle and conduct a "pat-down" frisk in the absence of reasonable suspicion that passengers are engaged in criminal activity, as long as officers have reason to believe that the passenger may be armed and dangerous. Here, D was a back-seat passenger in a car stopped for an insurance-related traffic violation. The officers conducting the stop were gang investigators, and officer's conversation with D gave her reason to believe that he was a member of a violent street gang whose members were frequently armed. Officer asked D to get out of the car in order to question him further. Because officer suspected that D was armed, she immediately patted him down for safety when he exited the car and found a gun.

Court held that encounter was not "consensual," and officers who conduct routine traffic stops may frisk drivers and passengers they have lawfully detained if officers have reasonable suspicion that they may be armed and dangerous. Brendlin v. California, 127 S. Ct. 2400 (2007). The temporary seizure of driver and passengers ordinarily continues, and remains reasonable, for the duration of the stop. Normally, the stop ends when police have no further need to control the scene and inform the driver and passengers, they are free to leave. Here, nothing in officer's conversation with D would have suggested that he was free to leave, so he remained seized when officer conducted pat-down.

Following reasoning in Muehler v. Mena, 544 U.S. 93 (2005), Court also held that Fourth Amendment allows officers to ask questions about drugs or make other inquiries unrelated to the traffic violation justifying the initial stop. This does not "convert the encounter into something other than a lawful seizure," so long as the inquiries unrelated to the traffic stop "do not measurably extend the duration of the stop." Held, Arizona Court of Appeals' decision reversed and remanded.

Note: The Court in Johnson reaffirmed the general rule that, with the exception of occupants in automobiles that have been lawfully stopped, a valid investigatory "stop and frisk" requires: 1) reasonable suspicion that the person stopped is committed or has committed a crime; and, to proceed from a stop to a frisk, 2) reasonable suspicion the person stopped is armed and dangerous. Johnson, slip op. at 1. In other words, a police officer involved in a "consensual encounter" cannot take safety measures such as patting someone down even if they have reason to believe the person is armed and dangerous. See State v. Atkins, 834 N.E.2d 1028 (Ind. Ct. App 2005) (officer safety is always a legitimate concern, but standing alone it cannot form the basis for a valid investigatory stop; a lawful stop, based on objective facts and reasonable suspicion, is the predicate for a pat down); Briggs v. State, 873 N.E.2d 129 (Ind. Ct. App 2007) (since police officers' encounter with D was "consensual," Fourth Amendment was not implicated and they had no authority to restrict D's movement in any way); Malone v. State, 882 N.E.2d 784 (Ind. Ct. App 2008) (at time police officers seized gun from D, they did not have information leading them to believe D had been convicted of any crime, which could render him a serious violent felon, or his possession of a weapon illegal).

TITLE: Armfield v. State
INDEX NO.: Z.7.a.
CITE: (12-18-09), (Ind. 2009) 918 N.E.2d 316
SUBJECT: Traffic stop based on random license plate check
HOLDING: Tr. Ct. properly denied the D's motion to suppress. Resolving a split in the appellate courts, Court held that an officer has reasonable suspicion to initiate a Terry stop when: (1) the officer knows that the registered owner of a vehicle has a suspended license and (2) the officer is unaware of any evidence or circumstances which indicate that the owner is not the driver of the vehicle. This rule does not require officers to match the physical description of the registered owner from the license plate check to the driver of the vehicle before initiating a Terry stop. To the extent that prior opinions of the Court of Appeals are inconsistent, such as Holly v. State, 888 N.E.2d 338, aff'd on other grounds, and Wilkinson v. State, 743 N.E.2d 1267, the Court disapproves of them.

Here, an officer ran a license plate check on D's vehicle while driving behind him at 12:30 a.m. The check revealed that the owner of the vehicle had a lifetime license suspension. It also revealed the name, address, and physical description of the owner. The officer stopped the vehicle. When he approached the driver, he asked if he was Thomas, to which D responded affirmatively. D again identified himself as Thomas Armfield and gave his birth date. The officer had reasonable suspicion to stop the car and acted properly when he approached the vehicle and verified the name of the driver matched that of the registered owner. Held, transfer granted, judgment affirmed.

RELATED CASES: Johnson, 21 N.E.3d 841 (Ind. Ct. App 2014) (traffic stop should have ended once reasonable suspicion dissipated); Holly, 918 N.E.2d 323 (where officer realizes that driver of car is not owner, officer must conclude traffic stop); Bannister, 904 N.E.2d 1254 (following Wilkinson, Ct. upheld warrantless stop where license plate check revealed that truck owner's driving privileges were suspended for life, & officer could see the driver and determine that he matched description of owner; see full review, this section); Maloney, App., 872 N.E.2d 647 (Ct. rejected D's comparison of "search" of license plate records to sobriety checkpoints. Moreover, Ind. Code 9-14-3-5 authorizes law enforcement search of records maintained by BMV; D could have no reasonable expectation of privacy from governmental intrusion in the BMV); Alexander, 947 N.E.2d 966 (Ind. Ct. App 2011) (as with a BMV search based on license plate numbers, a query of BMV records based on a person's name is not a search for Fourth Amendment purposes); Ritter, App., 801 N.E.2d 689 (although officer could not see person driving vehicle & could not verify if driver matched description of D, officer had reasonable suspicion to stop D's car to determine whether it was D who was driving it).

TITLE: Bannister v. State

INDEX NO.: Z.7.a.

CITE: (04-17-09), 904 N.E.2d 1254 (Ind. 2009)

SUBJECT: Traffic stop based on based random license plate check

HOLDING: Warrantless stop of D's pickup truck did not violate Fourth Amendment, where license plate check revealed that truck owner's driving privileges were suspended for life, and officer could see the driver and determine that the driver matched the physical description of the owner. D argued that officer was unable to identify any characteristics of the driver and that it was not reasonable for a police officer to believe that a vehicle is being driven by a suspended driver just because the registered owner may have the vehicle registered in his name. See Holly v. State, 888 N.E.2d 338 (Ind. Ct. App 2008), *trans. granted*, and Armsfield v. State, 894 N.E.2d 195 (Ind. Ct. App 2008), *trans. granted*. In this case, officer received information that described D as 5 foot 7, 165 pounds with brown hair. Officer recalled that the person he saw driving pickup truck through intersection was a male with brown hair. On cross-examination, counsel extracted a pretty wide range about the driver's possible height. Still, officer testified he saw the driver at a lighted intersection in clear weather. He judged that the driver "closely matched the description of [D]." Under this evidence, officer had reasonable suspicion to conduct an investigatory stop to determine whether it was D driving the vehicle. Held, transfer granted, memorandum Court of Appeals' opinion vacated, judgment affirmed.

RELATED CASES: Shorter, 144 N.E.3d 829 (Ind. Ct. App. 2020) (officer's training and experience permitted him to recognize the distinctive odor of burnt synthetic drugs and was sufficient to support probable cause to search D's vehicle).

TITLE: Bass v. Commonwealth
INDEX NO.: Z.7.a.
CITE: 525 S.E.2d 921 (Va. 2000)
SUBJECT: Legal Turn to Avoid Roadblock
HOLDING: Law enforcement officer's perception that motorist's legal U-turn was intended to evade a temporary traffic checkpoint did not provide reasonable suspicion for Terry stop. Because there are many reasons a driver might reverse directions, under totality of circumstances, driver's legal U-turn established no more than a "hunch" that he was trying to avoid the checkpoint.

TITLE: Baxter v. State

INDEX NO.: Z.7.a.

CITE: (6/26/2018), 103 N.E.3ed 1180 (Ind. Ct. App 2018)

SUBJECT: D was not unlawfully detained during police investigation

HOLDING: Trial court did not err in denying D's motion to suppress evidence resulting from a stop of a vehicle in which he was a passenger. D was parked at a car wash when police arrived to investigate suspicious persons on the premises who were not patronizing the business and who appeared to be evading security cameras. After releasing the suspicious men, police walked toward D's car believing one of the suspicious men came from that area. They smelled the odor of marijuana coming from the open window of D's car and ordered him out of the car. Police found marijuana and pills in the car. D argued that he was unlawfully detained during the investigation of suspicious persons because police lacked reasonable suspicion that criminal activity was afoot when they parked behind him, blocking him from leaving and detained his passenger. But D was not the subject of an investigatory detention until after the officers smelled the odor of marijuana coming from his car and ordered him out of the car. Court noted that the record does not support D's claim that he had a passenger, and concluded that a reasonable person in D's position would have felt free to leave the scene or approach an officer to ask him to move his vehicle if he felt he could not back out of the space. Under these circumstances, D's rights against unreasonable search and seizure under both the Fourth Amendment and Article 1, Section 11 of the Indiana Constitution were not violated Held, judgment affirmed.

TITLE: Bell v. State

INDEX NO.: Z.7.a.

CITE: (7/14/2017), 81 N.E.3d 233 (Ind. Ct. App 2017)

SUBJECT: Pat-down search upheld - D's behavior & bulge in pocket

HOLDING: Pat-down search following valid traffic stop at 1:00 a.m. in a high-crime area did not violate D's rights under Fourth Amendment or Article 1, Section 11 of the Indiana Constitution. Police officer stopped D after observing him riding a bike without lights, pulling another bike alongside. Officer found D did not have active warrants, but D had a suspicious bulge in his pocket, was sweating and nervous, and repeatedly scanned the area to see if anyone was watching him. D did not answer officer's question about the bulge, leading officer to believe D was hiding something or being evasive. Under these circumstances, it was reasonable for officer to be concerned for his own and the public's safety. Held, judgment affirmed; Robb, J., dissenting, believes the Fourth Amendment prohibited the prolonged seizure and pat-down search, as it was based on only a generalized suspicion that D presented a threat to officer's safety. Further, there was nothing inherently suspicious about D having something in his pocket, even at 1:00 a.m.

TITLE: Billingsley v. State
INDEX NO.: Z.7.a.
CITE: (12/7/2012), 980 N.E. 402 (Ind. Ct. App 2012)
SUBJECT: Officer drawing weapon did not result in arrest - information from 911 caller
HOLDING: Based on totality of circumstances available to responding officer at time he detained D, officer initiated an investigatory stop of D based on reasonable and articulable suspicion that he was engaged in criminal activity. Thus, Tr. Ct. did not abuse its discretion in admitting marijuana seized following officer's detention of D. Officer responded to a 911 call that D was armed at a VFW post. The caller, who identified herself as Renita Brown, said D was the same person who "held her hostage" previously and that he was in a tan or brown Dodge Durango. Officer knew the VFW to be a dangerous area and knew D to be a convicted felon with a history of dangerous acquaintances. D found D in passenger side of a Chevy Trailblazer that matched the color description. He called for backup, drew his gun and ordered D to put his hands on roof of SUV. Following Willis v. State, 907 N.E.2d 541 (Ind. Ct. App 2009), Court held that officer's limited use of firearm to detain D until backup arrived did not convert investigatory stop into an arrest requiring probable cause.

Majority concluded that information known to officer was sufficient to support an investigatory stop, despite claim that Brown's 911 call was akin to an anonymous tip because she did not give police any personally identifying information and State and defense counsel did not locate her. Brown was not an anonymous caller but a concerned citizen and fact she called 9-1-1 rather than a police station entitles the call to a degree of reliability. United States v. Terry-Crespo, 356 F.3d 1170 (9th Cir. 2004). Held, judgment affirmed; Kirsch, J., dissenting on basis that merely providing of a name by a 911 caller does not remove this case from category of an anonymous caller, and unverified information known to officer was insufficient.

TITLE: Bowman v. State

INDEX NO.: Z.7.a.

CITE: (4th Dist. 10/3/84), Ind. App., 468 N.E.2d 1064

SUBJECT: Investigatory stop - store security guard

HOLDING: Store security guard, acting upon salesclerk's observation of possible theft, properly stopped Ds outside store & properly detained Ds inside store. Ind. Code 35-33-6-2 provides that owner or agent of store who has probable cause (1) to believe theft has occurred/is occurring/is about to occur & (2) to suspect specific person, may detain & question such person until police arrive or for 2 hours, whichever occurs first. Here, Ds were observed by hardware salesclerk carrying saw away without paying for it. Clerk called security guard who detained Ds. Security guard, an off-duty police officer, advised Ds of their Miranda rights & questioned them. Police arrived & arrested Ds. Ct. finds store owners/agents are held to same requirements as police officers in investigatory stop situations. Ct. finds stop proper under Terry, etc. Held, affirmed.

TITLE: Brendlin v. California

INDEX NO.: Z.7.a.

CITE: 551 U.S. 249 (2007)

SUBJECT: Passenger seized under 4th Amendment and may challenge stop

HOLDING: Court in unanimous opinion held that when police make a traffic stop, a passenger in the car, like the driver, is seized for Fourth Amendment purposes and so may challenge the stop's constitutionality. Passenger in case was seized because no reasonable person in his position when the car was stopped would have believed himself free to "terminate the encounter" between police and himself. Florida v. Bostick, 501 U.S. 429, 436 (1991). Any reasonable passenger would understand the officers to be exercising control to the point that no one in the car was free to depart without police permission. A traffic stop necessarily curtails a passenger's travel just as much as it halts the driver, diverting both from the stream of traffic to the side of the road, and the police activity that normally amounts to intrusion on "privacy and personal security" does not normally distinguish between passenger and driver.

TITLE: Browder v. State

INDEX NO.: Z.7.a.

CITE: (5/22/2017), 77 N.E.3d 1209 (Ind. Ct. App 2017)

SUBJECT: Police did not unreasonably extend length of traffic stop

HOLDING: Tr. Ct. did not err in admitting evidence discovered when an officer searched Defendant's car during a traffic stop for an improperly plated vehicle. Traffic stop was not unreasonably extended under Rodriguez v. United States, 135 S. Ct. 1609 (2015). Police officer had reasonable suspicion to continue investigating who owned the car because no paperwork was in the vehicle documenting the sale to Defendant or his wife (even though Defendant may not have been required by statute to keep the paperwork in his possession), and the license plate on the vehicle was registered to a different vehicle whose owner did not share Defendant's name. Defendant's limited criminal history also gave officer reasonable suspicion that the car might be stolen. After further questioning, officer asked for and was granted permission to search the car, which Court found was voluntary under the circumstances.

Under Article 1, Section 11, officer reasonably decided to prolong the traffic stop to continue his investigation of whether Defendant was legally in possession of the car and his consent to search was valid. Held, possession of paraphernalia conviction affirmed.

RELATED CASES: Guthery, 180 N.E.3d 339 (Ind. Ct. App 2021) (even if the purposes of the traffic stop were completed by the time dog sniff was performed, the officer's observation of D reaching for the center console when he was pulled over, nervousness, inconsistent answers as to where he was going, and disobeying police instructions combined to support sufficient independent reasonable suspicion to justify D's further detention); Thayer, 144 N.E.3d 843 (Ind. Ct. App 2020) (K9 sniff did not unjustifiably extend the length of initial stop where officer had a reasonably high level of concern or suspicion that D was engaged in criminal conduct at the time of the stop); Hansbrough, 49 N.E.3d 1112 (Ind. Ct. App 2016) (traffic stop was not unreasonably extended under Rodriguez, given officer's valid concern over mismatched license plate and whether vehicle was possibly stolen) Washington, 42 N.E. 3d 521 (Ind. Ct. App 2015) (police dog alerted to odor of narcotics about 11 minutes after D was pulled over, which did not prolong the stop beyond the time reasonably required to complete the mission of issuing a ticket).

TITLE: Burkes v. State

INDEX NO.: Z.7.a.

CITE: (2nd Dist., 02-15-06), Ind. App., 842 N.E.2d 426

SUBJECT: Reasonable suspicion for detention

HOLDING: Detectives were lawfully inside house of a known drug user when that user, who had an outstanding warrant for her arrest, appeared at front door with two other men, one of whom matched description of an alleged drug dealer. Ordering these two men to freeze was not a "seizure," but a reasonable action to temporarily preserve the status quo-- allowing detectives a safe means of arresting the subject of the warrant. When detectives gave order to freeze, D began to run away. As in United States v. Silva, 957 F.2d 157 (5th Cir. 1992), these facts support a reasonable suspicion supporting investigatory stop. After being detained, D admitted to possessing marijuana & a handgun, thus justifying a further search of his person incident to his lawful arrest. Tr. Ct. did not err in admitting evidence seized from D's person. Held, judgment affirmed.

TITLE: Cade v. State
INDEX NO.: Z.7.a.
CITE: (2nd Dist., 08-23-07), Ind. App., 872 N.E.2d 186
SUBJECT: Request passenger's identification during traffic stop not unreasonable under Indiana Constitution

HOLDING: Tr. Ct. did not err in denying D's motion to suppress cocaine seized from D during a search incident to his arrest. D argued that police behavior leading to his arrest--requesting his identification when he was a passenger in a car stopped for an expired license plate & entering that information into a police computer--was unreasonable under Article 1, Section 11 of the Indiana Constitution. Although expired tag on plate justified stop, D claimed that because he was merely a passenger in the stopped car & had done nothing to arouse suspicion, officer's request for identifying information was unreasonable.

Assuming arguendo D was seized for purposes of Article 1, Section 11, Ct. concluded that police conduct was reasonable. Because traffic stop was valid, the degree of intrusion caused by an officer asking a passenger his name is minimal. Cochran v. State, 843 N.E.2d 980 (Ind. Ct. App 2006). In addition, for officer safety reasons, officers can verify the identity of those with whom they are interacting. Id. Held, denial of motion to suppress affirmed.

TITLE: Cannon v. State
INDEX NO.: Z.7.a.
CITE: (2nd Dist., 1-28-00), Ind. Ct. App, 722 N.E.2d 881
SUBJECT: Illegal detention for dog sniff - no reasonable suspicion
HOLDING: Tr. Ct. erred in denying D's motion to suppress evidence obtained as result of canine sniff test of his vehicle, where after valid initial traffic stop, police officer lacked requisite reasonable suspicion to detain vehicle for further investigation. At suppression hearing, officer testified that after activating his emergency lights, he observed D moving his right arm between seats of his truck. D stopped truck, exited immediately, & began pacing. After body search to which D consented revealed no weapons, officer requested D's permission to search his truck for weapons. D stated that he had no weapons & declined to give consent for vehicle search. Officer testified that he felt D was "being honest" about not having weapon in his truck, but that D's "nervous" & "suspicious" demeanor must have had another cause, which led him to conduct canine sniff test with dog trained in narcotics detection.

While Fourth Amendment permits search incident to custodial arrest, it does not permit search incident to traffic citation. Knowles v. Iowa, 119 S. Ct. 484 (1998). Sniff testing by trained narcotics detention canine is not search within meaning of Fourth Amendment, & detention of personal property for sniff test is not prohibited if officer has reasonable suspicion to believe property contains narcotics. Kenner, App., 703 N.E.2d 1122. In this case, sniff test of D's truck was not premised upon reasonable suspicion that it contained narcotics. Officer's safety concerns had been alleviated before he retrieved his canine & led him around perimeter of D's truck. At that point, his lingering suspicion about contents of truck was premised solely on D's "nervousness." Officer's hunch based only on vague & general characterization of D's demeanor did not rise to level of reasonable suspicion. Sniff test was therefore unreasonable, & cocaine found as result thereof should have been suppressed. Held, conviction reversed.

RELATED CASES: Powers, 190 N.E.3d 440 (Ind. Ct. App. 2022) (D's nervousness, her appearance, dark circles under her eyes, and sores on her arms, were not enough to rise to reasonable suspicion of criminal activity reasonable suspicion of criminal activity to justify removing her from vehicle, questioning her and performing canine sniff); Rodriguez, 135 S. Ct. 1609 (U.S. Supreme Court 2015) (absent reasonable suspicion, prolonging the duration of a traffic stop to conduct a dog sniff constitutes an unreasonable seizure; see full review, this section); Gray, 997 N.E.2d 1147 (Ind. Ct. App 2013) (where officer suspended normal traffic stop for two to six minutes in order to conduct a canine sniff, the search was not incident to the traffic stop; a vague tip that D was involved in narcotics did not provide reasonable suspicion justifying the sniff and subsequent search); Bush, 925 N.E.2d 787 (Ind. Ct. App 2010) (D & his car were unlawfully detained for dog sniff based on passenger's arrest for outstanding warrant); Wells, 922 N.E.2d 697 (Ind. Ct. App 2010) (D's extreme fidgetiness & other furtive gestures raised legitimate safety concerns that justified removing D from car & conducting pat-down search, but once concerns were alleviated, there was no reasonable suspicion to keep D until K-9 unit arrived); Wilson, App., 847 N.E.2d 1064 (officer did not have reasonable suspicion to detain D after traffic stop was concluded & until arrival of drug-sniffing dog that was summoned only after D declined consent to search); Bradshaw, App., 759 N.E.2d 271 (where canine sweep was conducted prior to officers receiving information from dispatch on license & warrants check, it did not prolong traffic stop longer than necessary & was thus proper); Mitchell, 745 N.E.2d 775 (reasonable search under Ind. Const. would permit police to briefly detain motorist only as necessary to complete officer's work related to illegality for which motorist was stopped); D.K., App., 736 N.E.2d 758 (nervousness, failure to make eye contact, turning to look at officer, refusal to consent to search & information about D's possession of police radio in vehicle were unparticularized suspicions, & did not create reasonable suspicion of criminal

activity to support continued detention for canine sniff for drugs).

TITLE: Cash v. State

INDEX NO.: Z.7.a.

CITE: (1st Dist. 06/18/92), App., 593 N.E.2d 1267

SUBJECT: No reasonable suspicion for traffic stop

HOLDING: Where D's license plate, although attached with only one bolt & off-center, was not swinging or non-horizontal, officer did not have sufficient reasonable suspicion of criminal activity to stop D, & therefore Tr. Ct. erred in refusing to suppress evidence of marijuana found in subsequent search of D. Officer noticed that D's license plate was fastened with only one bolt & did not look secure, although officer admitted that plate did not "flop" while he was following him. Individuals may be stopped briefly for investigation on less than probable cause, if officer's observations lead to reasonable suspicion, based on specific & articulable facts, the person is, or has committed crime. This requirement for reasonable suspicion creates the balance between legitimate governmental interest & individuals' expectations of privacy.

Requirements for license plates in Ind. Code 9-1-4-7 are that they be securely fastened, in horizontal position, not swinging, & clearly visible. There was no evidence, other than officer's subjective assessment that plate did not look secure, that D was at risk of violating law. Simple good faith on part of arresting officer was not sufficient. Because officer lacked probable cause or reasonable suspicion concerning criminal offense, stop of D was constitutionally impermissible, & evidence obtained thereby should have been suppressed.

RELATED CASES: Croom, 996 N.E.2d 436 (Ind. Ct. App 2013) (officer's mistaken but good faith belief that interim plate was invalid gave reasonable suspicion to stop D) (see full review, this section); United States v. Uribe, 709 F.3d 646 (7th Cir. 2013) (disagreeing with Smith (below), Court held that a color discrepancy between the registration and the actual car is, alone, insufficient to give rise to reasonable suspicion of criminal activity justifying a traffic stop; however, Court did not address whether the police can stop based on a color discrepancy to investigate possible violation of Ind. Code 9-18-2-27(a), prohibiting driving with a registration number belonging to a different vehicle); Houston, App., 898 N.E.2d 358 (where officer testified that the D's license plate was "swinging", there was reasonable suspicion to stop the D for violation of Ind. Code 9-18-2-26; moreover, Ind. Code 9-18-2-26(b)(1) is not unconstitutionally vague); Smith, App., 713 N.E.2d 338 (fact that license plate was registered to car of same make but different color constitutes reasonable suspicion that car was stolen); English, App., 603 N.E.2d 161 (Fact that officer stopping D actually saw his registration tag before reaching driver's side door, did not prevent valid investigatory stop, because tag was still not properly displayed & officer had good faith belief D had committed infraction).

TITLE: Clarke v. State

INDEX NO.: Z.7.a.

CITE: (06-26-07), Ind., 868 N.E.2d 1114

SUBJECT: Consent to vehicle search valid - D not in custody

HOLDING: A police officer who neither explicitly nor implicitly communicates that a person is not free to leave may ask questions of the person to investigate allegations of criminal activity without implicating the Fourth Amendment or requiring the advisement of rights under the Indiana Constitution. Here, police officer responded to an anonymous tip of a "black car with nice rims" parked in front of an apartment building from which someone was selling drugs. Officer pulled in behind D's vehicle, activated the rear flashers & placed spotlight on vehicle so she could see what was inside before approaching. Officer asked for identification & if there was anything illegal in the car before running D's information through computer. After finding no problems & returning to D his license & registration, officer did not inform D that he was free to leave but informed him that she was investigating a report of narcotics activity & asked again if there was anything illegal in the car. D again responded "no." D was then asked whether he cared if she searched his car. He did not answer the request but again responded that he did not have anything illegal in the car. Officer then asked if D "minded" if she searched, & D gave an "ambiguous" response of "no."

Fourth Amendment permits consensual interrogation as long as police do not convey a message that compliance with the request is required. Florida v. Bostick, 501 U.S. 429 (1991). Here, there is no evidence that officer conveyed that message. There was no seizure before D gave consent to search & search established probable cause to arrest D. This process did not violate the Fourth Amendment.

Article 1, ' 11 of Indiana Constitution requires that a person in custody explicitly waive the right to counsel before giving a valid consent to search. Pirtle v. State, 263 Ind. 16, 323 N.E.2d 634 (1975). D was not advised of his right to counsel before officer asked for consent to search his car. However, a suspect who has been stopped & "seized" is not necessarily in custody. Cooley v. State, 682 N.E.2d 1277 (Ind. 1997). As in Jones v. State, 655 N.E.2d 49 (Ind. 1995), Ct. found no Pirtle violation because D was not seized, and not in custody at time he consented to search. In so holding, Ct. distinguished Sellmer v. State, 842 N.E.2d 358 (Ind. 2006), noting that D's encounter with officer involved neither suggestions that he should cooperate, nor implication of adverse consequences for noncooperation, nor any suggestion that he was not free to go about his business. Held, transfer granted, Ct. App.' opinion at 854 N.E.2d 423 vacated, denial of motion to suppress affirmed. Rucker, J., dissenting, sees no principled distinction between "custody" & "seizure" & believes that D had no option to disregard the officer's questions & leave the scene; thus, his consent to search was invalid as a matter of state law.

TITLE: Coates v. State

INDEX NO.: Z.7.a.

CITE: (1st Dist., 4-28-95), Ind. App., 650 N.E.2d 58

SUBJECT: Investigatory stop - reasonable suspicion based on citizen's report

HOLDING: Police officers' reliance on unconfirmed report of lay person that D's license was suspended gave police articulable suspicion to justify investigatory stop. D's girlfriend informed officers that his driver's license was suspended & that D had left her residence driving distinctive truck. Without observing any moving violations, officers subsequently stopped vehicle that matched girlfriend's description of D's truck. As in State v. Smith, 638 N.E.2d 1353 (this section), specific & articulable facts possessed by officers gave them reasonable suspicion that D was operating while suspended sufficient to sustain legality of investigatory stop. Tr. Ct. did not err in admitting D's statement to police made during investigative stop. Held, judgment affirmed.

RELATED CASES: Washington, App., 740 N.E.2d 1241 (anonymous telephone tip, absent any independent indicia of reliability or any officer-observed confirmation of caller's prediction of D's future behavior, is not enough to permit police to subject citizen to Terry stop & detention; see full review, this section).

TITLE: Cochran v. State

INDEX NO.: Z.7.a.

CITE: 843 N.E.2d 980 (Ind. Ct. App. 2006)

SUBJECT: Encounter between officer & D was not investigative stop - request for identification

HOLDING: Police officer's interaction with D & request for identification constituted a consensual encounter, & violated neither United States nor Indiana Constitutions because reasonable suspicion was not required. A complaint had been made specifically against D because he was displaying a poster of an aborted fetus. Officer approached D on a public street & asked him to identify himself. Although D initially objected to identifying himself, Ct. concluded that officer did not use any coercive measures to persuade D to do so. Instead, D freely identified himself after officer explained that he was requesting identification for his own safety. Officer called information to dispatch, which relayed to him that there were no outstanding warrants for D & that he had no driver's license. Later that day, officer observed D driving a vehicle & pulled him over for driving without a license.

Ct. held that conversation between officer & D was a consensual encounter, not a seizure. Officer did not request that D move anywhere, did not stop D from moving anywhere, & never physically restrained him or retain anything that belonged to him. Asking a person to identify himself is clearly permissible under Fourth Amendment. Hiibel v. Sixth Judicial Dist. Ct. of Nevada, Humboldt County, 542 U.S. 177, 124 S. Ct. 2451 (2004). Even if D were "seized" while officer called D's name & date of birth into headquarters, earlier request for identification did not violate Fourth Amendment & officer would have learned of D's lack of driver's license anyway. Ct. also rejected D's argument that officer's request for identification constituted unreasonable police activity in violation of Article 1, Section 11 of Indiana Constitution. Held, judgment affirmed; Riley, J., dissenting, concluded that investigatory stop was initiated once officer requested D's identifying information with purpose of running a background check on him, & that D was not free to leave during this period of time.

RELATED CASES: Brown, 900 N.E.2d 820 (Ind. Ct. App. 2009) (encounter between officer and D where officer requested D's name and birth date was unreasonable under Indiana Constitution because officer had no reason to request the information, making the encounter random); Bentley, App., 846 N.E.2d 300 (when one passenger looked away, officer asked for identification, a request which the same passenger ignored; this request did not convert consensual encounter into an investigatory stop)

TITLE: Coleman v. State

INDEX NO.: Z.7.a.

CITE: (1st Dist., 05-18-06), Ind. App., 847 N.E.2d 259

SUBJECT: Informant's tip insufficient basis for investigatory stop

HOLDING: In stopping D, police officers relied on confidential informant's (C.I.'s) initial tip, his subsequent telephone conversation with "J.C." arranging the meeting, & then finally C.I.'s identification of D as "J.C." at pre-determined meeting place. C.I. was not a well-known informant, but rather had only given police one reliable tip in the past, on the very same day that he provided tip about D. Officers were only able to hear C.I.'s side of telephone conversation in arranging meeting with "J.C."; thus, officers relied entirely on C.I.'s statement that "J.C." would be waiting at mall & would have cocaine with him. While C.I. gave a general description of "J.C." as a 5'10" African American male, approximately thirty years old, record fails to show that C.I. gave any specific description of "J.C." prior to identifying him.

Applying principles of Adams v. Williams, 407 U.S. 143 (1972) & Alabama v. White, 496 U.S. 325 (1990), Ct. held that under totality of circumstances, officers lacked requisite reasonable suspicion to stop D. Officer did not observe D committing a crime, or even acting suspiciously, before stopping him. In essence, officers relied on a new informant who gave a tip consisting of little detail & they did not independently investigate tip prior to stopping D. Ct. noted that police typically arrange more than one meeting & observe an actual drug transaction before instigating stop of suspect. Predominately unsubstantiated tips like the one here either warrant no police response or require further investigation before a forcible stop of a suspect would be authorized. Accordingly, in such cases where record shows that police officers acted in a hurried fashion & did not take the time to carefully substantiate a tip, Ct. finds exclusionary rule especially appropriate. Held, denial of motion to suppress reversed; Vaidik, J., concurring, disagreed with majority's conclusion that police officers lacked reasonable suspicion to stop D, but agreed that cocaine found as result of invalid search of D's car must be suppressed.

RELATED CASES: Bates-Smith v. State, 108 N.E.3d 399 (Ind. Ct. App 2018) (distinguishing Coleman, Ct. held that tip by known CI provided sufficient indicia of reliability and reasonable suspicion to justify investigatory traffic stop of D).

TITLE: Collins-Draine v. Knief
INDEX NO.: Z.7.a.
CITE: 617 N.W.2d 679 (Iowa 2000)
SUBJECT: Terry Stop -- Continuing Detention
HOLDING: Investigative stop and detention became impermissible once search dispelled officers' suspicions. Continued detention violated 4th Amendment.

TITLE: Commonwealth v. Allen

INDEX NO.: Z.7.a.

CITE: 725 A.2d 737 (Pa. 1999)

SUBJECT: Terry Stop -- Reasonable Suspicion; Informer's Tip

HOLDING: A reliable informer's tip relaying information that an armed man was selling drugs at a particular address lacked the details and corroboration necessary to provide reasonable suspicion for a Terry stop. Retired police officer provided tip, apparently based on information from elderly woman, that a man known as "Mookie" was selling drugs in front of and inside the woman's home. The tip described Mookie and warned that he was known to carry a gun. On the basis of this tip, an officer went to the woman's address, saw D, who matched description of Mookie, sitting in chair on front porch, saw bulge in D's pants pocket, and ordered D to submit to frisk. As D stood up, officer saw packets of rock cocaine under his jacket. Held, tip did not provide reasonable suspicion to frisk D. While officer testified that he believed informant to be reliable, record does not provide basis for informant's knowledge, not was there any indication of the timing or frequency of Mookie's drug sales. Skeletal information in the tip, coupled with fact that D was asleep when officer approached him, fails to provide reasonable suspicion. Officer should have obtained more information concerning basis of knowledge, or else attempted to personally observe suspicious conduct on part of D.

TITLE: Commonwealth v. Alvarado
INDEX NO.: Z.7.a.
CITE: 423 Mass. 266; 667 N.E.2d 856 (Mass. 1996)
SUBJECT: Anonymous Tip - Mention of Gun
HOLDING: Massachusetts Court holds that mention of firearm in anonymous tip does not trigger lower standard for evaluating reasonableness of investigative stop based on tip. Although some federal courts (including 7th Circuit), have held that such mention of gun triggers lower standard, Massachusetts Court is unwilling to do so absent some indication that there is a threat to someone's safety.

TITLE: Commonwealth v. Hawkins
INDEX NO.: Z.7.a.
CITE: 547 Pa. 652; 692 A.2d 1068 (Pa. 1997)
SUBJECT: Terry Stop -- Anonymous Call About Man with Gun Does Not Provide Basis
HOLDING: Pennsylvania Court refuses to lower standard for Terry stop because firearm is involved. Police received anonymous call describing man holding gun at intersection but did not know the source of call or basis for information. Squad car arrived at intersection and saw man matching description given by caller and proceeded to detain and frisk him. Under both federal and Pennsylvania constitution, officer must have articulable, reasonable suspicion before conducting investigative stop. Here, only knowledge police had was that anonymous caller accurately described appearance of man at intersection. Something more was needed to corroborate caller's allegation of criminal wrongdoing. Fact that gun was allegedly involved does not add reliability or in any way add to basis for stop.

TITLE: Commonwealth v. Lora

INDEX NO.: Z.7.a.

CITE: 451 Mass. 428, 886 N.E.2d 688 (Mass. 2008)

SUBJECT: Suppression appropriate where traffic stop motivated by racial profiling

HOLDING: Massachusetts Supreme Court held suppression of evidence is an available remedy for an otherwise lawful traffic stop that was motivated by racial profiling in violation of the state constitution's equal protection guarantee. Court, however, made clear that it was setting a rigorous standard for the type of statistical evidence required to demonstrate a prima facie case of racial profiling and shift the burden to the prosecution to provide an explanation for the apparent disparities. Selective-prosecution claims are usually made in motions to dismiss charges, and in U.S. v. Armstrong, 517 U.S. 456 (1996) the U.S. Supreme Court declined to express an opinion as to the proper remedy in a criminal case for Ds subjected to racial profiling. Court concluded "the application of the exclusionary rule to evidence obtained in violation of the constitutional right to the equal protection of the laws is entirely consistent with the policy underlying the exclusionary rule, is properly gauged to deter intentional unconstitutional behavior, and furthers the protections guaranteed by the Massachusetts Declaration of Rights." Court emphasized that, although statistics can be used to make out a case of targeting minorities for traffic offenses, the statistical evidence preferred must address the crucial question of whether one class is being treated differently from another class that is "otherwise similarly situated."

TITLE: Croom v. State
INDEX NO.: Z.7.a.
CITE: (10/16/2013), 996 N.E.2d 436 (Ind. Ct. App 2013)
SUBJECT: Good faith belief D committed infraction gave reasonable suspicion to stop D
HOLDING: Tr. Ct. did not err in denying D's motion to suppress officer's discovery that D was driving when his driving privileges had been forfeited for life.

After observing D's interim license plate, police officer ran the plate and found that it was not on file with the BMV. However, the interim plate was still valid because it was one of many old interim plates dealers had stockpiled to give new car buyers such as D. Once officer stopped D, he determined that D's driving privileges had been suspended for life.

If an officer acts in good faith, his mistaken belief that a person has committed an infraction may establish reasonable suspicion to stop the person. Cf. Sanders v. State, 989 N.E.2d 332, 336 (Ind. 2013); State v. Lynch, 961 N.E.2d 534, 536 (Ind. Ct. App. 2012).

Even though the officer was mistaken that D's interim license plate was invalid, he nonetheless had reasonable suspicion under both the federal and state constitutions to stop D. In stopping D, officer acted under mistaken but good faith belief that all old interim dealer license plates were invalid after thirty days. Held, judgment affirmed.

RELATED CASES: Yates, 15 N.E.3d 1139 (Ind. Ct. App 2014) (D committing two bicycle infractions gave officer reasonable suspicion to stop D).

TITLE: Dixon v. State

INDEX NO.: Z.7.a.

CITE: (7/22/2014), 14 N.E.3d 59 (Ind. Ct. App 2014)

SUBJECT: Unlawful pat-down search

HOLDING: Tr. Ct. abused its discretion in denying D's motion to suppress drug evidence found on him as a result of an unlawful pat-down search. D made a turn without signaling and a police officer activated his emergency lights. D stopped his car in a residential neighborhood, turned it off and began to walk away. The officer ordered him to come back and sit in the car and D eventually complied. The officer recognized D's name as a possible drug dealer. The officer called for backup and performed a pat-down search. The officer grabbed a baggie in D's front pants pocket and decided to handcuff him before searching further. D resisted the attempt to handcuff him and tried to flee. Officers tased D and eventually found three baggies of cocaine on his person. The validity of an investigatory stop and Terry pat-down depends on the facts of each particular case. In denying D's motion to suppress, Tr. Ct. emphasized the "extreme" nervousness displayed by D while in the car, i.e., failure to make eye contact with the officer, rocking back and forth in his seat, and sticking his hands in his pockets. But this can reasonably be explained by the fact the officer, who conceded that D did not exhibit any threatening conduct, displayed his taser during the entire duration of the traffic stop, including when he was standing next to the open driver's door. It was only after the officer recognized D's name as a possible drug dealer, did he believe he needed "to put this guy in handcuffs until [he] find[s] out what's going on." Officer did not have any reason to believe D was engaged in criminal activity at the time he pulled him over, he saw no weapon on D when he was out of the car, and there were no open warrants or issues with D's identification. A Terry stop does not allow for a generalized cursory search for weapons, or any search for anything but weapons. Ybarra v. Illinois, 444 U.S. 85 (1979). Court concluded officer's actions ostensibly belie the fact that he was concerned for his safety. Held, denial of motion to suppress reversed and remanded; Bradford, J., dissenting, believes overall circumstances supported pat-down search for officer's safety.

TITLE: Dawson v. State

INDEX NO.: Z.7.a.

CITE: (1st Dist., 4-16-03), Ind. App., 786 N.E.2d 742

SUBJECT: Reasonable suspicion for investigatory stop & vehicle search

HOLDING: In dealing in controlled substance prosecution, Tr. Ct. did not err in denying D's motion to suppress evidence seized during warrantless search of vehicle in which D was traveling. Police officer was searching area based upon anonymous tip that individuals in large, blue four-door car were seen in proximity to agricultural co-op carrying containers. Officer located vehicle parked in middle of road in secluded area with its hood up. When officer activated emergency lights & exited his vehicle, two men walked around opposite sides of car. As second officer walked past car to assist other officer, he smelled anhydrous ammonia. Individuals were then ordered to put their hands on trunk of car for officer safety purposes so that they could do pat-down search. Based on suspicious nature of car being parked in middle of road in secluded area a short distance from agricultural co-op, an anonymous tip that individuals were seen carrying containers to & from co-op, the sudden appearance of three individuals after officer exited his vehicle, & odor of anhydrous ammonia, an ordinarily prudent person might reasonably conclude that criminal activity had occurred. Held, judgment affirmed.

TITLE: Dowdell v. State
INDEX NO.: Z.7.a.
CITE: (2nd Dist., 4-11-01), Ind. App., 747 N.E.2d 564
SUBJECT: Illegal Terry stop - no reasonable suspicion

HOLDING: Because police officer did not have reasonable suspicion that D had committed or was about to commit crime, investigative stop was illegal & "blunt" & plastic baggies discovered as result of stop should not have been admitted at trial. Police may briefly detain individual for investigatory purposes if there is reasonable suspicion that crime may be committed or has been committed. Overstreet v. State, 724 N.E.2d 661 (Ind. Ct. App 2000). Here, officer testified that he saw D standing on sidewalk smoking what appeared to be a "blunt," which is marijuana wrapped in cigar wrapper. Officer admitted he was uncertain whether D was smoking a blunt or a cigar. After officer called D over to his vehicle, D threw his blunt down & walked quickly over to officer's vehicle. Officer noticed strong odor of marijuana on D, handcuffed D, & began to question him concerning plastic baggies officer had observed in D's hands. At police station, after officers told D that they were going to perform pat down search, D reached into his pocket & pulled out two plastic baggies which contained marijuana & cocaine.

Because officer was uncertain if D was smoking blunt or cigar, he did not have reasonable suspicion that D was committing or about to commit crime. Ct. rejected State's argument that encounter between officer & D did not constitute Terry stop, but rather it was casual, brief, consensual stop that does not require reasonable suspicion. Distinguishing Overstreet, Ct. concluded that there was evidence indicating that compliance with officer's request was compelled. Reasonable person when faced with police officer pulling up to him in marked vehicle & calling for him to come over to car would not assume that he is free to turn & walk away. Held, Tr. Ct. reversed, convictions vacated.

RELATED CASES: Woodson, 960 N.E.2d 224 (Ind. Ct. App 2012) (officer's encounter with D who was riding his bicycle was not consensual where D saw the car he just exited being pulled over, the officer claimed he would have pursued D had he fled and D was handcuffed in the absence of any apparent threat to the officer and before obtaining information about D from his police computer); Gentry v. Sevier, 2010 U.S. App LEXIS 4030 (Where officer told D to "keep his hands up" when D waved to the officers and started walking towards them, this constituted a Terry stop; moreover, the police lacked reasonable suspicion to stop the D who was trotting down the street at 2:30 a.m. holding a beer and pushing a wheelbarrow and lacked probable cause to search the wheelbarrow); Greeno, App., 861 N.E.2d 1232 (ordering D to "stop" & "come back" required officer to have reasonable suspicion, which he did not); Stickle, App., 792 N.E.2d 51 (circumstances surrounding D's encounter with officers would not have led a reasonable person to think he was free to leave or terminate encounter); Crabtree, App., 762 N.E.2d 241 (D was subjected to investigatory stop where officer approached D with flashlight & yelled at him to get his hands up).

TITLE: Dunson v. State

INDEX NO.: Z.7.a.

CITE: (11/18/2016), 64 N.E.3d 250 (Ind. Ct. App 2016)

SUBJECT: Reasonable suspicion for stop based on law enforcement's collective knowledge

HOLDING: Tr. Ct. did not abuse its discretion in admitting handgun seized during investigatory stop. Law enforcement officers were cooperating in investigating reports of a disturbance involving "men with guns" and someone trying to kick down a door. While one of the officers was speaking to a victim who was injured and upset by the incident, D rode past on his motorcycle, and the victim identified D as someone who was involved in the incident. The investigating officer communicated to her fellow law enforcement officers that D may have been involved and called on them for assistance. Collectively, the officers had specific and articulable information from a known person (victim) regarding D's involvement in the incident. Distinguishing Jamerson v. State, 870 N.E.2d 1051 (Ind. Ct. App 2007) and State v. Murray, 837 N.E.2d 223 (Ind. Ct. App 2005), Court concluded that the officer who stopped D's motorcycle was acting upon the police department's collective knowledge that D was involved in the incident, and thus had reasonable suspicion to detain D to further investigate. Requiring a law enforcement officer to relay exact details of her reasonable suspicion "would be cumbersome and impractical, if not dangerous, in situations such as this one where the officers are simultaneously investigating the possible commission of a crime, keeping the area safe, and attempting to apprehend possible suspects." See United States v. Hensley, 469 U.S. 221, 105 S. Ct. 675 (1985). Held, judgment affirmed.

TITLE: Ferris v. State

INDEX NO.: Z.7.a.

CITE: 735 A.2d 491 (Md. 1999)

SUBJECT: Questions at End of Traffic Stop Amounted to Seizure

HOLDING: State trooper's questions about drugs after conclusion of traffic stop constituted seizure for 4th Amendment purposes. Officer had stopped D for speeding, and after issuing ticket and returning D's documentation, he asked D if he would mind stepping out of the car. D accompanied officer to back of car, where officer asked him if he had smoked any drugs prior to stop and obtained consent to search trunk. Court finds that traffic stop concluded when officer returned documentation to D. At that point, officer's actions amounted to second detention, rather than a mere continued encounter to which the D consented. In reaching this conclusion, Court noted that U.S. Supreme Court, in Ohio v. Robinette, 519 U.S. 33 (1996), had rejected bright line test requiring officer to tell motorist that he is free to go at end of traffic stop before continued encounter could be deemed consensual. However, Court reasoned that the moment at which a traffic stop ends is a difficult legal question, not readily discernible to a layperson, and it will set high standard for demonstrating that encounters at end of traffic stop are consensual.

TITLE: Finger v. State

INDEX NO.: Z.7.a.

CITE: (11-26-03), Ind., 799 N.E.2d 528

SUBJECT: Investigative detention - retention of driver's license

HOLDING: Although police officer's retention of D's driver's license converted a consensual encounter into an investigative stop, at that point officer had reasonable suspicion to detain D for a brief, 20-minute investigative period. To justify an investigatory stop, an officer must be able to point to specific facts giving rise to reasonable suspicion of criminal activity. In this case, at time officer detained D, he relied on following facts: 1) D's car was reported as "suspicious"; 2) although D claimed the car was out of fuel, & someone had gone for gasoline, a gas station was around the corner & fuel gauge indicated that there was one eighth of a tank of gas remaining in car; 3) D told other inconsistent stories during his conversation with officer; 4) there was pocketknife in the car; & 5) D & his passenger were "acting nervous." Officer could not rely solely on report by a concerned citizen of a suspicious car. United States v. Packer, 15 F.3d 654 (7th Cir. 1994). & taken individually, any one of remaining facts might not be enough to give rise to reasonable suspicion. However, a set of individually innocent facts, when observed in conjunction, can be sufficient to create reasonable suspicion of criminal activity. United States v. Arvizu, 534 U.S. 266 (2002). Factors leading to reasonable suspicion also satisfied requirements of Article 1, Section 11 of Indiana Constitution, because they could lead an ordinarily prudent person to believe that criminal activity was afoot. Held, transfer granted, Ct. App.' opinion at 769 N.E.2d 207 vacated, denial of motion to suppress affirmed; Rucker, J., dissenting, noted that D telling inconsistent stories & acting nervous occurred after D had been detained.

RELATED CASES: K.G., 81 N.E.3d 1078 (Ind. Ct. App 2017) (juvenile's nervousness did not create reasonable suspicion that pat down search was necessary because of potential threat to officer safety), Clark, 994 N.E.2d 252 (Ind. 2013) (police lacked reasonable suspicion to detain D so confession and contraband found in D's bag and car was inadmissible as fruit of poisonous tree); Scott, (Ind. Ct. App 2012) (officer violated 4th Amendment when he detained D and retained his driver's license for an unreasonable period of time without any reasonable suspicion that D had committed a criminal offense; as a result, D's act of opening his car door to obtain his registration was not voluntary); Alter, 953 N.E.2d 1182 (Ind. Ct. App 2011) (conservation officer retained possession of D's fishing license after determining it was valid and asked D about contents of duffel bag; no reasonable person would feel free to terminate the encounter and ignore officer's directive to give him marijuana and whatever was illegal inside the bag; see full review, this section); Gentry v. Sevier, 7th Cir., 2010 U.A. App LEXIS 4030 (Where officer told D to "keep his hands up" when D waved to the officers and started walking towards them, this constituted a Terry stop; moreover, the police lacked reasonable suspicion to stop the D who was trotting down the street at 2:30 a.m. holding a beer and pushing a wheelbarrow and lacked probable cause to search the wheelbarrow); Calmes, App., 894 N.E.2d 199 (although nothing in the record suggests that D was a motorist and needed his license to leave the location, nonetheless, upon being asked if he was armed, a reasonable person in D's position would not feel free simply to terminate the encounter, leave his license with the police, and walk away); Johnson, App., 856 N.E.2d 706 (investigatory stop clearly began at point during encounter when officer ordered D out of vehicle); Felker, App., 819 N.E.2d 870; Jefferson, App., 780 N.E.2d 398 (encounter constituted investigatory stop requiring reasonable suspicion; State's characterization of officer's encounter with D as consensual did not conform to evidence presented at trial).

TITLE: Florida v. J.L.

INDEX NO.: Z.7.a.

CITE: 120 S. Ct. 1375, 146 L.Ed.2d 254 (2000)

SUBJECT: Anonymous tip as basis for stop

HOLDING: An anonymous tip that a person is carrying a gun, without more, is not enough to justify an investigative detention under Terry v. Ohio, 392 U.S. 1 (1968). An anonymous tip can form the basis for reasonable suspicion only if accompanied by specific indicia of reliability, such as a correct prediction of the subject's behavior. Alabama v. White, 496 U.S. 325, 332 (1990). The Court rejects the idea of a "firearms exception" to the Terry rule that the police must have reasonable suspicion to justify an investigative stop. Here, the police received an anonymous tip that a young black male in a plaid shirt standing on a certain street corner was carrying a handgun. The police responded and found D in a plaid shirt on that corner. With no other information or grounds for suspicion, the police frisked D and found a handgun. Held, the handgun must be suppressed.

RELATED CASES: Segar, 937 N.E.2d 917 (Ind. Ct. App 2010) (anonymous tip that burglary was in progress and burglar was white and wearing a dark coat did not constitute reasonable suspicion to stop D who was white and wearing a dark coat while walking down the street); Willis, App., 907 N.E.2d 541 (Ind. Ct. App 2009) (officer's stop of two African-American males was based on reasonable suspicion, being the stop occurred within two minutes of a report of one African-American male holding a gun to another African-American male's head at the location of the stop).

NOTE: the case is not clear as to whether the caller was anonymous).

TITLE: Gaddie v. State
INDEX NO: Z.7.a.
CITE: (6/27/2014), 10 N.E.3d 1249 (Ind. 2014)
SUBJECT: Resisting law enforcement - order to stop must be based on reasonable suspicion or probable cause of criminal activity
HOLDING: A person cannot be prosecuted for resisting law enforcement by fleeing unless the officer has, at a minimum, the reasonable suspicion necessary to conduct a Terry stop. Here, a police officer responded to a “disturbance” at a residence and upon arriving attempted to “corral” everyone to the front yard in order to keep an eye on them until backup arrived. D ignored the officer’s order and walked away from the residence and the officer. The officer radioed for help, and eventually another officer intercepted D, who was arrested and charged with resisting law enforcement by fleeing.

A statute that makes it a criminal offense to walk away from an officer who, without reasonable suspicion or probable cause, has ordered the person to stop, would violate longstanding Fourth Amendment principles and "the right to walk away." The language of the Resisting Law Enforcement statute does not require that a police officer’s order to stop be lawful, but the Court prefers to construe the statute in a manner that does not violate the Constitution. As such, it held the statutory element “after the officer has . . . ordered the person to stop” must be understood to require that such order to stop rest on probable cause or reasonable suspicion that criminal activity is afoot.

In this case, because the officers lacked the reasonable suspicion necessary to conduct an investigatory stop of D, the evidence was insufficient to convict him of resisting law enforcement by flight. Held, transfer granted, Court of Appeals' opinion at 991 N.E.2d 117 vacated, conviction reversed.

RELATED CASES: Coleman, 196 N.E.3d 374 (Ind. Ct. App. 2022) (police had reasonable suspicion to stop D, who drove away on motorcycle after being ordered to stop; unlike Gaddie, here the report involved a person with arrest warrants who was damaging property and threatening suicide by cop); Neeley, 70 N.E.3d 866 (Ind. Ct. App 2017 (erroneous admission of officers' testimony after unlawful stop); Miller, 51 N.E.3d 313 (Ind. Ct. App 2016) (search incident to arrest violated D's right to walk away as recognized in Gaddie, where police had no basis to order her to stop. See full review at Z.3.a); M.J., 19 N.E.3d 796 (Ind. Ct. App 2014) (reversing delinquency adjudication because police officers did not have reasonable suspicion to believe that criminal activity had occurred or was afoot when they ordered M.J. to stop); Murdock, 10 N.E.3d 1265 (Ind. 2014) (under the statutory interpretation announced in Gaddie, evidence was sufficient to establish reasonable suspicion for officer to order D to stop; probation revocation for committing resisting law enforcement affirmed).

TITLE: Gipson v. State

INDEX NO.: Z.7.a.

CITE: (2/9/84), Ind., 459 N.E.2d 336

SUBJECT: Investigatory stop - abandoned evidence

HOLDING: Where investigatory stop is lawful, abandoned evidence is admissible. Hardin 257 N.E.2d 671. Here, officer saw 2 men, one holding a sack, in a high drug traffic area. D's abrupt movement upon seeing officer led officer to suspect drug transaction. Officer ordered D to stop; D threw sack (containing gun) toward car window & dropped plastic vial (containing drugs). When D threw items down, they were subject to lawful seizure by police. State v. Smithers, 269 N.E.2d 874; Kendrick, App., 325 N.E.2d 464; Carlisle, App., 319 N.E.2d 651. Only if abandonment was precipitated by illegal detention would property be inadmissible. Smithers; Bowles 267 N.E.2d 56; Hardin. Investigatory on-the-street stop by police must be reasonable in light of all circumstances. Williams 307 N.E.2d 457; Luckett 284 N.E.2d 738. Officer must "point to specific & articulable facts which, taken together with rational inferences from those facts" reasonably warrant intrusion upon an individual's right of privacy. Terry v. OH (1968), 392 U.S. 1, 88 S. Ct. 1868, 20 L.Ed.2d 889; Rutledge 426 N.E.2d 638. D's unusual conduct could reasonably have caused an experienced police officer to infer "criminal activity has been, is being, or is about to be committed." Ind. Code 35-3-1-1 [repealed]. Held, conviction affirmed.

TITLE: Green v. State

INDEX NO.: Z.7.a.

CITE: (4/2/84), Ind., 461 N.E.2d 108

SUBJECT: Investigatory stop

HOLDING: Detention & search of D was proper; no error in denial of suppression motion. Here, D was only person in vicinity of break-in at 3:37 a.m. (2 blocks away, same side of street), told police when stopped he had been visiting friend but could give neither name nor address & was belligerent with police. Stop was justified, Terry v. OH; weapons frisk permissible. Adams v. Williams (1972), 407 U.S. 143, 92 S. Ct. 1921, 32 L.Ed.2d 612. Officers at scene found distinctive boot-prints, radioed officer detaining D & learned D was wearing such boots. D was not detained an unreasonable length of time under circumstances. Police had probable cause to continue to detain D. D was later taken to scene of earlier break-in, where he consented to search that yielded stolen property identified by owners. D was arrested following search. Held, no error.

RELATED CASES: J.J., 58 N.E.3d 1002 (Ind. Ct. App 2015) (police had reasonable suspicion to stop J.J. because he was part of a group of young men who matched the description of a group that confronted another group at a mall); Ross, App., 844 N.E.2d 537 (D being in a high crime area, making a transaction, speeding off in a different direction, & carrying something unusual in his hand provided reasonable suspicion for the stop); Arcuri, App., 775 N.E.2d 1095 (reasonable suspicion for stop based on fact that car was only two blocks from robbery scene, only about five to seven minutes had passed since robbery, there were no other cars on street at time, D fit description officer had received from dispatch, & D was evasive when vehicle turned in front of officer's patrol car); Crabtree, App., 762 N.E.2d 241 (reasonable suspicion for stop found where D was in high-crime area at 4:30 a.m., was seen next to car with open door, car was at location where there had been complaint of loud stereo, D appeared to be hiding behind car & strained to look over it); Clark 512 N.E.2d 223 (D was only person walking along road near car stuck in mud; police officer asked D where he was going & "invited" D to ride back to car; during ride, officer noticed odor of alcohol & gave D sobriety test; Ct. finds investigation proper); Garrett 466 N.E.2d 8 (police followed van after observing occupants act suspiciously but lost sight of it; police found van parked in private drive, investigated & saw stolen property inside; Ct. finds investigation on private property reasonable - police had same right to investigate there as on public streets; as guest, D had no standing to challenge officer's presence).

TITLE: Hailey v. State

INDEX NO.: Z.7.a.

CITE: (4/29/88), Ind., 521 N.E.2d 1318

SUBJECT: Investigatory stop

HOLDING: Investigatory stop was proper where D looked at officer as officer drove by, then walked in opposite direction at brisker pace. Before beginning patrol, officer had been told to arrest D on suspicion of burglary if he encountered him. When officer drove by D, however, he did not recognize him. Instead, he stopped D based on above observations & asked for identification. Once D identified himself, officer searched him for his own safety. Search disclosed 2 screwdrivers, bank bag, flashlight, & handgun. D filed motion *in limine*, arguing that search & subsequent confession were fruit of illegal stop. Ind. S. Ct. holds that D's actions when officer drove by where such as to lead person of reasonable caution to believe that stop was appropriate. Gipson 459 N.E.2d 366 (see card at Z.7.a). Once stop revealed D's identity, officer was justified in searching D for his own safety. Held, affirmed. DeBruler & Shepard, JJ., DISSENT.

RELATED CASES: Castner, App., 840 N.E.2d 362 (although no thefts had been reported in area; officer had reasonable suspicion to stop D when he turned away from police, then officer found D inside a fenced-in area behind dumpster, with CD-player stuffed on side of dumpster with remote control & book of CDs); Belcher, App., 725 N.E.2d 92 (When viewed in totality, D's flight from police before he was seized, combined with other facts, presented police officers with reasonable suspicion of criminal activity necessary to justify lawful investigative Terry stop); Wilson, App., 670/27 (D's flight from police, together with other facts, presented police with reasonable suspicion of criminal activity to justify stop).

TITLE: Hansbrough v. State
INDEX NO.: Z.7.a.
CITE: (1/29/2016), 49 N.E.3d 1112 (Ind. Ct. App 2016)
SUBJECT: Dog sniff did not unreasonably prolong traffic stop
HOLDING: Dog sniff of D's vehicle 16 minutes after valid traffic stop began did not prolong the duration of the stop. Rodriguez v. United States, 135 S. Ct. 1609 (2015). After D was stopped pursuant to I. C. § 9-21-8-14 for following too closely, police officer thought he saw marijuana "shake" in center console and called for canine assistance while processing paperwork and checking for warrants. The dog alerted at the window. The shake was never processed but police recovered a handgun under the driver's seat.

Officer testified that he had not yet completed his paperwork and was still checking for outstanding warrants on D when the canine unit arrived and conducted the sweep. D noted that the officer knew how long it would take for the canine officer to get to the scene of the stop and argued that accepting the officer's testimony could induce officers to slow down their processes in order to allow time for the canine to arrive. Court acknowledged the legitimacy of D's concerns but deferred to the Tr. Ct., finding nothing clearly erroneous. Under the circumstances, Court could not say that the dog sniff prolonged or added any time to the valid traffic stop. Therefore, the subsequent search of D's vehicle was not rendered invalid, and Tr. Ct. did not abuse its discretion in admitting the evidence obtained during that search. Held, judgment affirmed.

RELATED CASES: Chauncey, 204 N.E.3d 311 (Ind. Ct. App. 2023) ((neither dog sniff nor officer's inquiry as to whether there were weapons in the car delayed the stop, as inquiry was made before the officer returned to his police car to write ticket for turn signal violation and request a drug dog, making it unlikely he asked the question to delay the stop so a dog sniff could occur purposely); Browder, 77 N.E.3d 1209 (Ind. Ct. App 2017) (traffic stop was not unreasonably extended under Rodriguez, given officer's valid concern over mismatched license plate and whether vehicle was possibly stolen), Washington, 42 N.E. 3d 521 (Ind. Ct. App 2015) (police dog alerted to odor of narcotics about 11 minutes after D was pulled over, which did not prolong the stop beyond the time reasonably required to complete the mission of issuing a ticket).

TITLE: Herron v. State

INDEX NO.: Z.7.a.

CITE: (7/18/2013), 991 N.E.2d 165 (Ind. Ct. App 2013)

SUBJECT: Detention & vehicle search supported by probable cause

HOLDING: Tr. Ct. did not abuse its discretion when it admitted evidence seized during traffic stop.

Police received anonymous tip that a Frederick Herron, who drove a white Chrysler Pacifica with dark-tinted windows, was selling crack cocaine in Kokomo. While drug task force was investigating another man, car matching the tip's description arrived twice at a controlled buy location shortly after the dealer inside called his supplier. Police learned the car was registered to D and stopped D after he left controlled buy location based on their belief the tint on his windows was illegal. Once stopped, police saw what appeared to be buy money in plain view in D's car. Those facts demonstrated the tip was from a credible source and the information was not stale, so police could rely on it when deciding whether they had probable cause to arrest D.

D claimed police unreasonably extended the valid traffic stop by removing him from his car and searching him. Court found police had probable cause at the time D was removed from the car to arrest him for dealing cocaine, so there was no violation of Fourth Amendment or Article 1, Sec 11. Officer was authorized to remove money from D's pockets and to detain him while police obtained a search warrant for D's car. Held, judgment affirmed.

TITLE: Hiibel v. Sixth Judicial Dist. Court of Nev., Humboldt Cty.
INDEX NO.: Z.7.a.
CITE: 542 U.S. 177, 124 S. Ct. 2451, 159 L.Ed.2d 849 (2004)
SUBJECT: Failure to identify, Terry stops, search & seizure, self-incrimination
HOLDING: D was convicted under a state statute requiring persons detained on suspicion of committing a crime to identify themselves to law enforcement. D argued that the conviction violated his 4th and 5th Amendment rights.

Held: The officer had reasonable suspicion to justify a brief detention and investigation under Terry v. Ohio, 392 U.S. 1 (1968). “[Q]uestions concerning a suspect's identity are a routine and accepted part of many Terry stops’, obtaining a suspect's name in the course of a Terry stop serves important government interests’, the principles of Terry permit a State to require a suspect to disclose his name in the course of a Terry stop.”

The conviction also did not violate the 5th Amendment. D's refusal to disclose his name was not based on any articulated fear that his name would be used to incriminate him. The Court left open the possibility that in some future case, requiring a suspect to disclose his name might be found to violate the 5th Amendment. Distinguished: Papachristou v. City of Jacksonville, 405 U.S. 156 (1972) (vagrancy statute was void for vagueness); Brown v. Texas, 443 U.S. 47 (1979) (conviction of violating a Texas stop-and-identify statute overturned where initial stop was not based on objectively reasonable suspicion of criminal activity); and Kolender v. Lawson, 461 U.S. 352 (1983) (California stop-and-identify law requiring suspects to produce >credible and reliable= identification invalidated for vagueness).

TITLE: Hill v. State

INDEX NO.: Z.7.a.

CITE: 169 N.E.3d 1150 (Ind. Ct. App) 06/09/2021

SUBJECT: Consensual encounter turned to investigatory stop when officer received information that Defendant matched description of suspect and then to probable cause for identity deception when defendant gave police false name such that search did not violate Fourth Amendment.

HOLDING: Defendant was a passenger in a car stopped at a gas station when police approached on foot looking for a recent person who used counterfeit currency at a CVS. Police did not display a weapon and did not request to see Defendant's driver's license. Court of Appeals found that this part of interaction was a consensual encounter. However, the officer was then informed that Defendant fit the description of the suspect, which turned the encounter into an investigatory stop. The officer's suspicion was more than a hunch and was supported by credible witness observations as relayed to dispatch. During the investigatory stop, Defendant provided false information as to his identity, which created probable cause for the police to believe that the crime of identity deception had been committed. Because police had probable cause to arrest Defendant and could order him to exit the vehicle and conduct a warrantless search of his person and car, there was no Fourth Amendment violation. Held, convictions for possession of methamphetamine, counterfeiting, and identity deception affirmed.

TITLE: Illinois v. Wardlow

INDEX NO.: Z.7.a.

CITE: 528 U.S. 119, 120 S. Ct. 673, 145 L.Ed.2d 570 (2000)

SUBJECT: Unprovoked flight from police as grounds for investigative stop

HOLDING: D, who was standing with a group of people in a high-crime area, fled upon being approached by law enforcement officers. The police caught up to him, stopped him, and patted him down for weapons, finding a handgun. Held, unprovoked flight from police is suggestive of wrongdoing and can justify an investigative detention under Terry v. Ohio, 392 U.S. 1 (1968). While a person approached by the police is free simply to walk away, Florida v. Royer, 460 U.S. 491, 75 L.Ed.2d 229, 103 S. Ct. 1319 (1983), and a simple refusal to cooperate, without more, does not furnish the reasonable suspicion needed to justify a stop under Terry v. Ohio, 392 U.S. 1, 20 L.Ed.2d 889, 88 S. Ct. 1868 (1968), unprovoked flight from law enforcement officers is suggestive of wrongdoing and under the facts of this case, helped justify a Terry stop. Although mere presence in a high-crime area is not enough to support a reasonable suspicion that the person is committing a crime, it is a factor in the analysis. Brown v. Texas, 443 U.S. 47, 61 L.Ed.2d 357, 99 S. Ct. 2637 (1979); Adams v. Williams, 407 U.S. 143, 32 L.Ed.2d 612, 92 S. Ct. 1921 (1972).

RELATED CASES: Greeno, App., 861 N.E.2d 1232 (D's walking quickly away from officer was not reasonable suspicion)

TITLE: In re J.D. v. State
INDEX NO.: Z.7.a.
CITE: (4th Dist., 03-09-09), 902 N.E.2d 293 (Ind. Ct. App. 2009)
SUBJECT: Reasonable suspicion to detain juvenile - proximity to open beer cans
HOLDING: Juvenile court did not err in denying D's motion to suppress evidence he claims was obtained in violation of article 1, section 11 of Indiana Constitution and Fourth Amendment to United States Constitution. Police officers observed juvenile sitting in very close proximity to open beer cans, with what appeared to be marijuana strewn about on the ground.

Officers instructed all individuals on front porch to walk out to the curb and sit down with their legs straight and advised that they were going to administer portable breath tests. D took off running and was ultimately adjudicated delinquent for acts that would constitute two counts of resisting law enforcement and one count of battery on a police officer if they had been committed by an adult.

D argued that police took D into custody when they directed him to sit on curb and did so without reasonable suspicion to justify the detention. Court disagreed, noting that although officers did not witness D actually drinking beer, the fact that he is a minor, coupled with his close proximity to open cans of beer on porch, was sufficient to cause an ordinarily prudent person to believe that criminal activity had or was about to occur, thus giving rise to requisite reasonable suspicion under Terry v. Ohio, 392 U.S. 1 (1968). Thus, the detention of D did not offend Fourth Amendment principles or article 1, section 11 of Indiana Constitution. Held, judgment affirmed.

RELATED CASES: Glasgow, (3/29/2018), 99 N.E.3d 251 (Ind. Ct. App 2018) (Reasonable suspicion for Terry stop where officers found jewelry box containing heroin next to spot to where D's friend "suspiciously" squatted down); McNeal, 62 N.E.3d 1275 (Ind. Ct. App 2016) *sum. aff'd*, 76 N.E.3d 137 (sufficient facts were available to support a reasonable suspicion that D was engaged in the crime of public intoxication, thus arresting officer's conduct and warrantless detention of D were reasonable under federal and state constitutions).

TITLE: Jacobs v. State

INDEX NO.: Z.7.a.

CITE: (6/29/2017), 76 N.E.3d 846 (Ind. 2017)

SUBJECT: Stop illegal under federal and state constitutions

HOLDING: D's seizure by police was illegal under both the federal and statute constitutions, so the

Tr. Ct. erred in denying D's motion to suppress a handgun he possessed without a license.

Officers received multiple reports of shots fired by youths wearing red clothes, a known gang color, in a high crime area of Indianapolis. Two days later, while monitoring the area, officers observed several juveniles who looked like they should be in school, including D. Some were wearing red, but D was not, though at one point he had a red t-shirt slung over his left shoulder. When a park ranger in a marked car patrolled the area, D and another individual quickly walked away, and then returned once the patrol car left. An officer called for backup, and once additional officers arrived, D and his companion again quickly walked away. Officers ordered D to stop, but he continued to walk away. D later relented and went to the ground to comply with the officers' commands. The officers noticed the outline of a handgun in D's pocket.

Police lacked reasonable suspicion under the Fourth Amendment to stop D. Walking away from police in a high crime area does not create reasonable suspicion. Stalling v. State, 713 N.E.2d 922, 924 (Ind. 1999). Also, D's display of a red garment (which he was never wearing and did not have at the time police approached), while standing among those clad in red, was insufficient to justify an investigatory stop. While this may create suspicion that D was a member of the gang that was involved in the shootings, this did not give police articulable suspicion that D himself was involved in the shootings.

The stop was also unreasonable under the Art. I, § 11 of the Indiana Constitution. See Litchfield v. State, 824 N.E.2d 356 (Ind. 2005). First, the officers' suspicion of D was not linked to any criminal activity by D. Second, the intrusion was not minimal because police commanded D to lie on the ground and then handcuffed him. Third, the needs of police were low with respect to D because there was nothing to connect him to the shootings. Held, transfer granted, Court of Appeals vacated, and judgment reversed.

TITLE: Jamerson v. State

INDEX NO.: Z.7.a.

CITE: (2nd Dist., 07-31-07), Ind. App., 870 N.E.2d 1051

SUBJECT: No reasonable suspicion for investigative detention

HOLDING: Police officers did not have the necessary reasonable suspicion to detain D in an investigatory stop. Anonymous tip indicating D's location reportedly came from residents of home where D was ultimately located. There was never any assertion of criminality in the tip, which did nothing more than identify a determinate person sitting in a car in the back of a house at a certain address. According to police officers, a report over dispatch merely indicated that they were to locate D "in reference to a carjacking" which had allegedly occurred at another location. Officers did not know who the detective was who had relayed this information over dispatch or his basis for making the report. While the report over dispatch did make an assertion of illegality, such assertion was not supported by any specific & articulable facts. While information obtained by one investigating officer may be relied upon by other officers who are called upon to assist in investigation of a suspect, the officer who obtains the information must possess the requisite reasonable suspicion to conduct the investigation in the first place. Heffner v. State, 530 N.E.2d 297 (Ind. 1988). The reporting officer provided no specific & articulable facts to link D to the alleged carjacking. Further, upon initially stopping D & inquiring into his identity, officers pointed to no statements or behaviors tending to corroborate D's link to the alleged carjacking. Thus, Tr. Ct. erred in admitting into evidence handgun found under D's seat & testimony regarding its discovery. Held, conviction for carrying handgun without license reversed.

TITLE: L.W. v. State
INDEX NO.: Z.7.a.
CITE: (04-02-10), 926 N.E.2d 52 (Ind. Ct. App 2010)
SUBJECT: Invalid Terry stop - fact tipster identified himself, alone, insufficient
HOLDING: Tr. Ct. abused its discretion in admitting coins and jewelry removed from L.W.'s pockets during a Terry stop, because knowledge of tipster's identity, standing alone, was insufficient to create reasonable suspicion under Fourth Amendment to stop L.W., who allegedly fit tipster's description to a "T." Where courts have found tip from known person sufficient to give reasonable suspicion, tipster had previously provided information to officers. Adams v. Williams, 407 U.S. 143, 146-47 (1972). While tipster who discloses identity leaves himself more open to prosecution for false reporting, heightening reliability of tip, totality of circumstances determines whether tip establishes reasonable suspicion. Kellems v. State, 842 N.E.2d 352, 355-56 (Ind. 2006), *rev'd on reh'g on other grounds*, 849 N.E.2d 1110 (Ind. 2006).

Here, Chisolm reported a burglary at her residence. She was missing jewelry and large number of coins. Soon after, Shockley called police, claiming suspect was tall, black male wearing a black shirt and black shoes. No one, including investigating officer, verified Shockley's identity or reliability. Officer found a person who fit tipster's description and approached L.W., who looked like he wanted to run, but did not. Officer patted down L.W. for weapons, which he did not detect, but he did feel what seemed like a large number of coins in L.W.'s pocket. When officer learned burglary suspect had stolen large quantity of coins, he arrested L.W.

The fact that a named caller with untested reputation called police did not, in itself, establish reasonable suspicion. Even though tipster identified himself, he was a virtual stranger who had not provided information to officers before. Police did not know if Shockley was a concerned citizen, a prankster, or an imposter. Shockley had no inside knowledge about burglary or suspect, as he merely described suspect's general build, shirt, and shoes, which did not give enough information for police to corroborate Shockley's assertions. Shockley also did not predict suspect's future behavior. Further, officer's observation that L.W. looked like he might run was a mere hunch; only *actual* flight may support determination of reasonable suspicion. Held, judgment reversed; Bradford, J., dissenting, argued that knowledge of tipster's identity made tip sufficiently reliable to create reasonable suspicion.

TITLE: Lampkins v. State

INDEX NO.: Z.7.a.

CITE: (6-27-97), Ind., 682 N.E.2d 1268

SUBJECT: Reasonable suspicion for Terry stop - corroboration of anonymous tip

HOLDING: Tr. Ct. properly found that reasonable suspicion was present to justify valid Terry stop. Police officers received anonymous tip with very specific information as to location of car D was driving as well as license plate number. Although anonymous tip alone likely will not constitute reasonable suspicion, Alabama v. White, 496 U.S. 325 (1990), in this case there was more. In addition to specific information from anonymous tipster, officer verified that this information was correct when he went to general area described by tipster. Moreover, officers had some verification of this information through two other sources with whom they had previously had contact. One source was confidential informant known to officer who had provided reliable information in past. Informant verified Co-D's girlfriend's report that Ds appeared to be dealing drugs from their car. These factors together constituted reasonable suspicion to satisfy Terry v. Ohio, 392 U.S. 1 (1968). Held, transfer granted, memorandum decision of Ct. App. vacated, Tr. Ct. affirmed; Dickson, J., dissenting on other grounds.

RELATED CASES: Shelton, 26 N.E.3d 1038 (Ind. Ct. App 2015) (police corroborated allegations in anonymous tip that D was on house arrest and possessed marijuana he stole from police car); Campbell, App., 905 N.E.2d 51 (officer investigated report that husband had dragged his wife into car at tavern by driving to tavern and speaking with three people in parking lot, one of whom witnessed the possible crime and provided officer with specific details of what she had observed, D's first name, town of residence and direction of travel; such information was adequate to give officers reasonable suspicion to stop the car for further investigation); Moultry, App., 808 N.E.2d 168 (where, as here, significant aspects of anonymous informant's prediction are verified, there is reason to believe not only that anonymous informant was honest, but also that anonymous informant's information is sufficiently credible to justify investigatory stop); Francis, App., 764 N.E.2d 641 (police officer properly corroborated information acquired from anonymous tip, where he confirmed informants' tip with dispatch & found car where informants said it would be); Washington, App., 740 N.E.2d 1241 (declining to interpret Bogetti to stand for proposition that vehicle description, without more, can demonstrate reliability of anonymous tip sufficient to support Terry stop); Bogetti, App., 723 N.E.2d 876 (tip by unidentified concerned citizen that driver may be intoxicated was sufficient reasonable suspicion justifying traffic stop; no evidence that citizen concocted false report or otherwise acted in manner which might have placed citizen's motive or credibility at issue).

TITLE: Lark v. State

INDEX NO.: Z.7.a.

CITE: (10-2-01), Ind. App., 755 N.E.2d 1153

SUBJECT: Investigatory stop - proper for stop to be several blocks away from scene of infraction

HOLDING: It was proper for police to both stop D's car after observing it obstruct traffic for 10-15 seconds & to search it after smelling marijuana emanating from car. It is well settled that police officer may stop vehicle when officer observes minor traffic violation. Ransom v. State, 741 N.E.2d 419 (Ind. Ct. App. 2000). Although police did not stop D until he had driven several blocks from scene of infraction, there is no authority for proposition that police must be within certain proximity to scene of violation, nor is there rationale for creating such rule. Further, after detecting odor of marijuana, police had reasonable suspicion that car contained narcotics which permitted search of car. Kenner v. State, 703 N.E.2d 1122 (Ind. Ct. App. 1999). Held, denial of motion to suppress affirmed; Sullivan, J., concurring; Riley, J., dissenting, believes that initial stop was not supported by reasonable suspicion in violation of Ind. Constitution.

RELATED CASES: Lark, App., 759 N.E.2d 275 (On rehearing of decision at 755 N.E.2d 1153, Ct. *clarified* that Indiana Constitution does require probable cause to justify valid search & seizure).

TITLE: Lewis v. State

INDEX NO.: Z.7.a.

CITE: 920 A.2d 1080, 04-12-2007 (Md. 2007)

SUBJECT: 'Almost committing' traffic violation not justification for stop

HOLDING: Maryland Court of Appeals held that police officers who observed a car almost strike their vehicle while pulling from the curb did not have the reasonable suspicion required by the Fourth Amendment to subject the driver to an investigative detention. Police were on the lookout for a rape suspect when they saw D in a sports utility vehicle parked on the side of the road. The officers pulled in front of the SUV, intending to ask D and his passenger some questions. When they did so, D signaled and pulled out into the street, narrowly missing the back of the police vehicle. The officers ordered D to stop, and the stop led to the discovery of marijuana used to convict D of a drug crime. "Almost committing a traffic violation . . . does not justify a traffic stop," Court noted. State argued that the near miss gave the officer reasonable suspicion to believe that D was driving recklessly or under the influence of intoxicants. "The State's proposed principle would permit the police to exercise unrestrained discretion when deciding to make a stop, based upon a belief that the driver has 'almost' been involved in a traffic accident. Such a standardless chimera practically destroys the objective basis of the reasonable suspicion requirement." Court added that "almost causing a traffic accident" could include "driving less than the speed limit, passing another car, or merely parallel parking." A dissent by three justices was entered in Maryland's highest court.

TITLE: Lockett v. State
INDEX NO.: Z.7.a.
CITE: (5-21-01), Ind., 747 N.E.2d 539
SUBJECT: Traffic stops - police may routinely inquire about presence of weapons
HOLDING: Police officer may, as matter of routine practice, ask driver stopped for traffic violation if he has weapon in vehicle or on his person. Investigative detention must be temporary & last no longer than is necessary to effectuate purpose of stop, & investigative methods employed should be least intrusive means reasonably available to verify or dispel officer's suspicion in short period of time. Florida v. Royer, 460 U.S. 491, 103 S. Ct. 1319, 75 L.Ed.2d 229 (1983). In comparison to ordering motorist stopped for traffic violation to exit car, which is permitted under Fourth Amendment, asking whether stopped motorist has any weapons is far less intrusive & presents insignificant delay. Federal Cts. are divided as to whether Fourth Amendment permits officer during traffic stop to ask questions unrelated to purpose of stop.

Here, officer validly stopped D's vehicle for traffic infraction. When officer approached vehicle, he smelled alcohol, & this prompted officer to investigate whether driver was intoxicated. During this investigation, officer asked D whether he had any weapons. Question was justified by safety concerns, & it did not materially extend duration of stop or nature of intrusion. Thus, officer's questions were not unreasonable search & seizure under Fourth Amendment. Ct. rejected D's argument that question by officer effectively rendered him in custody entitling him to protections of Miranda v. Arizona, 384 U.S. 436, 86 S. Ct. 1602, 16 L.Ed.2d 694. Officer's request that D exit car & his questioning D regarding weapons did not constitute custodial interrogation. Held, transfer granted, Ct. App.' opinion at 720 N.E.2d 762 vacated, denial of motion to suppress affirmed; Rucker, J., concurring in result, disagreed with majority's holding that police may routinely inquire about weapons. Justice Rucker would hold that Fourth Amendment mandates that officer have objectively reasonable safety concern before inquiring about weapons.

RELATED CASES: Glasgow, (3/29/2018), 99 N.E.3d 251 (Ind. Ct. App 2018) (whether officers had legitimate safety concerns to justify a pat down was irrelevant because when asked if he had any sharp objects, D said yes and voluntarily surrendered the syringe before the pat down); Delatorre, 903 N.E.2d 506 (App.) (during a traffic stop, officer's inquiry as to the presence of guns did not violate the Fifth or Fourth Amendment and was not discriminatory); Washington, 898 N.E.2d 1200 (under both federal and state constitutions, a police officer, without reasonable suspicion, can inquire as to possible further activity when a motorist is stopped for a traffic infraction; see full review, this section); Jarrell, 818 N.E.2d 88 (App.) (officer's question of whether D had "anything in the vehicle that I need to know about" was not unreasonable where D divulged that there was handgun under seat; issue of admissibility of non-weapon evidence seized as result of general inquiry was not before Ct.).

TITLE: McGaughey v. State

INDEX NO.: Z.7.a.

CITE: 37 P.3d 130 (Okla. Crim. App. 2001)

SUBJECT: Vehicle Stop Based on Mistaken Belief

HOLDING: A vehicle stop initiated by officer in reasonable belief that truck's taillights were not working should have ended as soon as officer learned he was mistaken. Stop was initially valid. However, once officer learned he was mistaken about taillights, stop was no longer "reasonably related in scope" to its initial justification. See also People v. Reddinger, 906 P.2d 81 (Colo. 1995); State v. Farley, 775 P.2d 835 (Or. 1989); U.S. v. McSwain, 29 F.3d 558 (10th Cir. 1994).

TITLE: McLain v. State

INDEX NO.: Z.7.a.

CITE: (03-16-12), 963 N.E.2d 662 (Ind. Ct. App 2012)

SUBJECT: Valid consent after termination of traffic stop

HOLDING: Reasonable suspicion of illegal activity is not required before asking additional questions or for consent to search after termination of a traffic stop. Here, police officer stopped D for failing to signal and as he was walking back to his patrol car, he noticed D appear to tense up and look at the center console. Upon running a license check officer saw D had two prior "incidences" for possession of marijuana. After issuing a written warning, officer told D he was free to leave, but then asked D if he had anything illegal in his vehicle, saying he was curious because of D's two prior incidences. Officer asked if he could search the car and D gave him permission, admitting that he had a marijuana pipe on the seat and a bag of marijuana in the dash console. On appeal, D argued that the Fourth Amendment prohibited the officer from asking any further questions after traffic stop concluded unless based on reasonable suspicion of criminal activity and therefore, consent to search was invalid. Court disagreed, concluding that the interaction between D and the officer after termination of traffic stop was consensual and the resulting consent was voluntary. The Fourth Amendment was not implicated after officer gave D his license, registration, and the warning citation and told him he was free to leave. At that point, D was in fact free to leave, and he was not required to answer the officer's questions.

Court also rejected argument that officer's questions and search constituted unreasonable police activity in violation of Article 1, Section 11 of the Indiana Constitution. Article 1, Section 11 does not generally prohibit police from questioning motorists or seeking consent to search following a terminated traffic stop. State v. Washington, 898 N.E.2d 1200 (Ind. 2008). Held, judgment affirmed.

TITLE: McNeal v. State
INDEX NO.: Z.7.a.
CITE: (6/20/2017), 76 N.E.3d 137 (Ind. 2017)
SUBJECT: Warrantless detention upheld, but not under community caretaking exception
HOLDING: Per Curiam. Supreme Court granted transfer to vacate a portion of the Court of Appeals' opinion in McNeal v. State, 62 N.E.3d 1275 (Ind. Ct. App. 2016), discussing the community caretaking exception to the Fourth Amendment's warrant requirement. The Court summarily affirmed the remaining portion of the Court of Appeals' opinion.

TITLE: Meister v. State

INDEX NO.: Z.7.a.

CITE: (09-22-10), 933 N.E.2d 875 (Ind. 2010)

SUBJECT: Search incident to stop/arrest - automobile exception survives Gant

HOLDING: On remand from the U.S. Supreme Court in light of Arizona v. Gant, 129 S. Ct. 1710 (2009), Court agreed with Court of Appeals that vehicle search was justified under the automobile exception to the Fourth Amendment's warrant requirement, even if not authorized under Gant as a search incident to arrest. The State filed a forfeiture action for Meister's car in which drugs were found when her son was arrested for driving with a suspended license. The officer had arrested the son on two prior occasions and both times found drugs either on his person or in his vehicle. While arresting the son, the officer patted the son down and discovered an ink pen without any of its internal parts, with a powdery-looking residue inside of it. The officer then searched the car and found more white substance which field tested positive for methamphetamine. Although the search would not have been justified by Gant because the son was already removed from the car, handcuffed, and was being arrested for driving while suspended for which no evidence could be found in the car, the son's prior drug arrests and the powdery substance in his pen constituted probable cause to believe a search of the car would uncover contraband. Thus, the search was proper under the automobile exception to the warrant requirement, and Tr. Ct. properly denied the motion to suppress in the forfeiture of D's car. In so holding, Court noted that Arizona v. Gant "did not disturb other established exceptions to the warrant requirement that authorize a vehicle search under additional circumstances when safety or evidentiary concerns demand." Held, transfer granted, Court of Appeals' opinion at 912 N.E.2d 412 vacated, judgment affirmed.

TITLE: Moore v. State

INDEX NO.: Z.7.a.

CITE: (1/29/2016), 49 N.E.3d 1095 (Ind. Ct. App 2016)

SUBJECT: Handgun seized pursuant to lawful investigatory stop

HOLDING: Trial court did not abuse its discretion in admitting evidence of handgun found on D by apartment complex courtesy officer during investigative stop. Officer initially approached D because he was acting strangely by wearing a hoodie on a very hot day. D argued that when he decided to end his initial encounter with the officer by leaving a pat-down search, the officer did not have reasonable suspicion to stop him from leaving. However, officer had discovered D's name, knew that several residents had complained about "Willie Moore" and knew that "Willie Moore" had been placed on a trespass list. This gave the officer reasonable suspicion under Fourth Amendment to stop D to determine whether he was the same Willie Moore whom officer had heard was on the trespass list. Moreover, in light of officer's high degree of suspicion, minimally intrusive actions, and law enforcement needs, investigatory stop was reasonable under Indiana Constitution. Held, judgment affirmed in part, reversed in part on other grounds.

TITLE: Mullen v. State
INDEX NO.: Z.7.a.
CITE: (5/25/2016), 55 N.E.3d 822 (Ind. Ct. App 2016)
SUBJECT: Investigatory stop at apartment complex -- no-loitering policy & possible drug dealing
HOLDING: Assuming, without deciding, that D was "seized" when he stopped to show detective his identification, the seizure was not unconstitutional because facts known to detective at the time supported a reasonable suspicion of criminal activity. In response to drug activity and gun violence on apartment complex's property, management had posted no-loitering signs over all building entrances and asked police for assistance in controlling loitering, specifically requesting police to stop and identify individuals who were not legally on the property. Detective observed a large group of men loitering in apartment building at 10:00 p.m., despite no-loitering signs that had been posted. In addition, some of the men appeared to be acting as lookouts, which was consistent with illegal drug activity. When another officer entered the opposite doorway, two men quickly exited, walked close to building rather than on sidewalk, and kept their eyes on the door behind them as if someone might be coming after them. From these circumstances, an officer in detective's position could reasonably infer that the two men who had just exited the building had been engaged in illegal drug activity or had no right to be present on the property. Thus, detective was justified in stopping D to ask him for his ID and what he was doing on the property. When D told officer he had a knife and reached toward his pocket, patdown search for officer safety was justified. Held, denial of motion to suppress affirmed.

TITLE: Murphy v. State
INDEX NO.: Z.7.a.
CITE: (5-23-01), Ind., 747 N.E.2d 557
SUBJECT: Encounter between D & police did not constitute "seizure"
HOLDING: Under Fourth Amendment, seizure of individual does not occur until police officer, by means of physical force or show of authority, has in some way restrained liberty of citizen. Terry v. Ohio, 392 U.S. 1, 88 S. Ct. 1868, 20 L.Ed.2d 889 (1968). United States S. Ct. has subsequently interpreted that requirement in Terry to mean that seizure does not occur when suspect fails to yield to law enforcement authority. California v. Hodari D., 499 U.S. 621, 111 S. Ct. 1547, 113 L.Ed.2d 690 (1991).

Here, while patrolling high crime area, police officers observed D leaning into car through open driver's side door. D looked in direction of police &, with surprised expression, shut car door & moved to darkened area between two houses. Officer approached D to investigate, & asked D to stop. D began to walk toward officer with his hand in his pocket. Before reaching officer, officer asked him to remove his hand, & D threw baggie which officer suspected contained cocaine onto porch of one of houses, then turned & fled. Officers gave chase, attempted to tackle D, & eventually subdued him. Trial judge found this case very similar to Hodari D. & concluded that initial encounter between police & D was not illegal stop because there had been no physical seizure or submission to authority. Ct. agreed that even if attempted tackle by one of officers was considered seizure, officers had reasonable suspicion, if not probable cause, to seize D at that point. Held, judgment affirmed.

TITLE: Navarette v. California
INDEX NO.: Z.7.a.
CITE: (4/22/2014), 134 S. Ct. 1683 (2014)
SUBJECT: Anonymous tip that truck swerved once created reasonable suspicion to stop truck
HOLDING: Under the totality of the circumstances, a traffic stop precipitated by an anonymous but reliable tip to 911 complied with the Fourth Amendment because the officer had reasonable suspicion that the truck's driver was intoxicated.

An unidentified person called 911 to report that a pickup truck swerved once and forced her off a road. An officer found the truck and followed it for five minutes; during that time, the truck did not swerve or violate any other traffic law. The officer eventually stopped the truck. The driver was not intoxicated, but he smelled of marijuana. A search of the truck bed uncovered 30 pounds of marijuana.

The 911 call was sufficiently reliable. See Alabama v. White, 496 U.S. 325, 327 (1990). By reporting that she had been run off the road by a specific vehicle, the caller necessarily claimed eyewitness knowledge of the incident. The short time between the reported incident and the 911 call suggests she had little time to fabricate the report. Further, a reasonable officer could conclude a person would think twice before making a false report to a 911 system, which has several features that allow identification of those who file false reports.

Not only was the tip reliable, it created reasonable suspicion of drunk driving. See United States v. Cortez, 449 U.S. 411, 417-18 (1981). Running another car off the road suggests the sort of impairment that characterizes drunk driving. While that conduct might be explained by another cause such as driver distraction, reasonable suspicion "need not rule out the possibility of innocent conduct." United States v. Arvizu, 534 U. S. 266, 277. Finally, the officer's failure to observe additional suspicious conduct during the short period that he followed the truck did not dispel the reasonable suspicion of drunk driving, and the officer was not required to surveil the truck for a longer period. In dissent, Justice Scalia wrote that the officers had no reason to believe that "a discrete instance of irregular or hazardous driving generates reasonable suspicion of ongoing intoxicated driving." Held, cert. granted, opinion of California Court of Appeal vacated, and judgment affirmed. Thomas, J., joined by Roberts, C.J., and Kennedy, Breyer, and Alito, J.J. Scalia, J., dissenting, joined by Ginsburg, Sotomayor, and Kagan, J.J. joined.

Note: Under similar facts and issues, the Indiana Supreme Court reached the same result in State v. Renzulli, 958 N.E.2d 1143 (Ind. 2011).

TITLE: Neeley v. State

INDEX NO.: Z.7.a.

CITE: (2/16/2017), 70 N.E.3d 866 (Ind. Ct. App 2017)

SUBJECT: Erroneous admission of officers' testimony after unlawful stop

HOLDING: In intimidation and resisting law enforcement prosecution, trial court abused its discretion in admitting police officers' testimony because officers had no reasonable suspicion to stop Defendant. After seeing Defendant walking along a county road, a woman called police because he "looked questionable" and she was "tired of seeing him." An officer who responded to the call saw Defendant walking on the wrong side of the road, which is a Class C infraction. The officer ordered Defendant to stop, but he ignored his request and kept walking. Eventually, two other officers arrived, grabbed and detained Defendant. One officer then threatened to beat up Defendant and put him in jail. The officers never mentioned the traffic infraction to Defendant. After thirteen minutes of being detained, Defendant said, "If you didn't have that vest on I'd f--- you up."

Following Gaddie v. State, 10 N.E.3d 1049 (Ind. Ct. App 2014), Court held there was no reasonable suspicion at the time the officers stopped Defendant, because the only information the officer had was that a person was walking down the street looking questionable. Even if the officer could stop Defendant to issue a traffic citation for the infraction of walking on the wrong side of the street, the stop was prolonged beyond the time necessary to issue a citation, and the officers never completed the tasks authorized by Ind. Code § 34-28-5-3 for an infraction or ordinance violation. Rodriguez v. United States, 135 S. Ct. 1609, 1612 (2015). Held, convictions reversed.

Note: Although Defendant failed to make contemporaneous objections to the officers' testimony, Court noted Defendant had requested a continuing objection, which trial court granted. Further, trial court specifically told defense attorney not to jump up and down making objections to the officers' testimony.

TITLE: Overstreet v. State

INDEX NO.: Z.7.a.

CITE: (1st Dist., 2-29-00), Ind. App., 724 N.E.2d 661

SUBJECT: Brief encounter between D & officer was not Terry stop

HOLDING: Tr. Ct. properly denied D's motion to suppress, where police officer's brief encounter & inquiry did not constitute Terry stop & reasonable suspicion of criminal activity was not required. Where law enforcement officer makes casual & brief inquiry of citizen which involves neither arrest nor stop, no Fourth Amendment interest is implicated. Molino, 546 N.E.2d 1216. Here, police officer observed D looking into mailbox & then closing mailbox door. D then walked hurriedly toward parked vehicle & drove away. Officer watched as D exited his car at gas station & began to pump air into one of his automobile tires. Officer pulled his marked police vehicle into gas station behind D's vehicle but did not activate his flashing lights. Officer then got out of his vehicle, walked up to D, asked D what he had been doing at mailbox & also asked him for identification. D volunteered that his driver's license was suspended. In affirming Tr. Ct.'s denial of D's motion to suppress, Ct. noted that this was "consensual encounter" during which D was not detained, nor did officer restrict D's movement in any way. To characterize every street encounter as seizure implicating Fourth Amendment would impose wholly unrealistic restrictions upon wide variety of legitimate law enforcement practices. United States v. Mendenhall, 446 U.S. 544 (1980). Held, conviction affirmed; Robb, J., dissenting, argued that encounter between D & officer constituted Terry stop without reasonable suspicion.

RELATED CASES: Woodson, 966 N.E.2d 135 (Ind. Ct. App 2012) (reasonable suspicion not required to approach & talk to D as he stood on sidewalk); Powell, 912 N.E.2d 853 (Ind. Ct. App 2009) (no seizure where officer approached D who was sitting in a parked car in public place, & asked D questions about his purpose for being in area); Greeno, App., 861 N.E.2d 1232 (ordering D to "stop" & "come back" required officer to have reasonable suspicion, which he did not); Augustine, App., 851 N.E.2d 1022; Lefevers, App., 844 N.E.2d 508 (no seizure where officer approached D's vehicle as she prepared to exit her vehicle & began questioning her as to whether she had had anything to drink & whether she made any erratic movements to suggest to somebody that she might be intoxicated); Shirley, App., 803 N.E.2d 251 (4th amendment was not implicated when officer asked D as he rode closer to bicycle if he was all right; however, after noticing signs of intoxication, officer requested D's identification & casual inquiry became an investigatory stop); Bentley, App., 779 N.E.2d 70 (*distinguishing Overstreet*, Ct. rejected State's argument that police officers' encounter with D was consensual; rather, D was seized & subjected to investigatory stop for Fourth Amendment purposes because any reasonable person or passer-by on street would conclude that D was not free to leave scene; officer activated emergency lights, stopped his vehicle in way that blocked traffic, & asked D for identification); Carlson, App., 762 N.E.2d 121 (police approach of D's vehicle parked in public place & officer's subsequent questioning about erratic driving report involving car matching D's vehicle's description & whether D had been drinking did not constitute "seizure"); Dowdell, App., 747 N.E.2d 564 (reasonable person when faced with police officer pulling up to him in marked vehicle & calling for him to come over to car would not assume that he is free to turn & walk away).

TITLE: Payne v. State

INDEX NO.: Z.7.a.

CITE: (1st Dist., 10-11-06), Ind. App., 854 N.E.2d 1199

SUBJECT: Reasonable suspicion for investigatory detention; permission to handcuff D

HOLDING: Tr. Ct. did not abuse its discretion by denying D's motion to suppress. Record showed that police officer knew two things for certain when he approached D: that a bridge was on fire, & D's whereabouts had been discussed over the police radio after bridge was discovered to be on fire. Even though officer did not know with whom he was having a conversation when he approached D, he acted legally by asking for identification. State v. Augustine, 851 N.E.2d 1022 (Ind. Ct. App 2006). Then, with no provocation other than a mere request for identification, D handed officer his driver's license, identifying himself as D, & a gas station receipt. Totality of circumstances surrounding his encounter with D, supplemented by officer's knowledge, met requisite reasonable suspicion to justify officer's pat down & detention of D. Further, officer properly detained D until another officer with more information could arrive at the scene. Although officer testified D was not free to leave, he never communicated to D that he was not free to leave. Officer sought permission from D to place him in handcuffs, indicating D was not forcibly restrained against his will. D was detained in handcuffs for no more than five minutes. Court found this detention did not rise to level of arrest but was rather an investigatory detention in line with Crabtree v. State, 762 N.E.2d 241 (Ind. Ct. App 2002) & Johnson v. State, 710 N.E.2d 925 (Ind. Ct. App 1999). Held, judgment affirmed.

Note: But see Loving v. State, 647 N.E.2d 1123 (Ind. 1995) & Wright v. State, 766 N.E.2d 1223 (Ind. Ct. App 2002), which held that being placed in handcuffs rose to level of arrest requiring probable cause rather than reasonable suspicion.

RELATED CASES: Billingsley, 980 N.E. 402 (Ind. Ct. App 2012) (as in Willis (below), officer's use of firearm to detain D did not convert investigatory stop into an arrest requiring probable cause); Willis, App., 907 N.E.2d 541 (fact that police officers drew their guns and handcuffed D did not convert investigatory stop into an arrest requiring probable cause; officers had reasonable suspicion that the men were armed and dangerous, being they were responding to a call that one man was holding a gun to the other man at that location).

TITLE: Peete v. State

INDEX NO.: Z.7.a.

CITE: (4th Dist., 4-9-97), Ind. App., 678 N.E.2d 415

SUBJECT: Vehicle stop & inventory search upheld

HOLDING: Trial counsel was not ineffective for failing to object to admissibility of cocaine, which was obtained as result of valid traffic stop & inventory search. Stop of D's vehicle was due to failure to keep license plate properly illuminated. All occupants of vehicle had outstanding arrest warrants & were placed under arrest. In upholding initial stop, Ct. noted that police officer may briefly detain person whom officer believes has committed infraction or ordinance violation. Ind. Code 34-4-32-2; English, App., 603 N.E.2d 16. Operating a motor vehicle with equipment that is not in good working condition is a Class C infraction. Ind. Code 9-21-7-1; Ind. Code 9-21-7-13. Initial stop was therefore valid. Walker, 527 N.E.2d 706. Held, conviction affirmed.

RELATED CASES: Williams, 22 N.E.3d 730 (Ind. Ct. App 2014) (officer lacked reasonable suspicion to stop D where officer erroneously believed D committed an infraction by driving with a cracked tail light that emitted both white and red light; Ind. Code § 9-16-6-4 only requires that a tail light emit some red and does not prohibit emission of white light); Kroft, 992 N.E.2d 818 (Ind. Ct. App 2013) (tail lamp with tiny crack that emitted a miniscule amount of white light from otherwise red tail lamp did not give officer reasonable suspicion to stop D under Ind. Code § 9-10-6-4 or Ind. Code § 9-21-7-1); Riggle, 967 N.E.2d 522 (Ind. Ct. App 2012); Gunn, 956 N.E.2d 136 (Ind. Ct. App 2011) (officer's mistaken belief that D committed an infraction by failing to enter the roadway in the lane closest to the center line after making a left turn did not justify the traffic stop; Ind. Code 9-21-8-21 only requires a person making a left turn to "leave the intersection to the right of the center line of the roadway being entered"); Goens, 943 N.E.2d 829 (Ind. Ct. App 2011) (D did not commit an infraction by having one inoperable brake light; officer's stop of his car was invalid, and the resulting evidence of his intoxication should have been suppressed); Freeman, App., 904 N.E.2d 340 (officer properly stopped D's vehicle because left tail lamp was not illuminated).

TITLE: People v. Saint-Veltri
INDEX NO.: Z.7.a.
CITE: 923 P.2d 337 (Col. Ct. App. 1996); reversed and remanded 945 P.2d 1339
SUBJECT: "Cupped Handshake" - Not Suspicious Enough to Justify Stop
HOLDING: Conduct between two men, including unusual "cupped" handshake, outside office building in area not known for drug activity, did not justify Terry stop. Interaction took place in public, it was apparent men were not concerned about being watched, and area was not known for drug activity. Dissent argues that ruling will encourage open air drug trafficking.

TITLE: Pinner v. State
INDEX NO.: Z.7.a.
CITE: (5/9/2017), 74/226 (Ind. 2017)
SUBJECT: No reasonable suspicion for Terry stop - report of man with a gun
HOLDING: Given fact that possession of weapon is not per se illegal in Indiana, a report that a person is carrying a gun is, without more, insufficient to establish that D was or was about to be engaged in criminal activity. There is no "firearm exception" to the Fourth Amendment. Florida v. J.L., 529 U.S. 266, 272 (2000). Here, at the time police seized D, they had information from a taxicab driver that a male passenger dropped a handgun while exiting his cab before entering a movie theater, and the driver said he "felt he was going to be robbed." Police went to the theater, located D, who matched the description, and ordered him to stand up from his seat and to "keep his hands high."

Employing de novo review, Court rejected State's argument the encounter was consensual because, assuming that D would have felt free to disregard the officers when they confronted him in full uniform and announced their suspicions about a gun, it became an investigative stop when they ordered him to stand. Considering Florida v. J.L. and fact that possession of a weapon is not per se illegal in Indiana, Court found no reasonable suspicion for a Terry stop based on the cab driver's bare-boned tip. "Even a reliable tip will justify an investigatory stop only if it creates reasonable suspicion that 'criminal activity may be afoot.'" Navarette v. California, 134 S. Ct. 1683, 1690 (2014) (emphasis added). Officers had no reason to suspect D did not have a valid license to carry a gun. His nervousness in the presence of police was not indicative of criminal activity because that would be "common for most people." Court also rejected argument police may detain D to determine if he could legally possess a gun because that is exactly the type of "firearm or weapons exception" to reasonable suspicion analysis the Supreme Court expressly disapproved of in J.L. Although police conduct here was conscientious and in the best interests of the community, an officer's good intentions do not make evidence he finds admissible. "At stake here is whether the evidence obtained by the conscientious officers in this case can be used against the D without violating his Fourth Amendment rights. On the facts of this case, we find that it cannot." Held, transfer granted, Court of Appeals' opinion at 59 N.E.3d 275 vacated, denial of motion to suppress reversed and remanded for further proceedings.

RELATED CASES: Redfield, 74 N.E.3d 226 (Ind. 2017) (distinguishing Pinner, Ct. held that D's behavior during consensual encounter gave rise to fear for officer safety and reasonable suspicion for seizure).

TITLE: Pinner v. State

INDEX NO.: Z.7.a.

CITE: (8/24/2016), 59 N.E.3d 275 (Ind. Ct. App 2015)

SUBJECT: No reasonable suspicion for Terry stop; report of man with a gun

HOLDING: Where two police officers approached D as he sat on a bench in movie theatre lobby, stood in front of him, told him there was a report of a man with a gun and asked whether he was carrying a gun, the interaction was an investigatory stop for which the officers did not have reasonable suspicion of criminal activity. The encounter was not consensual, as the officers approached D with an official purpose and asked questions for which the answers could have criminal implications. United States v. Mendenhall, 446 U.S. 544 (1980). Although officers asserted at suppression hearing that D could have walked away, no reasonable citizen would have felt free to disengage from the officers without answering their question.

Court found no reasonable suspicion for the Terry stop, as mere possession of a firearm, which is legal, cannot produce reasonable suspicion to justify an investigatory stop. Malone v. State, 882 N.E.2d 784 (Ind. Ct. App 2008). Here, a cab driver called police to report a male passenger dropped a handgun while exiting the cab before entering the movie theater. Although the driver said he was fearful of being robbed, there was no indication a robbery had been attempted. Police went to the theater, located D, who matched the description, and initiated a Terry stop as D was seated on a bench in the lobby. Officers asked D to stand, then observed the butt of a gun in his front pocket. Court concluded there was no reason why the police believed when they stopped D that his possession of the gun was illegal, nor did the State assert any other criminal activity was "afoot." Held, denial of motion to suppress reversed; Brown, J., dissenting, believes that encounter was consensual and that reasonable suspicion arose when officers observed D's gun immediately after he told the officers that he was not armed. Moreover, the gun was properly admitted under Article 1, Section 11 of the Indiana Constitution (which the majority did not address).

TITLE: Platt v. State

INDEX NO.: Z.7.a.

CITE: (03/24/92), Ind., 589 N.E.2d 222

SUBJECT: Reasonable suspicion for OWI stop

HOLDING: Where D sped away from side of road when officer approached within 50-feet of vehicle, action provided reasonable suspicion to warrant investigative stop, granting transfer & reversing Ct. App. decision in Platt 568 N.E.2d 1028. At approximately 3 a.m., officer found car parked on side of highway, with someone in driver's seat. After making U-turn, officer pulled in behind car, at which time car's lights came on, & it immediately sped away. Officer then turned-on red lights followed car for brief time & pulled it over. When officer approached car & asked for identification from driver, he detected strong smell of alcohol. After administering portable breath test, officer took D to jail, where he registered .17 percent BAC on breathalyzer test.

S. Ct. found proper balance under 4th Amend. was struck by allowing officers to tempo rarely stop D who flees upon seeing police. Ct. noted that this type of stop fell in Terry "stop & frisk" doctrine, i.e., allowing for investigatory stop when there is reasonable suspicion of criminal activity. Ct. found standard was met, primarily because motorist immediately fled upon encountering police car on country road in dead of night. Flight upon seeing police is undeniably suspicious behavior. Michigan v. Chesternut, (1988), 486 U.S. 567, 108 S. Ct. 1975, 100 L.Ed.2d 565. Test is what would reasonably police officer reasonably suspect in light of circumstances & training, & decision was consistent with Hailey (1988), Ind., 521 N.E.2d 1318. Held, Ct. App. decision vacated & conviction affirmed, DeBruler, J., dissenting.

RELATED CASES: Paul, 189 N.E.3d 1146 (Ind. Ct. App. 2022) (traffic stop of car approaching house under surveillance and exhibiting evasive behavior upheld); Sowell, App., 784 N.E.2d 980 (second stop of car was lawful, where occupants appeared unusually nervous, car passed by intended destination, made series of circular turns, & passengers continued to turn around to see if officer was still following); Frye, App., 757 N.E.2d 684 (police surveillance, combined with information provided by buyer of drugs, was sufficient to arouse reasonable suspicion that criminal activity was afoot in house & to justify brief detention for investigative purposes of individuals standing outside house); Cardwell, App., 666 N.E.2d 420 (D's act of running from his vehicle as police officer approached it in parking lot gave officer grounds for reasonable suspicion that D was engaged in criminal activity).

TITLE: Polson v. State

INDEX NO.: Z.7.a.

CITE: (12/31/2015), 49 N.E.3d 186 (Ind. Ct. App 2015)

SUBJECT: Concerned citizen tip justified Terry stop

HOLDING: Based on the totality of circumstances, police officer had reasonable suspicion to support investigatory search and seizure of D, thus trial court did not abuse its discretion in admitting seized handgun into evidence. Officer responded to a report from a concerned citizen of a suspicious person walking down road in a rural area. He quickly identified D based on the caller's description of D's body type, bad complexion, clothing, and large bulge underneath his shirt. D told officer he was walking to a gas station to get a ride, but the closest gas station was at least two-and-one-half miles away. Then, when the officer approached D, he acted nervous and skittish, was sweating, and appeared to be under the influence of something. Finally, as the officer became concerned for his safety, he asked D to show him what was underneath his shirt. In response to this lawful request, D acted in an evasive manner and refused to comply several times before finally revealing his handgun. Held, judgment affirmed.

TITLE: Pridemore v. State

INDEX NO.: Z.7.a.

CITE: (2/24/2017), 71 N.E.3d 70 (Ind. Ct. App 2017)

SUBJECT: Investigatory stop for driving outside right-hand lane

HOLDING: Police officers had reasonable suspicion to stop Defendant's vehicle for crossing the center line between opposite lanes of travel, a violation of Ind. Code § 9-21-8-2(a). Officer decided to initiate traffic stop when Defendant's tire went onto the yellow line and median separating north and south bound traffic, but her car did not enter into the other lane. Defendant cited no authority for her assertion that the driving left of center statute only applies when a motorist crosses into the opposite lane of travel. Rather, the statute plainly states that "a vehicle shall be driven upon the right half of the roadway." A motorist is not "upon the right half of the roadway" if she is driving in the median between two opposite lanes of travel. Held, denial of motion to suppress affirmed.

TITLE: Pruitt v. State

INDEX NO.: Z.7.a.

CITE: (10-04-2010), 934 N.E.2d 767 (Ind. Ct. App 2010)

SUBJECT: Reasonable Suspicion - Officer Not Mistaken About Infraction

HOLDING: Officer was not mistaken that D committed traffic violation by failing to activate his headlights while driving after midnight in a private parking lot, even though statute requiring activation of headlights, Ind. Code 9-21-7-2, is limited to vehicles on public highways. Cf. Datzek v. State, 838 N.E.2d 1149, 1156 (Ind. Ct. App. 2005). Thus, the officer had reasonable suspicion to stop D. The “statute does not necessarily imply that a driver is allowed at all times and under all circumstances to drive without headlights on private property. Such a reading of the statute would run counter to the policy of facilitating safe automobile traffic. Furthermore, the statute neither states nor implies that an officer is barred from stopping a driver for driving without headlights on private property.” Held, denial of motion to suppress affirmed.

TITLE: Ransom v. State

INDEX NO.: Z.7.a.

CITE: (4th Dist., 12-28-00), Ind. App., 741 N.E.2d 419

SUBJECT: Illegal traffic stop & search

HOLDING: Tr. Ct. erred in denying D's motion to suppress handgun, because initial stop of D's vehicle was unlawful & D's consent to search of vehicle was not voluntary. Police officer stopped D's vehicle for driving in reverse, which is not in & of itself unlawful. There was no violation of obstruction of traffic statute, Ind. Code 35-42-4-4, as D did not unlawfully block progress of officer or any other motorist as he backed up his vehicle. Thus, officer did not have objectively justifiable reason for stopping D. Ct. rejected State's argument that stop was justified because officer had good faith belief that D had committed traffic violation. Although law enforcement officer's good faith belief that person committed violation will justify traffic stop, Ind. Code 34-28-5-3, officer's mistaken belief about what constitutes violation does not amount to good faith. Cash, 593 N.E.2d 1267 (Ind. Ct. App 1992). Given short passage of time between unlawful stop & search & causal connection between stop & search, Ct. could not say that D's consent to search purged taint of officer's unlawful stop. Held, reversed & remanded with instructions to grant D's motion.

RELATED CASES: Croom, 996 N.E.2d 436 (Ind. Ct. App 2014) (officer's mistaken but good faith belief that interim plate was invalid gave reasonable suspicion to stop D) (see full review, this section); Killebrew, 976 N.E.2d 775 (Ind. Ct. App 2012) (while driving through an intersection with an activated turn signal without turning or changing lanes might be a legitimate factor in creating a reasonable suspicion that a driver is impaired, such use of a turn signal alone is not sufficient); Gunn, 956 N.E.2d 136 (Ind. Ct. App 2011) (officer's mistaken belief that D committed an infraction by failing to enter the roadway in the lane closest to the center line after making a left turn did not justify the traffic stop; Ind. Code 9-21-8-21 only requires a person making a left turn to "leave the intersection to the right of the center line of the roadway being entered"); Goens, 943 N.E.2d 829 (Ind. Ct. App 2011) (D did not commit an infraction by having one inoperable brake light; officer's stop of his car was invalid, and the resulting evidence of his intoxication should have been suppressed); Sitts, 926 N.E.2d 1118 (Ind. Ct. App 2010) (D's act of crossing the center line once between the adjacent southbound lane was not a violation of Ind. Code 9-21-8-2(a); thus, officer did not have an objectively justifiable reason for stopping D's vehicle); Roger, App., 883 N.E.2d 136 (stop was illegal because it was based on officer's mistaken belief that D violated Ind. Code 9-21-8-35, requiring D to change lanes when approaching a stationary emergency vehicle if possible); Combs, App., 878 N.E.2d 1285 (even if driving left-of-center requires sufficient room on the right side of roadway, it is objectively reasonable for an officer to stop someone for driving left-of-center and subsequently determine whether there is sufficient room).

TITLE: Redfield v. State

INDEX NO.: Z.7.a.

CITE: (5/30/2017), 78 N.E.3d 1104 (Ind. Ct. App 2017)

SUBJECT: D's behavior during consensual encounter gave rise to fear for officer safety and reasonable suspicion

HOLDING: Although police officer had no reasonable suspicion of criminal activity at the time he initially approached Defendant outside bar in response to anonymous report of a man with a firearm, that fact does not negate the reasonableness of officer's ensuing conduct in response to Defendant's behavior during the encounter. It is well settled that an officer is entitled to frisk a suspect for his own protection when the suspect's own conduct gives rise to suspicion. 4 Wayne R. LaFave Search & Seizure § 9.6(a) (5th ed. 2012). Here, when officer approached and stated that he received a report of a person with a firearm, Defendant became nervous, "blade[d]" his body away from officer and made a hand motion consistent with drawing a firearm. It was at that moment that officer feared for his safety and seized Defendant. Distinguishing Pinner v. State, 74 N.E.3d/ 226 (Ind. 2017), Court held that officer's seizure was lawful under the Fourth Amendment. Held, judgment affirmed.

RELATED CASES: Bell, 144 N.E.3d 791 (Ind. Ct. App. 2020) (while possession of firearm, without more, cannot provide reasonable suspicion for an investigatory stop, evasive and aggressive behavior during a consensual encounter regarding an inquiry into possession of a firearm may provide reasonable suspicion to perform an investigatory stop and frisk); Redfield, 59 N.E.3d 275 (Ind. Ct. App 2015) (distinguishing Pinner, Ct. held that D's behavior during consensual encounter gave rise to fear for officer safety and reasonable suspicion for seizure.)

TITLE: Reynolds v. State

INDEX NO.: Z.7.a.

CITE: 746 A.2d 422 (Md. Ct. Spec. App. 1999)

SUBJECT: Detention of Pedestrian to Run Computer Check

HOLDING: Pedestrian who was asked for name and birthdate was seized for 4th Amendment purposes when, after giving officers requested information, he waited five minutes for them to run computer check for outstanding warrants. D was with a group of people standing on a sidewalk in the afternoon when two uniformed officers in a marked police car drove by. Like the people he was with, D began to walk away as the officers approached. However, when they asked him his name and birth date, he complied and waited while they ran a check for warrants. The check revealed warrants, D was arrested, and a search incident to arrest revealed cocaine. Court here holds evidence should have been suppressed. While police needed no articulable suspicion in order to ask D for name and birth date, D was seized for 4th amendment purposes during the five minutes he waited for the computer check, because a reasonable person under the circumstances would not have believed that he was free to walk away.

TITLE: R.H. v. State

INDEX NO.: Z.7.a.

CITE: (2nd Dist., 11-10-09), (Ind. App. 2009) 916 N.E.2d 260

SUBJECT: Activation of emergency lights did not constitute seizure

HOLDING: Tr. Ct. did not abuse its discretion in admitting evidence that D possessed marijuana, because he was not seized under Fourth Amendment when officer parked behind him and activated his emergency lights. Officer received a dispatch late at night from a concerned citizen regarding a report of a suspicious vehicle parked on the street in front of her residence. When officer arrived at scene, he found vehicle matching description given already stopped and parked. He then parked his police vehicle, activated his emergency lights in order to alert others of his presence, and approached D's vehicle to ask occupants some questions and request identification. In Finger v. State, 799 N.E.2d 528 (Ind. 2003), Court determined that parking behind a vehicle, activating emergency lights, and asking questions of occupants were "all things a police officer would be expected to do upon finding a stranded motorist and do not indicate to a reasonable motorist that officer intends to detain him." Moreover, failing to activate emergency lights would put officer at risk to approach a vehicle late at night without first alerting the unknown occupants that he or she is a safety enforcement officer. While use of siren or flashers could be interpreted as an intrusion upon freedom of movement, circumstances in this case do not suggest officer seized D when he activated his lights because he in no way hindered traffic or D's vehicle. Court was not persuaded that activation of emergency lights constituted an order to stop. Held, judgment affirmed; Mathias, J., concurring, believes it is better to consider a vehicle in these circumstances to be stopped within meaning of Fourth Amendment and that facts giving rise to D's stop have been held to warrant a stop in Finger.

TITLE: Richey v. State

INDEX NO.: Z.7.a.

CITE: (5/19/2023), 210 N.E.3d 329 (Ind. Ct. App.)

SUBJECT: Lawful Terry stop/patdown -- walking on wrong side of road; sufficient identification evidence to support unlawful possession of firearm by SVF

HOLDING: Police officer had reasonable suspicion to justify Terry stop of Defendant, whom he observed walking on the wrong side of the road in violation of Ind. Code § 9-21-17-14. The Court of Appeals acknowledged the stop bore “several similarities” to a stop found unlawful in Neeley v. State, 70 N.E.3d 866, 873 (Ind. Ct. App. 2017), but noted the stop here was also motivated by safety concerns for Defendant, whom officer observed wandering in the rain for several hours without rain gear, and the sun had set by the time he stopped him. Defendant then said he would like a “courtesy ride,” so the off-duty officers called another uniformed officer to give him a ride. For officer safety reasons, the uniformed officer asked Defendant if he had any weapons on him and performed a pat down search after Defendant responded that he had a gun. The Court held that because the Terry stop of Defendant turned into a consensual encounter before the discovery of a firearm and the uniformed officer’s pat down search of Defendant after he disclosed he had a handgun was reasonable, the officers did not violate Defendant’s rights under the Fourth Amendment or Article 1, Section 11 of the Indiana Constitution.

TITLE: Rodriguez v. United States
INDEX NO.: Z.7.a.
CITE: (4/21/2015), 135 S. Ct. 1609 (U.S. 2015)
SUBJECT: Can't extend traffic stop for dog sniff absent reasonable suspicion
HOLDING: Absent reasonable suspicion, prolonging the duration of a traffic stop to conduct a dog sniff constitutes an unreasonable seizure. A traffic stop for an infraction may last no longer than is needed to complete the purpose of that stop. Illinois v. Caballes, 543 U. S. 405, 407 (2005) (dog sniff). The seizure remains lawful only "so long as [unrelated] inquiries do not measurably extend the duration of the stop." Arizona v. Johnson, 555 U. S. 323, 333 (2009). Beyond determining whether to issue a traffic ticket, an officer's mission in a traffic stop usually includes checking for a driver's license and outstanding warrants and inspecting registration and proof of insurance. These steps ensure vehicles on the road are operated safely and responsibly. However, a dog sniff is not fairly characterized as part of an officer's traffic mission because it lacks the same close connection to road safety.

Here, an officer pulled D over for driving on a highway shoulder. After the officer issued a warning ticket, he asked D if he would consent to a dog sniff of his car. D declined. The officer then waited until another officer arrived and then conducted a dog sniff, which led to the discovery of methamphetamine in the car. Held, cert. granted, Eighth Circuit opinion at 714 F.3d 905 vacated, and remanded to Eighth Circuit for determination if there was an independent basis to justify the dog sniff. Ginsburg, J., joined by Roberts, C.J., Scalia, Breyer, Sotomayor, and Kagan, J.J., Thomas, J., dissenting, joined by Alito, J., and joined in part by Kennedy, J.; Alito, J., dissenting.

RELATED CASES: Cassady, 56 N.E.3d 662 (Ind. Ct. App 2016) (dog sniff did not unreasonably prolong traffic stop, where approximately four minutes passed between the time officer gave his location and a description of the vehicle to dispatch and the time he completed his dog sniff). Z.4.d

TITLE: Rutledge v. State
INDEX NO.: Z.7.a.
CITE: (3/19/2015), 28 N.E.3d 281 (Ind. Ct. App 2015)
SUBJECT: Officer's approach to D's parked vehicle did not violate federal or state constitutions
HOLDING: The Tr. Ct. did not err in admitting evidence discovered after police officer approached D's minivan parked in a driveway. Around midnight, officers observed that D had difficulty keeping his vehicle on the roadway and while they followed him, D pulled into different driveways twice. The officers pulled up to the van while parked in the second driveway and discovered the van was not registered to either location. One of the officers approached the van and found D in the driver's seat slumped over the center console. He tapped on the window, waking D up, while the second officer stood at the back corner of the van. Officer opened the door, and D denied driving the car and refused to participate in sobriety tests.

Court held the encounter was consensual and did not constitute a "seizure" under the Fourth Amendment. No lights or sirens were activated, the deputies did not initiate a traffic stop and D's freedom of movement was not impaired.

But even assuming that the initial encounter was not consensual and that a stop occurred when officer opened the door, Court concluded that the facts known to the officers, together with the reasonable inferences would cause an ordinarily prudent person to believe that criminal activity has or is about to occur. Court also rejected D's argument that his rights were violated under the state Constitution. Officer's approach and initial contact with D was minimally intrusive and the deputies had a degree of concern, suspicion or knowledge that a violation had occurred. Held, judgment affirmed.

TITLE: Salt Lake City v. Bench

INDEX NO.: Z.7.a.

CITE: 177 P.3d 655 (Utah Ct. App. 2008)

SUBJECT: Ex-wife's tip not sufficiently trustworthy for reasonable suspicion

HOLDING: Utah Court of Appeals held that a woman's 911 call reporting that her ex-husband had just been to her house and was driving while intoxicated was not sufficiently trustworthy to provide the reasonable suspicion required by the Fourth Amendment to stop him. In prior cases, the Utah Court of Appeals has joined other courts that have upheld stops based on anonymous tips about drunken driving after police corroborate only the innocent details in the tip, such as the suspect's location or direction of travel. The *Criminal Law Reporter*, a Bureau of National Affairs publication, noted the sticking point in this nationwide jurisprudential debate has been whether certain factors (such as the imminence of the danger posed by a drunken driver and/or the informer's disclosure of the basis for his or her tip) permit the prosecution to show that an anonymous tip is reliable enough to make it reasonable to conduct an investigatory stop in the absence of police corroboration of erratic driving. State argued that the ex-wife identified herself and thus qualified as a "citizen-informer" of the type whose veracity may be presumed. Court followed cases holding that tipsters who identify themselves should not be treated as presumptively reliable citizen-informers in circumstances where the police have some reason to believe the tipsters carry grudges against the people they are accusing. Despite nothing to suggest ill will on part of ex-wife, Court noted a concern about the informer's veracity "is surely presented here, given that the citizen-informant was [D's] ex-wife and that malice or ill will is a typical - albeit not inevitable - product of divorce. Court also rejected State's argument that police corroborated the tip based on D's driving below the speed limit and activating his turn signal longer than normal before turning. "Safe ultra-cautious driving, however, even if motivated by a desire to avoid police contact, does not, without more, create reasonable suspicion sufficient to justify a traffic stop."

TITLE: Sanchez v. State

INDEX NO.: Z.7.a.

CITE: (2nd Dist., 2-6-04), Ind. App., 803 N.E.2d 215

SUBJECT: Illegal detention & arrest - fruit of poisonous tree; attenuation doctrine

HOLDING: Tr. Ct. erred in denying D's motion to suppress evidence seized incident to arrest after an illegal detention. Although D's initial encounter with police officers in which they asked him to show identification was consensual, encounter evolved into an investigatory stop as soon as D remained detained after officer was advised that name D provided was "not on file." Absent any reasonable suspicion of criminal activity, D should have been free to leave at this point. Instead, officers continued to interrogate him without reasonable suspicion that criminal activity was about to occur, & eventually handcuffed & transported him to police department for fingerprinting. D was arrested for an open Illinois warrant, which officers had no knowledge of prior to seizing D. A search incident to D's arrest at police department revealed a small quantity of marijuana.

State argued that D's arrest at police station pursuant to outstanding warrant dissipated any taint of illegal stop & detention & made search incident to that valid arrest proper. Distinguishing Quinn v. State, App., 792 N.E.2d 597, & following Jefferson v. State, 780 N.E.2d 398 (Ind. Ct. App 2002), Ct. concluded that the casual chain between the commencement of the illegality & the seizure of the evidence was not sufficiently attenuated to purge the primary taint. United States v. Green, 111 F.3d 515 (7th Cir. 1997). Unlike Quinn, officer's actions in this case were flagrant & intended to exploit an illegal arrest. Thus, evidence obtained pursuant to illegal seizure in this case should have been excluded from trial under fruit of poisonous tree doctrine. Held, judgment reversed & remanded.

TITLE: Sellmer v. State

INDEX NO.: Z.7.a.

CITE: (02-16-06), Ind., 842 N.E.2d 358

SUBJECT: Invalid Terry stop - anonymous tip

HOLDING: Anonymous tip to police that there was marijuana in D's car did not provide police with reasonably articulated suspicion of criminal activity required by Fourth Amendment to detain her. For anonymous tip to constitute reasonable suspicion necessary for a valid stop, significant aspects of tip must be corroborated by police & tip must demonstrate an intimate familiarity with suspect's affairs and be able to predict future behavior. Lampkins v. State, 682 N.E.2d 1268 (Ind. 1997); Johnson v. State, 659 N.E.2d 116 (Ind. 1995). Protection against uncorroborated anonymous tips is necessary because if any anonymous caller's allegation, uncorroborated by anything beyond public knowledge, could justify a search, every citizen's home or car would be fair game for a variety of innocent and not so innocent intrusions. Jaggers v. State, 687 N.E.2d 180 (Ind. 1997).

Here, anonymous tip provided information detailing color, make, and whereabouts of a vehicle but failed to provide identity/description of car's driver, car's license plate number, basis of caller's knowledge, or any information detailing future acts of car's driver that would demonstrate caller's intimate knowledge of suspect's activities and provide officers tools with which to verify its dependability. Johnson. Tip provided police with no information that was not already easily knowable by member of general public and lacked any information that would allow police to corroborate caller's claim that illegal activity was afoot. Florida v. J.L., 529 U.S. 266 (2000). Nor did tip provide police regarding D's future acts that would bolster its reliability.

While police were entitled to approach D & ask her if she was willing to step outside hair salon & answer questions, police procedures used here were such that her consent to search the car was not valid (see above). Held, transfer granted, Ct. App.' opinion at 800 N.E.2d 671 vacated, denial of motion to suppress reversed & remanded; Shepard, C.J. & Dickson, J., dissenting.

See also: Kellems v. State, 842 N.E.2d 352 (in 3-1 decision, Court held that identified informant's tip that D was driving intoxicated, without a license and with children in vehicle, coupled with some corroborative police investigation, established sufficient reasonable suspicion to validate traffic stop; officer confirmed that license plate number matched that given to dispatch by informant. Immediacy of threat to public safety is relevant consideration under totality of circumstances).

RELATED CASES: Grayson, 52 N.E.3d 24 (Ind. Ct. App 2016) (*distinguishing* Sellmer, Ct. held that officer had reasonable suspicion to justify a Terry stop based upon an anonymous tip of a man in a gray or silver car waving a firearm); Rhodes, 950 N.E.2d 1261 (Ind. Ct. App 2011) (call from concerned citizen, which failed to describe D or his vehicle, did not give officer reasonable suspicion that D was operating while intoxicated).

TITLE: Simmons v. State

INDEX NO.: Z.7.a.

CITE: (1st Dist., 12-31-02), Ind. App., 781 N.E.2d 1151

SUBJECT: Encounter between D & officer did not constitute investigatory stop

HOLDING: Tr. Ct. did not err in denying D's motion to suppress breath & alcohol test results, because police officer's encounter with D did not constitute Terry stop, thus reasonable suspicion of criminal activity was not required. Where law enforcement officer makes casual & brief inquiry of citizen which involves neither arrest nor stop, no Fourth Amendment interest is implicated. Overstreet v. State, 724 N.E.2d 661 (Ind. Ct. App 2000). Here, truck that D started & drove up his own driveway at 2:00 a.m. in a dark, rural area had been under surveillance by officer as part of legitimate & entirely non-criminal investigation into crash & abandonment of another vehicle in D's ditch. Officer followed truck as it proceeded up driveway & then activated police car's emergency lights. D then got out of truck, officer asked him who truck belonged to & why D was driving it. When D answered, officer smelled alcohol on his breath.

Citing Overstreet, Ct. held that officer had not subjected D to investigatory detention at time he smelled alcohol on D's breath. Investigation of crash & abandonment of vehicle on D's property was well within officer's authority, as officer had reason to believe that persons traveling in crashed vehicle might have been injured. There is nothing in record that officer did or said anything that would give D impression that he was not free to terminate conversation with officer & return to his residence. Under circumstances, it appeared officer activated his emergency lights simply to announce his presence & to get D's attention. Held, judgment affirmed; Mathias, J., dissenting.

RELATED CASES: Campbell, App, 841 N.E.2d 1165 (shining spotlight on D did not constitute seizure)

TITLE: State v. Alter

INDEX NO.: Z.7.a.

CITE: (08-31-11), 953 N.E.2d 1182 (Ind. Ct. App 2011)

SUBJECT: Ordering D to hand over contraband inside bag is a seizure

HOLDING: Conservation officers checking to see if D had a valid fishing license did not have reasonable suspicion to detain him and ask to see what was inside his bag after verifying his license. While on boat patrol, the two officers decided to see if D had a valid fishing license and was in compliance with state law regarding bag limits and size limits with fish. On their way to D's location, one of the officers (who was in uniform) saw D pick up something small and put it in his bag. After D produced his fishing license and officer determined that it was valid, the officer retained possession of the license while asking D about the contents of the duffel bag and a smaller bag inside. Because D was "hesitant" to disclose the contents of the smaller bag, officer had a "hunch" it contained marijuana and told D to give them whatever was illegal in the bag and the marijuana.

Rejecting State's argument that the officer's actions did not constitute a "search," Court concluded that no reasonable person would feel free to terminate the encounter and ignore the officers' directive under the circumstances. Therefore, officers needed reasonable suspicion of criminal activity to justify further detainment of D, and "reasonable suspicion requires more than mere hunches or unparticularized suspicions." Based on testimony presented at suppression hearing, officers lacked reasonable suspicion to further detain D for investigatory purposes at time officer directed him to open smaller bag and to give him anything illegal or give him the marijuana. Court also found that Ind. Code 14-22-39-3, which grants conservation officers authority to search when they have "good reason to believe" they will secure evidence of a violation of conservation laws, does not allow the officer to detain or seize D in violation of the Fourth Amendment. Held, grant of motion to suppress affirmed.

TITLE: State v. Atkins

INDEX NO.: Z.7.a.

CITE: (4th Dist., 09-29-05), Ind. App., 834 N.E.2d 1028

SUBJECT: Unconstitutional investigatory stop - D's own property

HOLDING: Investigatory stop & subsequent pat-down of D was not supported by reasonable suspicion that criminal activity was afoot. In response to a domestic disturbance call, police officer knocked on front door of D's residence. No one answered front door, but officer heard back door slam. Officer went to side of house & encountered D as he walked on his property with a jacket in his hands. At no point did D attempt to flee or turn away from officer but continued to walk in a normal pace in officer's direction. Officer ordered D to kneel on ground, drop the jacket, & put his hands behind his head. Officer acknowledged that D could have been the complaining party, & D complied with all of officer's commands.

Initially, Ct. noted that reasonable suspicion analysis did not apply to this case because D was on his own property, thus probable cause to stop D was required. Notwithstanding "immediate safety" concerns cited by State & officer's nervousness & instinct, Ct. held facts, individually or collectively, did not provide officer with reasonable suspicion required to conduct a valid investigatory stop. Officer safety is always a legitimate concern but standing alone it cannot form the basis for a valid investigatory stop. Webb, App., 714 N.E.2d 787. A lawful stop, based on objective facts & reasonable suspicion, is predicate for a pat down. Without more, officer's nervousness & instinct are insufficient to justify stop. While State notes that officer heard rear door slam, could not see D's hands, & everything "happened fast," that evidence did not support a finding that officer had reasonable suspicion to conduct an investigatory stop. Case might have been different if D had fled, engaged in furtive activity, was uncooperative, or if officer had a description of suspect that was corroborated upon seeing D. But none of those factors were present here. Held, grant of motion to suppress handgun affirmed.

RELATED CASES: J.D., App., 902 N.E.2d 293 (implicitly disagreeing with Atkins' proposition that Terry does not apply in situations where D is on his own property)

TITLE: State v. Barney
INDEX NO.: Z.7.a.
CITE: 708 So.2d 1205 (5th Cir. La. Ct. App. 1998)
SUBJECT: Opening Matchbox Removed from Suspect's Pocket Exceed Scope of Terry Frisk
HOLDING: Police officer's opening of matchbox found in suspect's pocket during pat down exceeded scope of Terry frisk and violated 4th Amendment and state constitutional counterpart. Once matchbox was in officer's possession, any weapon inside was no longer potential danger to officer. Further, opening of box amounted to kind of further manipulation of object that U.S. Supreme Court in Minnesota v. Dickerson, 508 U.S. 366 (1993), held could not be justified under plain feel doctrine.

TITLE: State v. Britton
INDEX NO.: Z.7.a.
CITE: 604 N.W.2d 84 (Minn. 2000)
SUBJECT: Vehicle Stop -- Broken Window Insufficient Justification
HOLDING: Minnesota Supreme Court joins jurisdictions holding that a broken car window does not alone give rise to reasonable suspicion that criminal activity is afoot.

TITLE: State v. Brown

INDEX NO.: Z.7.a.

CITE: 900 N.E.2d 820 (Ind. Ct. App. 2009)

SUBJECT: Consensual encounter/stop - unreasonable under Indiana Constitution

HOLDING: Tr. Ct. properly granted D's Motion to Suppress. The reasonableness of a search or seizure under Indiana Constitution may turn on a balance of : (1) the degree of concern, suspicion, or knowledge that a violation has occurred, (2) the degree of intrusion the method of the search or seizure imposes on the citizen's ordinary activities, and (3) the extent of law enforcement needs. Here, police received noise complaints about a party on private property. The police spoke to the party organizers about the excessive noise and the organizers resolved the issue to the officer's satisfaction. As officers were leaving, D pulled into the private lane and parked his truck. Upon one officer approaching D and asking for identification, D became nervous and gave two names and birth dates which turned out to be fake. Another officer recognized D and determined he was HTV. Tr. Ct. properly found that because D had not yet arrived at the party when the officers had informed the persons present at the party of the noise complaint, there was no need to interact with D and thus no need to ascertain his identity. In other words, the request was random. Thus, even though State argued that the police encounter with D was consensual, State did not sustain its burden of proving the suppression order was contrary to law. Held, judgment affirmed.

TITLE: State v. Burlington

INDEX NO.: Z.7.a.

CITE: (1-29-04), Ind., 802 N.E.2d 435

SUBJECT: Invalid investigatory stop - purchase of three boxes of antihistamines; Indiana Constitution

HOLDING: In prosecution for conspiracy to commit dealing in methamphetamine (meth), Tr. Ct. properly granted D's motion to suppress evidence resulting from investigatory stop of his truck. Store employee called police & reported that two men had separately bought three boxes of cold medicine, left store separately, entered same truck, removed tablet packages from boxes & deposited packages in their shopping bags. County drug task force had asked store employees to notify police if customer purchased certain quantities and/or combinations of meth precursors. Ct. App. reversed Tr. Ct.'s suppression ruling & held that under totality of circumstances, information given to police by store employees was sufficiently reliable to provide officer with reasonable suspicion that D & his companion possessed, or were about to possess, two or more chemical reagents or precursors with intent to manufacture meth.

On transfer, Indiana S. Ct. affirmed the Tr. Ct. & held that the officers conducted an investigatory stop without reasonable suspicion in violation of art. I, ' 11 of the Indiana Constitution. While it is a crime to possess two or more "chemical reagents or precursors" with intent to manufacture meth, Ind. Code 35-48-4-14.5(c), D & his companion only purchased a small to moderate amount of one such reagent or precursor (ephedrine) & did not commit any traffic violation to justify stop. Although there was at least some reason to believe that "criminal activity might be afoot," content of information contained in store employee's tip was insufficient to provide police officer with reasonable suspicion to stop D's truck. In so holding, Ct. distinguished cases from other jurisdictions that involved additional indicia that criminal activity was afoot, such as when customer purchases: 1) a combination of meth precursors from one store; 2) a combination of precursors from several stores; 3) one precursor & then commits a traffic violation; & 4) one precursor & arresting officer has knowledge of D's previous involvement with meth.

Ct. noted that opportunities for official arbitrariness, discretion, & discrimination are simply too great if it were to find that purchase by two companions of three packages each of cold medicine justifies a search or seizure under art. I, ' 11. Further, the problem is compounded when nature of other "reagents & precursors" are considered, e.g., rubbing alcohol, iodine, duct tape, lithium batteries, & antifreeze. Held, transfer granted, Ct. App. opinion at 783 N.E.2d 338 vacated, grant of motion to suppress affirmed; Boehm, J., & Shepard, C.J., dissenting.

Note: Under de novo review, majority acknowledged that "it may be that Fourth Amendment's mandate of reasonable suspicion is achieved" in this case, but that D was clearly entitled to relief under Indiana Constitution.

RELATED CASES: Barrett, App., 837 N.E.2d 1022 (*distinguishing* Burlington, Ct. noted that police stopped D's car for touching fog line in addition to information D purchased cold medicine; see full review at Z.4.d).

TITLE: State v. Dickey
INDEX NO.: Z.7.a.
CITE: 152 N.J. 468; 706 A.2d 180 (N.J. 1998)
SUBJECT: Hours-Long Detention of Motorist Before Dog Sniff Exceeded Scope of Terry Stop
HOLDING: State trooper's hours-long detention of occupants of vehicle to have it sniffed by narcotics-detection dog exceeded scope of Terry stop and violated 4th Amendment. Length of delay and degree of intrusion exceeded limits drawn by Terry.

TITLE: State v. Gladney

INDEX NO.: Z.7.a.

CITE: (2nd Dist., 8-15-03), Ind. App., 793 N.E.2d 264

SUBJECT: Investigatory stop & seizure of handgun upheld

HOLDING: Tr. Ct. erred in granting D's motion to suppress handgun seized after investigatory stop.

At 1:39 a.m., police officer observed a car parked on side of street with its interior dome light illuminated. Officer saw D sitting in front passenger seat but leaning across center console of car underneath steering wheel. Initially, because of D's posture in car, officer was concerned that attempted theft was in progress. Accordingly, officer slowed his patrol vehicle to stop & reversed toward car. When officer approached car, he saw D hunched over in passenger seat & female in driver's seat of car. Based on his experience patrolling this particular area of town, officer suspected that two individuals might be involved in drug deal, prostitution, or both. When taken together, Ct. held that these facts & reasonable inferences drawn from them constituted reasonable suspicion that criminal activity was about to occur & justified brief investigatory stop of car & D. Based on D's subsequent actions, including fidgeting with object in his sweatshirt, officer had reasonable suspicion to believe that D may have been hiding a weapon under sweatshirt; thus, his request for D to put down his sweatshirt & show his hands was proper. Further, officer had lawful right to retrieve handgun which fell onto console in plain view when D put down sweatshirt & showed his hands. Held, judgment reversed & remanded.

TITLE: State v. Glass

INDEX NO.: Z.7.a.

CITE: (1st Dist., 6-10-02), Ind. App., 769 N.E.2d 639

SUBJECT: Invalid investigatory stop - information from dispatch; named but unverified caller

HOLDING: Police officer did not have reasonable suspicion to stop D's car based on unconfirmed information provided from named but unverified caller. Police dispatch knew identity of caller, who gave description of suspicious vehicle being driven recklessly. Officer found & stopped vehicle without witnessing a traffic violation or inappropriate driving. Distinguishing State v. Eichholtz, 752 N.E.2d 163 (Ind. Ct. App 2001), Ct. noted that identity of caller was never verified. Further, caller's reliability was unknown. At time of stop, officer did not know whether caller was concerned citizen, a prankster, or an imposter. Ct. could not discern whether caller identified himself in such a way as to place his credibility at risk or subject himself to criminal penalties. Fact that named caller with an untested reputation called police does not in itself establish reasonable suspicion.

Ct. next considered content & reliability of information offered by caller. Officer did not personally observe facts to verify reliability of caller or reliability of any significant information provided by caller. To extent caller predicted future conduct, it did not occur. On record created, State failed to demonstrate that officer had objective & articulable suspicion that D had committed, was committing, or was about to commit legal wrongdoing. Thus, investigatory stop violated D's Fourth Amendment rights, & Tr. Ct. did not err in granting motion to suppress evidence of marijuana seized after D was stopped. Held, judgment affirmed.

RELATED CASES: Powell, App., 841 N.E.2d 1165 (anonymous tip of possible intoxicated person in area of drugstore did not establish reasonable suspicion justifying stop of D's vehicle as it backed out of parking space; neither dispatch nor arresting officer verified anonymous caller's identity); Stickle, App., 792 N.E.2d 51 (as in Glass, record did not show that caller identified himself in a way which would place his credibility at risk or subject himself to criminal penalties).

TITLE: State v. Harris

INDEX NO.: Z.7.a.

CITE: (5th Dist., 11-4-98), Ind. App., 702 N.E.2d 722

SUBJECT: Vehicle stop, detention, & roadside questioning upheld

HOLDING: Tr. Ct. erred in granting D's motion to suppress evidence State received at moment police officer asked D for his driver's license. Initial stop of D's vehicle was justified due to unsafe condition of trailer, & fact that ramp on trailer had fallen. Police may briefly detain someone whom officer believes has committed infraction or ordinance violation, for time sufficient to obtain person's name, address, or driver's license. Ind. Code 34-4-32-2; Peete, App., 678 N.E.2d 415. Person may not drive vehicle unless equipment upon vehicle is in good working order. Ind. Code 9-21-7-13. Because police officer's intention of pulling over vehicle was to issue warning & instruct driver to have vehicle fixed, it was necessary for officer either to see D's driver's license or to know D's proper name. Officer's request for identifying information was small but necessary intrusion on D's privacy & was reasonably related in scope to justification for intrusion. Moreover, fact that D repeatedly gave officer false information gave rise to reasonable suspicion by officer that D may have committed, was committing, or was about to commit crime, & provided additional justification for further detention & questioning. Held, judgment reversed & remanded.

TITLE: State v. Holmes

HOLDING: Parking violation is not sufficiently serious to justify Terry stop of driver. Driver returned to park car to find that parking State v. Holmes

INDEX NO.: Z.7.a.

CITE: 569 N.W.2d 181 (Minn. 1997)

SUBJECT: Terry Stop -- Parking Violation Does Not Justify

officer had ordered it towed due to outstanding tickets. Parking officer called regular officer, who subjected driver to pat down and discovered magazine clip. Parking officer had already conducted cursory inventory search of car and found nothing, but regular officer, after finding clip, searched car and found firearm. Court finds that parking violation did not justify initial Terry pat down of driver, and thus there was no probable cause to search car. State argued that search of car was merely extension of inventory search, but the Court rejects this argument, since purpose of search was clearly investigatory.

TITLE: State v. Louthan

INDEX NO.: Z.7.a.

CITE: 275 Neb. 101, 744 N.W.2d 454 (Neb. 2008)

SUBJECT: Dog sniff unlawfully prolonged stop despite only short delay

HOLDING: Nebraska Supreme Court held the Fourth Amendment requires a police officer to have reasonable suspicion before prolonging a traffic stop for the brief time that it takes to deploy a narcotics-detection dog that is already on the scene. D had been stopped for traffic violations after leaving the residence of a suspected drug trafficker. When D refused a request to search, the officer confirmed with dispatch that D's license was valid and no outstanding warrants existed against him, with this taking about three minutes. The officer then retrieved his drug-detection dog from his vehicle and the dog alerted on the passenger compartment, spending less than four minutes in the sniff search. Court had previously applied the Terry principle to traffic stops and decided that police officers who want to prolong a detention for the time necessary to deploy a drug-detection dog must have a reasonable suspicion that the motorist is involved in criminal activity beyond the purpose of the stop. "We are not persuaded to abandon the reasonable suspicion standard in favor of the 'de minimis rule' advocated by the State." Court pointed to a comment in the opinion of Illinois v. Caballes, 543 U.S. 405 (2005) where majority referred to a state court ruling that a dog sniff "during an unreasonably prolonged traffic stop" amounted to an unconstitutional seizure. The Caballes opinion continued, "We may assume that a similar result would be warranted in this case if the dog sniff had been conducted while respondent was being unlawfully detained."

Court noted, "This indicates that there is a constitutionally significant line of demarcation between a routine traffic stop and one in which a dog sniff is conducted after the investigative procedures incident to the traffic stop have been completed. . . While the detention for the drug sniff was not lengthy, that is but one factor in the Fourth Amendment analysis, which requires the dual inquiries of 'whether the officer's action was justified at its inception, and whether it was reasonably related in scope in the circumstances which justified the interference in the first place.'"

TITLE: State v. Murray

INDEX NO.: Z.7.a.

CITE: (5th Dist., 11-17-05), Ind. App., 837 N.E.2d 223

SUBJECT: Invalid investigatory stop - collective knowledge of police department

HOLDING: Tr. Ct. properly granted D's motion to suppress, because police officer did not have reasonable suspicion to conduct an investigatory stop of D's vehicle. Officer responded to a dispatch call that an individual was disorderly & had gotten into a fight at a pool hall. After speaking with witnesses, officer radioed dispatch with D's physical appearance, type of car he was driving, & information that he had been picking fights. Officer told another officer that "he just need[ed] to speak with [D]." Shortly thereafter, the other officer (hereinafter "arresting officer") observed D's vehicle pull into a parking lot & enter a drive-through. D was ultimately arrested for operating while intoxicated. State argued that reasonable suspicion of D's criminal activity does not have to be based upon arresting officer's personal knowledge, but rather, officer could rely on collective knowledge of police department regardless of whether it was conveyed to him. State asserted that any knowledge that first officer may have had in regard to D's criminal activity was imputed to arresting officer before he made investigatory stop of D's vehicle.

However, arresting officer received no information from first officer that D had been or was involved in criminal activity before arresting officer made his investigatory stop. First officer merely radioed other units that he "needed to speak with the subject." In order to rely on collective knowledge, the knowledge sufficient for reasonable suspicion must be conveyed to the investigating officer before the stop is made. The collective knowledge cannot be relied upon after the fact. To hold otherwise would allow police officers to conduct investigatory stops before having any reasonable suspicion of criminal activity. Held, judgment affirmed.

TITLE: State v. Quirk
INDEX NO.: Z.7.a.
CITE: (02-14-06), Ind., 842 N.E.2d 334
SUBJECT: Detention for dog sniff unreasonable under Indiana Constitution
HOLDING: Under totality of circumstances, troopers' detention of D beyond period necessary to issue a warning ticket & subsequent search of his truck was unreasonable under Article 1, Section 11 of Indiana Constitution. Trooper's observation that D was operating his tractor-trailer with an unilluminated headlight justified the initial stop, but twenty-minute detention for canine sniff after D was first advised he was free to leave violated Article 1, Section 11, which permits an officer to detain a motorist briefly "only as necessary to complete the officer's work related to the illegality for which the motorist was stopped." Mitchell v. State, 745 N.E.2d 775 (Ind. 2001).

Here, trooper testified that he detained D beyond time necessary to issue a warning ticket because: 1) D demonstrated nervous behavior by failing to make eye contact & shifting in his seat; 2) D's bill of lading was handwritten; 3) D had used aliases in the past; 4) D had a criminal history which included transportation of a controlled substance; 5) D lied about his criminal history; & 6) D's driver's license was issued from & he was traveling from states officer believed to be sources of narcotics. Court held that a combination of irrelevant conduct & innocent conduct, without more, cannot be transformed into a suspicious conglomeration. D's nervousness, use of aliases, inconsistent answers regarding criminal history & officer's "source state" designation were non-factors to support reasonable suspicion of criminal activity. Evidence of cocaine seized as a result of search of cabin portion of D's truck was tainted & properly suppressed. Held, transfer granted, Ct. App.' memorandum opinion vacated, grant of motion to suppress affirmed.

RELATED CASES: Austin, 997 N.E.2d 1027 (Ind. 2013) (where D's prior criminal history was much more significant and recent than Quirk's, D's logs were incomplete, and D could not give specifics regarding his destination, there was reasonable suspicion to justify a canine search; in addition, the intrusion of the canine search which occurred during the traffic stop was much less significant than the intrusion in Quirk); Bush, 925 N.E.2d 787 (Ind. Ct. App 2010) (D & his car were unlawfully detained for dog sniff based on passenger's arrest for outstanding warrant); Wells, 922 N.E.2d 697 (Ind. Ct. App 2010) (D's extreme fidgetiness & other furtive gestures raised legitimate safety concerns that justified removing D from car & conducting pat-down search, but once concerns were alleviated, there was no reasonable suspicion to keep D until K-9 unit arrived); Thayer, App., 904 N.E.2d 706 (further detention of D during traffic stop was justified due to D's extreme nervousness & lies to officer about where he had been the night before and that morning; when officer asked D specifically whether he had any cocaine in his car, D giggled and looked away from officer).

TITLE: State v. Renzulli

INDEX NO.: Z.7.a.

CITE: (12-29-11), 958 N.E.2d 1143 (Ind. 2011)

SUBJECT: Valid Terry stop based on tip from concerned citizen

HOLDING: Police officer had reasonable suspicion to stop a vehicle based on a concerned citizen's tip of a possibly intoxicated driver. Tipster identified himself, provided a telephone number to 911 dispatch officer and reported that he had been following a driver of a blue Volkswagen who had been driving erratically and was going to "kill somebody." The caller told the 911 operator the vehicle just pulled into a BP Gas Station but was unable to get a license plate number. Within 90 seconds, an officer arrived at the gas station, observed the blue Volkswagen backing out of parking space and stopped D.

There very well may be greater indicia of reliability in report of a "concerned citizen" as distinguished from a "professional informant." See Kellems v. State, 842 N.E.2d 352 (Ind. 2006). Regardless, based on the totality of circumstances, the concerned citizen in this case supplied sufficient information to establish reasonable suspicion to support the officer's investigatory stop (i.e., make/color of vehicle at time of night with minimal traffic, and almost immediate response/arrival at scene by police).

Circumstances of this case warranted an immediate response by police for safety of general public, as well as for the safety of D herself. Held, transfer granted, Court of Appeals' opinion at 935 N.E.2d 200 vacated, grant of motion to suppress reversed. Rucker, J., dissenting, believes there was "minimal to no 'corroborative police investigation'" of tip in this case and would affirm Tr. Ct.'s suppression of evidence in this "close case."

RELATED CASES: Dahn v. State, 1420 N.E.3d 1055 (Ind. Ct. App.) (pat-down search and canine sniff did not unconstitutionally prolong traffic stop and were lawfully based on specificity of D's roommate's tip regarding stolen firearm and illegal substances); Navarette, 134 S. Ct. 1683 (U.S. 2014) (under the totality of the circumstances, a traffic stop precipitated by an anonymous but reliable tip to 911 complied with 4th Amendment because the officer had reasonable suspicion that the truck's driver was intoxicated; see full review, this section); Russell, 993 N.E.2d 1176 (Ind. Ct. App 2013) (Renzulli does not stand for proposition that a tipster must report additional criminal activity in order for his or her report of a possible intoxicated driver to be deemed reliable).

TITLE: State v. Richcreek

INDEX NO.: Z.7.a.

CITE: 187 Ariz. 501; 930 P.2d 1304 (Ariz. 1997)

SUBJECT: Stop of Motorist Not Suspected of Crime Violates 4th Amendment

HOLDING: Arizona Supreme Court holds that automobile stop based on anything less than reasonable suspicion of criminal activity violates 4th amendment. Here, police were investigating scene of one-car accident from which driver had departed when D drove by, briefly pulled over, then sped off. Officer, thinking D might be driver or at least have information about accident, followed and stopped D's car, and discovered that it was stolen. Even assuming that D knew something about accident, investigation of accident was not sufficient basis for officer to stop vehicle. Had D been stopped or on foot, officer could have approached him. However, vehicle stop is more intrusive and must be supported by reasonable suspicion of criminal activity.

TITLE: State v. Rincon

INDEX NO.: Z.7.a.

CITE: 125 Nev. 1170, 147 P.3d 233 (Nev. 2006)

SUBJECT: Stop not justified by slow driving alone

HOLDING: The Nevada Supreme Court held that driving significantly below the posted speed limit may contribute to the reasonable suspicion that a police officer must have in order to conduct a traffic stop for drunk driving, when it is combined with additional indicia of erratic driving or other unusual behavior, but it may not by itself justify such a stop. The Court added, however, that slow driving alone may justify an "inquiry" stop pursuant to an officer's community caretaking function, but it said that such a stop is permissible only in very narrow circumstances. A police officer on routine patrol observed the D in this case driving 48 mph in a 65-mph zone; stopped the vehicle and smelled alcohol with a subsequent blood draw confirming the D's blood alcohol level exceeded the legal limit. The Tr. Ct. suppressed the evidence and the Nevada Supreme Court agreed that the police officer lacked reasonable suspicion. "Reasonable suspicion is not a stringent standard, but it does require something more than a police officer's hunch." Slow driving, absent some other behavior indicating intoxication, does not rise to that standard. Other courts considering similar cases have held that reasonable suspicion arose when a motorist was driving well under the speed limit and other behavior indicated intoxication, such as swerving, driving on a shoulder, straddling a lane, crossing a center line, or weaving, the Court noted. However, the Court found no authority for the state's position that slow driving can suffice, in and of itself, to trigger a reasonable suspicion that a driver is intoxicated. Court noted there are times when it is prudent to drive below the speed limit. Hazardous road conditions and inclement weather, for example, may justify driving slowly. Therefore, absent evidence of another traffic violation, a court reviewing a stop for reasonableness should consider the road and weather conditions, the time of day, the driving pattern, the driver's behavior, and any other relevant circumstances that might indicate criminal activity.

The Court did note that in "very limited and narrow circumstances" a stop might be justified under a police officer's exercise of his community caretaking role. This exception would apply if the officer observed circumstances indicating that the driver was beset by a medical emergency or automotive malfunction. Court emphasized, however, that a community caretaking stop is justified "only where there are clear indicia of an emergency," such as "excessively slow" driving. Court remanded to determine whether such evidence or evidence of criminal activity existed because the record was unclear on this issue.

TITLE: State v. Smith

INDEX NO.: Z.7.a.

CITE: (1st Dist., 09-06-94), Ind. App., 638 N.E.2d 1353

SUBJECT: Investigatory stop may rely on police dispatch report

HOLDING: Although officer did not personally observe D's erratic driving, his reliance on police dispatch report to provide reasonable suspicion of criminal activity was proper, & Tr. Ct. erred in granting D's motion to suppress evidence of breath test. Officer heard police dispatch broadcast concerning possible drunk driver. Dispatch was based on 911 call & CB radio reports that D was driving on interstate in grey Dodge Dakota pickup, & had gone into median & weaved from lane to lane. License plate number was also given. Off-duty officer heard dispatch, observed pickup, started to follow it, & radioed another officer to tell him he was following pickup. As officer overtook D's pickup, truck driver identified it as one at issue, & officer noted license number was one identified in dispatch. Although officer observed no erratic driving, he pulled D over, & smelled alcohol on his breath, etc. D failed three sobriety tests, & Intoxilyzer results showed BAC of .20%. Tr. Ct. granted D's motion to suppress on grounds stop was illegal because no officer personally observed impaired driving or violation of traffic laws.

After noting standard of review of negative judgment, & requirements for investigatory stop, Ct. noted officer can make such stop based on information from police dispatcher that concerned citizen had reported car was being driven erratically, Springmier, App., 559 N.E.2d 319. Ct. also noted that where officers act in good faith reliance on police dispatch report that crime has been committed, it is not necessary to show source of information is reliable, Moody, 448 N.E.2d 660. Here, Ct. determined officer was justified in making investigatory stop. Held, reversed.

RELATED CASES: Ertel, 928 N.E.2d 261 (Ind. Ct. App 2010) (officer had reasonable suspicion to stop where car waited at stop sign for over 5 seconds at 2:30 a.m., and both car & D matched dispatcher=s descriptions); Holly, 918 N.E.2d 323 (where officer realizes that driver of car is not owner, officer must conclude the traffic stop); Augustine, App., 851 N.E.2d 1022 (under totality of circumstances, police officer had reasonable suspicion for investigatory stop based on informant's report of erratic driving, even though officer did not observe D driving); Kenworthy, App., 738 N.E.2d 329 (officer had reasonable suspicion for investigatory stop where he knew that owner of vehicle had suspended license, although he could not readily determine who was driving truck; radio check on license plate confirmed officer's suspicions re: suspension).

TITLE: State v. Smith

INDEX NO.: Z.7.a.

CITE: 286 Kan. 42, 184 P.3d 890 (Kan. 2008)

SUBJECT: Particularized suspicion necessary to ask to search during traffic stop

HOLDING: Kansas Supreme Court held police officers conducting routine traffic stops must have particularized suspicion before asking motorists for permission to conduct searches unrelated to the traffic violation, even if the request and the search do not prolong the length of the traffic stop. Court disagreed with other state and federal courts that have loosened up Fourth Amendment restrictions on traffic stops after Muehler v. Mena, 544 U.S. 93 (2005). D was a passenger in a car that had been stopped by a police officer who noticed that it had a broken taillight and an expired tag. While the officer was processing the traffic violations, he was joined by a colleague who knew D and thought she might be holding drugs. The Officer asked D for permission to search her purse, which she granted. His search of the purse turned up evidence used to charge D with drug offenses.

TITLE: State v. Washington

INDEX NO.: Z.7.a.

CITE: (12-31-08), Ind., 898 N.E.2d 1200

SUBJECT: Traffic stops - asking questions unrelated to stop

HOLDING: Under Fourth Amendment to U.S. Constitution and Article 1, ' 11 of Indiana

Constitution, a police officer, without reasonable suspicion, can inquire as to possible further activity when a motorist is stopped for a traffic infraction. Here, an officer stopped D for driving a moped left of center, and because officer suspected that D was under eighteen and not wearing goggles or a helmet as required by Ind. Code 9-21-11-13. Because D appeared nervous, officer asked whether he had "any guns, drugs or anything" that might harm the officer.

Officer's conduct did not violate Fourth Amendment, because police do not need reasonable suspicion to ask questions of detainee during a lawful detention. See Muehler v. Mena, 544 U.S. 93, 125 S. Ct. 1465, 161 L.Ed.2d 299 (2005). Officer's brief questioning here did not constitute excessive delay, was not itself a search or seizure and thus was not prohibited by Fourth Amendment. Applying factors set forth in Litchfield v. State, 824 N.E.2d 356 (Ind. 2005), Court concluded that officer's question whether D held contraband on his person, notwithstanding the absence of reasonable suspicion, was not unreasonable under totality of circumstances and did not violate Article 1, Section 11 of Indiana Constitution. Held, transfer granted, Court of Appeals' opinion at 875 N.E.2d 278 vacated, grant of motion to suppress reversed and remanded. Boehm, J., dissenting, agrees with majority's conclusion that Fourth Amendment does not restrict scope of officer's questioning, but disagrees that, under Indiana Constitution, "a person stopped for a traffic violation is rendered fair game for questions on unrelated subjects." Rucker, J., dissenting on basis that purpose of traffic stop was completed once officer learned D was over age 18, and it is "patently unreasonable" under Fourth Amendment for officer to ask stopped motorist about presence of drugs "with no basis whatsoever to believe they are present."

RELATED CASES: Graham, 971 N.E.2d 713 (Ind. Ct. App 2012) (D was not obligated to answer officer's question regarding presence of drugs or weapons in his car; it was his willingness to do so that led to extension of stop and his arrest, not the amount of time it took for officer to complete the routine tasks associated with the traffic stop).

TITLE: State v. Wiegand
INDEX NO.: Z.7.a.
CITE: 645 N.W.3d 125 (Minn. 2002)
SUBJECT: Dog Sniff of Car's Exterior During Routine Traffic Stop
HOLDING: Minnesota Supreme Court holds that dog sniff of car's exterior during routine traffic stop requires reasonable suspicion, because it impacts a driver's reasonable expectation of privacy and extends the scope of the stop, even if it does not extend the duration. Because the intrusion is minimal, it requires only reasonable suspicion, but that much, at least, is required.

TITLE: T.D. v. State

INDEX NO.: Z.7.a.

CITE: (2nd Dist., 09-13-07), Ind. App., 873 N.E.2d 184

SUBJECT: Traffic stop - officer's testimony re: cracked windshield

HOLDING: Stop of car in which D was riding was reasonable under Article 1, Section 11 of Indiana Constitution, where officer observed the car had a cracked windshield that was "obstructing view." On appeal, *citing* State v. Pease, 531 N.E.2d 1207 (Ind. Ct. App 1988), D argued that police officer's testimony regarding the condition of the windshield is inadequate to demonstrate reasonable suspicion. Ct. declined D's invitation to hold that photographic evidence of damaged windshield is required to demonstrate a police officer had reasonable suspicion justifying a traffic stop. See, e.g., Jackson v. State, 785 N.E.2d 615 (Ind. Ct. App 2003). Officer's testimony the windshield was cracked sufficiently to obstruct driver's view was sufficient to support his reasonable belief that a traffic stop was required to determine whether the obstruction made the vehicle sufficiently unsafe to warrant a traffic citation. Held, judgment affirmed.

TITLE: Taylor v. State

INDEX NO.: Z.7.a.

CITE: (09-13-94), Ind. App., 639 N.E.2d 1052

SUBJECT: Investigatory stop proper under Ind. Constitution

HOLDING: Where officer observed D in van parked in unusual place (boat ramp off road) & saw van's vent window had been smashed in way indicating illegal entry, totality of circumstances constituted basis for reasonable suspicion of criminal activity justifying further investigation. Therefore, investigatory stop of D was proper. When officer approached van, it started up & began to drive away, & after officer activated lights, he did radio check that indicated van was stolen. Decision contains extensive discussion of State Constitutional analysis & independence from U.S. Constitution. Held, conviction affirmed.

RELATED CASES: Kenner, App., 703 N.E.2d 1122 (D's 45-minute detention awaiting arrival of canine unit did not violate 4th Amend. right against unreasonable searches & seizures).

TITLE: Taylor v. State

INDEX NO.: Z.7.a.

CITE: 4th Dist. (6/21/84), Ind. App., 464 N.E.2d 1333

SUBJECT: Investigatory stop - articulable suspicion

HOLDING: Tr. Ct. erred in refusing to suppress evidence obtained from D at time of arrest. Here, anonymous caller told police drug dealers were back in Barrington in a white car. Four plain clothes officers drove to area, spotted white car & surrounded it. D was 1 of 4 persons near car. Officer approached D with gun drawn & told D to put his hands on car. D said he had "bad luck" & had just "copped" (purchased drugs). Officer searched D & discovered drugs. Ct. finds holding D at gunpoint constituted arrest. Police had no probable cause to make arrest. Neither did police have "articulable suspicion" required for investigative stop. Evidence obtained through unlawful arrest is inadmissible. US v. Mendenhall (1950), 446 U.S. 544, 100 S. Ct. 1870, 64 L.Ed.2d 497. Tr. Ct. found arrest unlawful but did not suppress evidence because it found D made voluntary admission of guilt. Ct. finds holding improper; issue is was statement an act of free will sufficient to purge taint of unlawful arrest. Wong Sun v. US (1963), 371 U.S. 471, 83 S. Ct. 407, 9 L.Ed.2d 441; Morris 399 N.E.2d 740. State bears burden of proving no taint. Factors important in determination are time lapse between arrest/admission, presence of intervening circumstances & purpose of official misconduct. Brown v. IL (1975), 422 U.S. 590, 95 S. Ct. 2254, 45 L.Ed.2d 416. Only 45 seconds elapsed from police arrival to admission, no intervening circumstances existed & arrest was investigatory - made in hope of discovering evidence to justify arrest. "Such investigative techniques cannot be tolerated by the Cts." Held, reversed.

TITLE: Thomas v. State

INDEX NO.: Z.7.a.

CITE: (9/7/2017), 81 N.E.3d 621 (Ind. 2017)

SUBJECT: Dog alert & other circumstances gave probable cause to detain and transport D to police station

HOLDING: Tr. Ct. did not abuse its discretion in admitting heroin recovered from D after a warrantless arrest following a traffic stop. Police stopped the van D was riding in after observing a lane change without signaling. Officers had been watching the vehicle based on a reliable confidential informant's tip. Once the traffic stop was initiated, both D and driver told officers they were visiting family, but neither man could identify where in Indiana their respective family members lived. Officers ran a trained canine simultaneous to the lawful stop, which initially resulted in an alert to the presence of narcotics, but the dog no longer detected the narcotics after the suspects were removed from the vehicle. Police then obtained permission to search the vehicle but did not find contraband in the van. After the driver was arrested for having a suspended license, he consented to a strip search but D declined. Police took him to the station and placed him in an interview room. When officers saw D remove something from his jacket and place it in his mouth, they forced him to open his mouth and discovered a plastic baggie containing heroin. Under the totality of circumstances-- including tip from a reliable informant, inconsistent answers D and driver provided about why they were in Indiana, and the positive canine alert when they were inside vehicle-- Court held that a reasonable person could believe at least one of the men still possessed the drugs when he exited the vehicle. Thus, the officers met the probable cause threshold necessary to detain D and transport him to police station. Held, transfer granted, Court of Appeals' opinion at 65 N.E.3d 1096 vacated, Class A felony dealing in a narcotic drug conviction affirmed.

TITLE: Torres v. Madrid
INDEX NO.: Z.7.a.
CITE: 141 S. Ct. 989 (U.S.) 03/25/2021
SUBJECT: The application of physical force to the body of a person with intent to restrain is a seizure, even if the force does not succeed in subduing the person.
HOLDING: Torres was involved in an incident with police officers in which she was operating a vehicle under the influence of methamphetamine and in the process of trying to get away, endangered the two officers pursuing her. In the process, one of the officers shot and injured her. Torres pleaded no contest to three crimes: (1) aggravated fleeing from a law enforcement officer, (2) assault on a police officer, and (3) unlawfully taking a motor vehicle.

Later, she filed a civil-rights complaint in federal court against the two officers, alleging claims including excessive force and conspiracy to engage in excessive force. Construing Torres's complaint as asserting the excessive-force claims under the Fourth Amendment, the court concluded that the officers were entitled to qualified immunity. In the court's view, the officers had not seized Torres at the time of the shooting, and without a seizure, there could be no Fourth Amendment violation. The U.S. Court of Appeals for the Tenth Circuit affirmed.

Under the Court's precedents, common law arrests are considered seizures under the Fourth Amendment, and the application of force to the body of a person with intent to restrain constitutes an arrest even if the arrestee escapes. The use of a device, here, a gun, to effect the arrest, makes no difference in the outcome; it is still a seizure. There is no reason to draw an "artificial line" between grasping an arrestee with a hand and using some other means of applying physical force to effect an arrest. The key consideration is whether the conduct objectively manifests the intent to restrain; subjective perceptions are irrelevant. Additionally, the requirement of intent to restrain lasts only as long as the application of force. In this case, the officers' conduct clearly manifested intent to restrain Torres and was thus a seizure under the Fourth Amendment.

TITLE: Thurman v. State

INDEX NO.: Z.7.a.

CITE: (5th Dist., 11-10-92), Ind. App., 602 N.E.2d 548

SUBJECT: Reasonable suspicion for investigatory stop

HOLDING: There was sufficient reasonable suspicion for investigatory stop. After receiving numerous complaints of illegal activity in liquor store parking lot, police received anonymous tip that white over blue 1977 or 1978 Cadillac would be at parking lot at approximately 7:00 p.m. that night, & that occupants of car would possibly be selling narcotics from car. In response to call, officer set up surveillance of parking lot, & at approximately 7:01 p.m. white over blue Cadillac driven by D pulled in. One of passengers left car & walked to another in lot. He had conversation with two occupants of other car & returned to Cadillac, & then all three occupants of Cadillac got inside other car. None of those in either car ever entered liquor store. Officer saw movement in other car & based on this concluded drug transaction was taking place. He called for uniformed officers & investigatory stop of D & others was made. While observations made by officer, standing alone, were not sufficient to create reasonable suspicion of criminal activity justifying investigatory stop; observations, coupled with anonymous tip, were sufficient to constitute reasonable suspicion. Alabama v. White (1990), 496 U.S. 325, 110 S. Ct. 2412, 110 L.Ed.2d 301. Tip predicting specific future behavior which is corroborated by behavior itself can be sufficiently reliable & confirmed prospective nature of tip adds to its credibility because it indicates that caller is both honest & well-informed about incident. Id. Ct. found situation here to be similar to that in White, & information taken together was sufficient to justify investigatory stop.

RELATED CASES: Parker, App., 662 N.E.2d 994 (tip by known informant provided sufficient indicia of reliability and reasonable suspicion to justify investigatory stop of D); Johnson, Ind., 659 N.E.2d 116 (Tr. Ct. erred in admitting evidence found during warrantless search of D & his car, because investigatory stop lacked probable cause & even reasonable suspicion).

TITLE: Tumblin v. State

INDEX NO.: Z.7.a.

CITE: (2nd Dist., 5-8-96), Ind. App., 664 N.E.2d 783

SUBJECT: Invalid investigatory stop

HOLDING: Seizure of handgun was result of improper investigatory stop, because police officer did not have before him specific & articulable facts necessary to form reasonable suspicion of criminal activity. While walking on sidewalk in high crime area, two black males saw approaching squad car & turned to walk in opposite direction. Investigatory stop appeared to have been made on officer's hunch that two black males turning away from police in bad neighborhood signifies presence of criminal activity. However, walking in high-crime neighborhood & looking suspicious is not sufficient to overcome 4th Amend. protections against arbitrary & abusive police practices. Brown v. Texas, 99 S. Ct 2637 (1979). Here, D's actions did not constitute flight from police, & facts would not prompt person of reasonable caution to investigate further. Color of one's skin, neighborhood one happens to be in, & fact that one turns away from police are not sufficient, individually, or collectively, to establish reasonable suspicion of criminal activity. Williams, 477 N.E.2d 96. Held, conviction reversed.

RELATED CASES: Woodson, 960 N.E.2d 224 (Ind. Ct. App 2012) (fact that D sat in car with another individual in an area determined to be a "hot zone" for drugs and then got out of car and rode bike around parking lot did not constitute reasonable suspicion to stop D); Gentry v. Sevier, 2010 U.S. App LEXIS 4030 (the police lacked reasonable suspicion to stop the D who was trotting down the street at 2:30 a.m. holding a beer and pushing a wheelbarrow and lacked probable cause to search the wheelbarrow); Castner, App., 840 N.E.2d 362 (police conducted unlawful Terry stop based on uncorroborated tip of drug sales to children in high-crime area; officer did not observe D interacting with anyone & no children were even in the area); Johnson, App., 856 N.E.2d 706 (mere fact that D & 3 other individuals got into a car parked along street which did not have a visible license plate does not support an investigatory stop; inability to give social security number is likewise insufficient to give rise to reasonable suspicion); Bridgewater, App., 793 N.E.2d 1097 (police did not observe any sort of transaction among D & others standing with him, & he was not carrying anything unusual; mere fact that D walked or ran from police into building was not enough to meet State's burden); Bovie, App., 760 N.E.2d 1195 (officer's observations of D & his passenger, a known drug user & seller, leave known drug house, proceed to gas station & stop their vehicle, did not rise to level of reasonable & articulable suspicion required in order to make investigatory stop); Williams, App., 745 N.E.2d 241 (police officer did not have reasonable suspicion to justify investigatory stop when he observed D & another person exchange something & then walk off in different directions after noticing officer); Burkett, App., 736 N.E.2d 304 (fact that D was only Black standing on street corner in high crime area at late hour, wearing hooded sweatshirt with hood up in 76-degree weather & that D walked away when officer pulled up did not constitute reasonable suspicion to stop D); Green, App., 719 N.E.2d 426 (D's presence in alleged high crime area alone insufficient to create reasonable suspicion justifying D's investigatory stop); Stalling, App., 713 N.E.2d 922 (Ct. found improper investigatory stop based on Ahunch@ of criminal activity & D's movement toward his waistline); Webb, App., 714 N.E.2d 787 (D's furtive movements of turning back to officer & appearance of attempting to hide something in his pants was unlawful Terry stop); Reeves, App., 666 N.E.2d 933.

TITLE: U.S. v. Chavez-Valenzuela

INDEX NO.: Z.7.a.

CITE: 268 F.3d 719 (9th Cir. 2001); *overruled* in part U.S. v. Turvin, 517 F.3d 1097 (2008)

SUBJECT: Driver's Trembling Did Not Justify Prolonging Stop

HOLDING: A D's extreme nervousness and physical trembling during traffic stop did not provide reasonable suspicion to prolong a traffic stop to ask permission to search car. Because the prolonged detention was illegal, it spoiled the consent given for the search.

TITLE: U.S. v. Clemons

INDEX NO.: Z.7.a.

CITE: 201 F. Supp. 142 (U.S. D. Ct. D.C. 2002)

SUBJECT: Terry Stop May Trigger Miranda

HOLDING: Fact that officer's encounter with D was valid Terry scope and detention did not exceed scope of Terry did not mean that suspect was not in custody for Miranda purposes. Officers heard what sounded like car wreck and saw D driving with two flat tires. Officers pulled D over, and passenger ran from car. Officers ordered D to stay in car until they caught passenger, at which time they ordered him out of car, handcuffed him, and ordered him to sit on ground. At Terry's inception, stops usually involved no more than a brief detention and a few questions relating to identity and circumstances. Court reasoned, however, that as officers encounter situations fraught with increasing danger, handcuffs and drawing of weapons may be reasonable under Terry. But reasonableness for 4th Amendment purposes does not mean they are not custodial for Miranda purposes. Any reasonable person handcuffed and forced to sit on ground would have believed he was not free to leave, and custodial nature of encounter required giving of Miranda warnings.

TITLE: United States v. Cohen

INDEX NO.: Z.7.a.

CITE: 481 F.3d 896 (6th Cir. 2007)

SUBJECT: Reasonable suspicion not provided by 911 hang-up call

HOLDING: Sixth Circuit Court of Appeals held that police officers checking out a hang-up call to a 911 emergency line at 5 a.m. did not have the reasonable suspicion required by the Fourth Amendment to stop a car they saw pulling out of the small cul de sac from where the call originated. Court decided that the silent 911 call provided the officers with even less reason to suspect D than the anonymous tip found insufficient to justify a stop in Florida v. J.L., 529 U.S. 266 (2000). Unconvinced by the government's reliance on a case involving a stop near an activated burglar alarm, United States v. Moore, 817 F.2d 1105 (4th Cir. 1987), Court pointed out, among other things, that a burglar alarm is a "more reliable indication of a criminal activity" than a silent 911 call and that the pedestrian in Moore was closer to the source of the alarm than D in this case was to the house from which the call had been placed.

TITLE: U.S. v. Dortch

INDEX NO.: Z.7.a.

CITE: 199 F.3d 193 (5th Cir. 1999)

SUBJECT: Delay for Canine Sniff at End of Traffic Stop

HOLDING: Although initial traffic stop of D was legal, detention, without justification, for 15 minutes at end of stop for sniff of vehicle by drug-detection canine was 4th Amendment violation. D was stopped for traveling too close to a tractor-trailer on an interstate highway. Rental agreement for vehicle did not list D as authorized driver, and driver and passenger gave inconsistent explanations about the D's relationship to the renter. Officers called in computer check to see whether vehicle had been reported stolen and whether D had any outstanding warrants, and they told D and his passenger that they were free to go as soon as the computer check came back, but that their car would be detained for a canine sniff. D and passenger were not told when results of computer check came back. After dog arrived, officers told D and passenger that computer check had come back negative, but that they were going to have dog sniff vehicle anyway. Dog alerted to driver's seat, but nothing was found. Police then obtained consent to search D and found 137 grams of cocaine in his pants. Court holds that detaining D and passenger to run computer check was legal, and if dog-sniff had occurred while awaiting results of computer check, sniff would have been legal. However, detention for computer check was justified by reasonable suspicion that car was stolen. That justification ended when computer check came back negative. At that point, the detention became unconstitutional, and consent to search obtained from D cannot be considered voluntary.

TITLE: United States v. Grigg
INDEX NO.: Z.7.a.
CITE: 498 F.3d 1070 (9th Cir. 2007)
SUBJECT: Investigative detention unreasonable where no public safety threat
HOLDING: The Ninth Circuit Court of Appeals held the Fourth Amendment does not allow law enforcement officers to conduct an investigative detention on the basis of reasonable suspicion to believe that an individual committed a misdemeanor that poses no threat to public safety. Court held that trial judge should have suppressed evidence of a machine gun that was discovered by police officers who stopped a car to investigate a reported violation of a noise ordinance.

In U.S. v. Hensley, 469 U.S. 221 (1985), U.S. Supreme Court held that the Fourth Amendment allowed police to make an investigative detention on the basis of reasonable suspicion that the suspect was the perpetrator of an armed robbery 12 days earlier. The few lower courts to address the question whether a police officer can forcibly stop an individual to investigate a completed misdemeanor have split on the question. Unlike in Blaisdell v. Commissioner, 375 N.W.2d 880 (Minn. Ct. App. 1985), Court here declined to adopt "a *per se* standard that police may not conduct a Terry stop to investigate a person in connection with a past completed misdemeanor simply because of the formal classification of the offense." Instead, Court held that the determination depends on "the nature of the misdemeanor," focusing on the potential for ongoing or repeated danger (e.g. drunken and/or reckless driving), and any risk of escalation (e.g. disorderly conduct, assault, domestic violence). This was consistent with the Hensley conclusion after balancing the government's interest in protecting public safety against individual privacy interests.

TITLE: United States v. Hensley

INDEX NO.: Z.7.a.

CITE: 469 U.S. 221, 105 S. Ct. 675, 83 L.Ed.2d 604 (1985)

SUBJECT: Investigatory stop based on reasonable suspicion

HOLDING: Investigatory stop of D in reliance on another police department's "wanted flier" was reasonable, because flier was issued on basis of articulable facts supporting reasonable suspicion that person committed offense & stop & detention were no more intrusive than would have been permitted issuing department on objective reading of flier. Ct. further held police, having validly stopped D, were entitled to seize evidence revealed in plain view in course of lawful stop. Ct. approved arrest of D's passenger when evidence discovered in plain view gave probable cause to believe passenger had committed crime. Police properly searched passenger compartment of car because it was within passenger's immediate control. Officers, having discovered additional weapons in D's car during course of lawful search, had probable cause to arrest D himself for firearms possession. Held, judgment reversed & remanded. Brennan, J., concurred.

TITLE: United States v. Jenson

INDEX NO.: Z.7.a.

CITE: 462 F.3d 399 (5th Cir. 2006)

SUBJECT: Delay in pulling over does not equal reasonable suspicion

HOLDING: The U.S. Court of Appeals for the Fifth Circuit held that a motorist's 30- to 60-second delay in pulling over in response to a police cruiser's flashing lights, coupled with his unusually nervous demeanor during the ensuing traffic stop, did not add up to the reasonable suspicion of criminal activity necessary for the police officer to prolong the driver's detention beyond the time necessary to issue him a traffic ticket. The D moved to suppress evidence that was discovered during a pat down search after the state trooper who stopped him for speeding had determined that his license was clean. The Fifth Circuit ruled that the stop should have ended as soon as the officer learned of D's clean driving record and that the extension of the stop beyond that time was not justified. The trooper's conclusion that it is unusual to hesitate as long as the D did to pull over was entitled to "great respect," but "the modest delay in stopping time does not by itself . . . give rise to reasonable suspicion." The Court noted several reasons a driver may take additional time to pull over. Nor did the D's increasing nervousness as the stop continued provide an additional factor for a reasonable suspicion of criminal activity. Most importantly, there was no evidence of a nexus between the D's allegedly suspicious behavior and any specific criminal activity.

TITLE: U.S. v. Jones

INDEX NO.: Z.7.a.

CITE: 269 F.3d 919 (8th Cir. 2001)

SUBJECT: Nervousness & Inconsistent Answers About Prior Arrests Insufficient to Justify
Prolonged Detention

HOLDING: Driver's nervousness and inconsistent answers to questions about any prior arrests did not create reasonable suspicion so as to justify prolonged detention after purpose of traffic stop was completed. While inconsistent answers to questions about current destination or purpose of trip may create reasonable suspicion, answers about past behavior are less suspicious. Former casts suspicion regarding nature and legitimacy of D's current behavior but denying prior arrests merely casts doubt on D's honesty. During detention, D refused consent to search his car. Officer then told D he would call for drug-sniffing canine and D said, "Fine." This was not consent to search.

TITLE: United States v. Reaves

INDEX NO.: Z.7.a.

CITE: 512 F.3d 123 (4th Cir. 2008)

SUBJECT: Anonymous caller's contemporaneous descriptions insufficient to provide reasonable suspicion

HOLDING: Fourth Circuit Court of Appeals held an anonymous caller's accurate descriptions of an alleged criminal's movements as he was being followed by police were not the sort of "predictive details" that will demonstrate that a tip is sufficiently reliable to provide the reasonable suspicion required by the Fourth Amendment to justify an investigatory stop. The fact that an anonymous tip contains information about the basis of the informer's knowledge is not, by itself, enough to show that the tipster is trustworthy. Analyzing case in relation to Alabama v. White, 496 U.S. 325 (1990) and Florida v. J.L., 529 U.S. 266 (2000), Court found the case to be the opposite of White because the caller here did not make any predictions whatsoever about the suspect's future behavior despite her contemporaneous observations of the suspect's location being accurate and readily confirmable by the police. A tipster's running account of a suspect's movements may contribute to the presence of reasonable suspicion, but "it may not, by itself, serve to validate the underlying tip here." Quoting J.L., Court explained "an anonymous tipster's accurate description of a suspect's location and appearance is 'reliable in the limited sense [that it] will help the police correctly identify the person whom the tipster means to accuse,' but it 'does not show that the tipster has knowledge of . . . criminal activity.'" Court also emphasized that the informer was "adamant" about her remaining anonymous and thus did not place "herself in a position where her 'reputation [could] be assessed' or she could 'be held responsible if her allegations [of illegal conduct] turn[ed] out to be fabricated.'" Quoting J.L.

TITLE: U.S. v. Sigmond-Ballesteros

INDEX NO.: Z.7.a.

CITE: 247 F.3d 943 (9th Cir. 2001); withdrawn and replaced at 285 F.3d 1117 (2001)

SUBJECT: Vehicle Stop - Reasonable Suspicion

HOLDING: Group of facts that included D's changing lanes and slowing down when tailgated by border patrol vehicle and shielding eyes when officer shines bright light in driver's side window while driving next to D's truck on highway, did not provide reasonable suspicion to stop D's truck. D was driving large pickup truck at 4:20 a.m. on highway near Mexican border. Because of area's reputation for alien smuggling, fact that there is little commercial traffic at 4:20 a.m., and fact that smugglers often drive pickup trucks, border patrol officer began following D very closely. D pulled into slow-lane and reduced speed. Officer then pulled up next to D's truck and shined spotlight in driver's side window, at which point D shielded his face with his hand. Based on D's changing lanes and reducing speed and covering face, officer stopped D's truck. Ninth Circuit finds consideration of these two factors impermissible. Because government uses any possible reaction to officer tailgating as ground for stop (i.e., speeding up or failure to acknowledge), reaction cannot properly be considered at all. Because D's shielding of eyes was necessitated by officer's shining bright light into D's moving truck, this factor cannot be properly considered either. While shielding face may be "suspicious" in some circumstances, officer cannot create dangerous driving condition, observe driver react appropriately, and then base reasonable suspicion on that reaction because it can sometimes be suspicious. Without these impermissible factors, driving a pickup truck at 4:20 a.m. on a highway between two U.S. towns is not sufficiently probative to create reasonable suspicion.

TITLE: W.H. v. State

INDEX NO.: Z.7.a.

CITE: (06-17-10), Ind. Ct. App, 928 N.E.2d 288

SUBJECT: Stop and search of juvenile upheld

HOLDING: Tr. Ct. did not abuse discretion in denying juvenile's motion to suppress handgun officers found in juvenile's waistband. During Indiana Black Expo, police spotters were positioned inside buildings to observe crowds from above. One spotter radioed officers standing at busy intersection that he saw juvenile move his hands toward his waist, lift his shirt, and show something from his waistband to another person. This gave officers particularized and objective basis for suspecting that juvenile possessed a gun. Less evidence is required to stop a man suspected of being armed with a gun. Once officers detained juvenile, they noticed a bulge underneath juvenile's shirt, which was a .9-millimeter semi-automatic pistol. Officers also had legitimate safety concerns for themselves and the fifty to one hundred people standing near the intersection. Possible innocent explanations for juvenile's behavior - he could have lifted his shirt to show someone a belt buckle, cell phone, or "abs of steel" - did not vitiate reasonable suspicion; officers were not required to rule out all possible innocent explanations when evaluating conduct.

Detention and search also did not violate juvenile's rights under Art. 1, Sect. 11 of Ind. Constitution. Officers received information that a person was showing something from his waistband to another person. Based on 1) the degree of suspicion that juvenile possessed a gun, 2) the brevity and unobtrusive character of the stop, and 3) law enforcement's need to maintain safety at a crowded city convention, officers did not act unreasonably. Held, judgment affirmed.

RELATED CASES: Scisney, 55 N.E.3d 321 (Ind. Ct. App 2016) (officer had reasonable suspicion to pat down D where D was seen walking with a person suspected of involvement in a shooting, hurried his pace when police approached both of them, avoided eye contact, and reached for the right side of his waist line); J.B., 30 N.E.3d 51 (Ind. Ct. App 2015) (juvenile discarding an approximately six-inch, black, L-shaped object that the officer believed to be a handgun constituted reasonable suspicion to stop the juvenile; further, the stop was reasonable under the Ind. Constitution).

TITLE: Washington v. State

INDEX NO.: Z.7.a.

CITE: (2nd Dist., 3-12-03), Ind. App., 784 N.E.2d 584

SUBJECT: Detention & pat down search reasonable

HOLDING: Tr. Ct. did not err in admitting handgun into evidence. After valid traffic stop in which officer determined that D's license & registration were valid, officer asked D to step to rear of car so that he could explain warnings. Court rejected D's argument that officer detained D longer than necessary to effectuate traffic stop. Fourth Amendment permits officer to request motorist stopped for traffic violation to exit car. Lockett v. State, 747 N.E.2d 539 (Ind. 2001). Moreover, officer had not yet completed his traffic stop at time he noticed bulge at D's right hip. Officer's pat-down search was reasonable, based on D's movements during traffic stop & bulge officer observed on D's back hip. Officer testified that he believed bulge to be a weapon. A reasonably prudent person in these circumstances would be warranted in believing that his or her safety or that of others was in danger. D.H. v. State, 688 N.E.2d 221 (Ind. Ct. App 1997). Held, judgment affirmed.

TITLE: Washington v. State
INDEX NO.: Z.7.a.
CITE: (2nd Dist., 12-19-00) Ind. App., 740 N.E.2d 1241
SUBJECT: Invalid investigatory stop - based solely on anonymous tip
HOLDING: Anonymous telephone tip, absent any independent indicia of reliability or any officer-observed confirmation of caller's prediction of D's future behavior, is not enough to permit police to subject citizen to Terry stop & detention. Anonymous tip can form basis for reasonable suspicion only if accompanied by specific indicia of reliability, such as a correct prediction of subject's future behavior. Alabama v. White, 496 U.S. 325 (1990). Federal precedent requires ability to predict future behavior, validating informant's knowledge as reliable in its assertion of illegality, Florida v. J.L., 120 S. Ct. 1375 (2000), in contrast to information that might be relayed to police by prankster or police officer acting in bad faith.

Here, anonymous informant contacted police to report possible drunk driver. Informant provided description & license plate number of vehicle but neither identity nor reliability of informant was known or subsequently determined. Based on totality of circumstances of D's stop, including absence of any officer-observed activity which would provide reasonable suspicion/independent basis for traffic stop, & absence of detailed predictions of D's future behavior or other indicia of reliability that would reflect knowledge of anonymous caller, Ct. held that investigatory stop was improper. Held, convictions for dealing in cocaine & marijuana reversed.

Note: Ct. declined to follow State v. Springmier, App., 559 N.E.2d 319, to extent it can be interpreted to allow Terry stop based solely on anonymous telephone call reporting vehicle's location & direction of travel. Ct. also declined to interpret Bogetti, 723 N.E.2d 876 (Ind. Ct. App 2000), to stand for proposition that vehicle description, without more, can demonstrate reliability of anonymous tip sufficient to support Terry stop.

RELATED CASES: Beverly, App., 801 N.E.2d 1254 (receipt of numerous 911 calls about gold SUV firing at or exchanging gunfire with another vehicle in a certain location in a relatively short amount of time distinguished this case from situations involving single anonymous caller; calls bear independent indicia of reliability because the corroborate each other); Wells, App., 772 N.E.2d 487 (anonymous tip in this case was corroborated in that police officer was able to verify tipster's specific information regarding color, make, plate number of car, & manner in which D operated it); Glass, App., 769 N.E.2d 639 (invalid investigatory stop based on unconfirmed information provided from named but unverified caller; see full review this section); Berry, App., 766 N.E.2d 805 (invalid investigatory stop based solely on anonymous tip; there is no firearm exception to reliability requirement); Francis, App., 764 N.E.2d 641 (police officer properly corroborated information acquired from anonymous tip, where he confirmed informants' tip with dispatch & found car where informants said it would be); Eichholtz, App., 752 N.E.2d 163 (Terry stop proper, even though officer had not personally observed any erratic driving or traffic violations, where other driver identified himself to 911 operator, gave pertinent information to operator & continued to drive behind D).

TITLE: Williams v. State

INDEX NO.: Z.7.a.

CITE: (5/1/85), Ind., 477 N.E.2d 96

SUBJECT: Invalid investigatory stop - harmless error

HOLDING: Where MO police stopped D because he was walking in high-crime district at 1:30 a.m. with something tucked under his arm (a coat), evidence re stop should not have been admitted. However, error in admission of evidence of flight from MO police was harmless beyond a reasonable doubt where D was unequivocally identified by 3 victims & testimony indicated his failure (prior to stop) to appear for first trial date. Investigatory stop exceeded constitutional limits. Chapman v. CA (1967), 386 U.S. 18, 87 S. Ct. 824, 17 L.Ed.2d 705; Head 443 N.E.2d 44; Williams 433 N.E.2d 769. Ct. finds no justification for stop, *citing* Brown v. TX (1979), 443 U.S. 47, 99 S. Ct. 2637, 61 L.Ed.2d 357 (conviction under TX statute for failure to identify self to police on demand reversed). Here, as in Brown, officer had no basis for suspecting D of misconduct. Held, conviction affirmed.

RELATED CASES: Johnson, Ind., 659 N.E.2d 116 (investigatory stop illegal); Marsh, 477 N.E.2d 877 (Arrest 63.5(6); Crim L 394.4(9); Ct. distinguishes stop of auto in which D was passenger from Williams; specific crime freshly committed & officer believed he was near D's destination; held, no error); Russell, App., 468 N.E.2d 1064 (Arrest 64; store owners/agents are held to same requirements as police officers in investigatory stop situations; see card at O.9.a).

TITLE: Williams v. State

INDEX NO.: Z.7.a.

CITE: (3/25/2015), 28 N.E.3d 293 (Ind. Ct. App 2015)

SUBJECT: Erroneous understanding of law can provide reasonable suspicion

HOLDING: On rehearing, Court set aside its original opinion, which reversed D's conviction for marijuana possession under Fourth Amendment because discovery of marijuana in D's car stemmed from a traffic stop based on officer's mistaken belief that D committed an infraction by driving a car with a taillight that emitted both red and white light. See Ransom v. State, 741 N.E.2d 419, 422 (Ind. Ct. App 2000). The Court concluded that the recent decision in Heien v. North Carolina, 135 S. Ct. 530 (2014), dictated a different result, as Heien ruled that reasonable suspicion may rest on a mistaken understanding of the law as long as the mistaken understanding is objectively reasonable. Id. at 535-40.

Here, the officer's belief that D was committing an infraction was objectively reasonable. The passenger-side taillight of D car "had a large hole in it that was allowing a significant amount of white light to emit out of it while it was in forward motion" and a miniscule amount of red. The officer testified he believed "any white light emitting out of the rear of a vehicle while it [was] in forward was a violation of the statute" under Indiana Code section 9-19-6-4—which provides a vehicle "must be equipped with at least two (2) tail lamps mounted on the rear that, when lighted, ... emit a red light plainly visible from a distance of five hundred (500) feet to the rear." The Court said the officer was wrong; the statute does not prohibit other colors of light from also being emitted. However, the officer's reading of the statute was not entirely unreasonable and he was therefore justified in stopping D.

Because D did not raise a cogent argument upon Article I, section 11, of the Indiana Constitution, the Court "[left] for another day the question of whether a reasonable mistake of law can support a traffic stop under the Indiana Constitution." Held, rehearing granted, original opinion vacated, and judgment affirmed.

RELATED CASES: Dowdy, 83 N.E.3d 755 (Ind. Ct. App 2017) (even assuming officer was ultimately mistaken in his belief that a violation of vehicle registration statute occurred, traffic stop was based upon a good faith, objectively reasonable belief that a statutory infraction had occurred; see full review at Z.4.d).

TITLE: Yanez v. State

INDEX NO.: Z.7.a.

CITE: (02-21-12), 963 N.E.2d 530 (Ind. Ct. App 2012)

SUBJECT: Unlawful Terry stop - State's failure to meet burden

HOLDING: Tr. Ct. erred in admitting evidence of marijuana discovered as a result of an unconstitutional investigatory stop. D was at a flea market talking loudly to his female companion when he was stopped by a federal agent who was part of an investigation looking for illegal immigrants and counterfeit items. After the federal agent stopped D, an Indianapolis police officer approached to assist. D consented to a pat-down search, which revealed a baggie of marijuana sticking out of D's pants pocket. The determination of the reasonableness of a search and seizure under Article 1, Section 11 hinges on a balance of: 1) the degree of concern, suspicion, or knowledge that a violation of law 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. Litchfield v. State, 824 N.E.2d 356 (Ind. 2005). Here, there was absolutely no evidence of a concern or suspicion that a violation of law had occurred. The federal agent who stopped D did not testify at trial. State presented no evidence as to why D was stopped or what occurred between him and the federal agent when he was stopped. Thus, Court was unable to assess the reasonableness of the agent's actions in stopping D. Further, the Indianapolis police officer's testimony consisted of postulation of what occurred and did not meet the reasonableness standard. Her discovery of marijuana after D was stopped cannot justify the initial illegal seizure of D by the federal agent. Although the degree of intrusion on D's activities was minimal, that factor is not sufficient to convert an otherwise unconstitutional stop into a constitutional one. Finally, the extent of officers' need to investigate was nominal. Held, judgment reversed and remanded; Barnes, J., concurring, noted that officers' actions may have been reasonable, but State failed to meet its burden of proving that D's initial encounter with federal agent was consensual.

Z. SEARCH AND SEIZURE

Z.7. Investigatory stops/ searches/detentions

Z.7.a.1. Drug courier profile (U.S. v. Mendenhall, Florida v. Royer)

TITLE: Florida v. Royer

INDEX NO.: Z.7.a.1.

CITE: 460 U.S. 491, 103 S. Ct. 1319, 75 L.Ed.2d 229 (1983)

SUBJECT: Investigatory stops/searches/detentions - Drug courier profile

HOLDING: Approaching & stopping young man meeting drug courier profile at airport & asking if he had moment to speak with police did not constitute seizure. Police had grounds to detain D & his luggage while they attempted to verify or dispel their suspicions that D was drug courier. However, police exceeded limits of investigative stop where they retained D's license & ticket & told him he was suspected of transporting narcotics, & asked D to accompany them to small police room & indicated in no way that D was free to leave. Seizure exceeded that authorized by Terry v. Ohio, 392 U.S. 1 (1968), & required probable cause to arrest. Consent to search D's luggage during that pat down was invalid. Held, reversal of D's conviction affirmed. Powell & Brennan, JJ., concurred. Blackmun, Rehnquist, O'Connor, JJ. & Burger, C.J., dissented.

Note: Majority of Ct. apparently avoided holding that drug courier profile is enough for Terry seizure.

TITLE: Lyons v. State

INDEX NO.: Z.7.a.1.

CITE: (2nd Dist., 7-25-00), Ind. App., 735 N.E.2d 1179

SUBJECT: Airport stop based on drug courier profile upheld

HOLDING: Where police officers had reasonable & articulable suspicion that D was carrying illegal drugs, police had right to make investigatory stop of D to detain him briefly to complete their investigation. Police officer on duty at Indianapolis airport received information from Minneapolis Airport Task Force about D that matched characteristics that Indianapolis Airport Task Force uses to determine whether individual is possible drug courier. Shortly before D's arrival at Indianapolis airport, officer was notified by Minneapolis airport police officer that there was individual he considered to be possible drug courier. Minneapolis officer identified possible drug courier as D, & gave Indianapolis officer D's airline, seat number, flight number, & approximate arrival time in Indianapolis. In addition, officer learned that D had criminal history involving firearms & controlled substances, that D purchased his airline ticket at airport just prior to boarding his flight in San Francisco, & that D had checked no luggage. Indianapolis officer testified that based upon her thirty-one years of experience, she reasonably determined that information she had received warranted investigatory stop of D upon his arrival at airport. Ct. also held that, based on totality of circumstances, D's subsequent consent to search his person & his luggage was valid & voluntary. Held, convictions affirmed.

TITLE: Molino v. State

INDEX NO.: Z.7.a.1.

CITE: (12/5/89), Ind., 546 N.E.2d 1216

SUBJECT: Investigatory stop - drug courier profile

HOLDING: Officers' investigatory stop of D at airport, based on drug courier profile, was permissible & evidence seized subsequent to this stop was admissible. Evidence showed that D arrived at Indianapolis airport on express flight from Florida, exited this flight with leather handbag, & quickly left airport & hailed cab. Officers followed D outside, where plain-clothes officer presented badge & ID card to D, explained that he was conducting narcotics investigation, & asked if he could ask D a few questions. D consented & on request produced Florida driver's license & airline ticket, which were returned to him. D then consented to search of handbag, which contained numerous receipts & business documents, as well as D's Colombian passport. Officers observed that D had become very nervous. When they asked D for his permission to be searched, he told them, "I have drugs," whereupon they asked him to accompany them to their office. At office, after responding orally that he understood his rights but refusing to sign waiver, D removed from his clothing 6 packages of powder later determined to be cocaine. D moved to suppress, & on appeal argues that cocaine was fruit of illegal search & seizure. US v. Mendenhall (1980), 446 U.S. 544, 100 S. Ct. 1870, 64 L.Ed.2d 497, involved encounter at airport similar to instant case. After consenting to be searched, D handed 2 packages of heroin from her undergarments to policewoman. U.S.S. Ct. upheld search as consensual, stating that as long as individual remains free to walk away no intrusion had occurred requiring particularized justification. In Florida v. Royer (1983), 460 U.S. 491, 103 S. Ct. 1319, 75 L.Ed.2d 229, U.S.S. Ct. upheld reversal of conviction where officers held D in office while they retrieved his luggage & opened it. Ct. noted that D was not free to leave & as practical matter had been placed under arrest before probable cause developed. In Florida v. Rodriguez (1984), 469 U.S. 1, 105 S. Ct. 308, 83 L.Ed.2d 165, officers approached D for similar reasons & in similar manner to instant case. Rodriguez voluntarily handed his luggage to officers, who discovered cocaine inside. U.S. S. Ct. upheld conviction, stating that simply asking D to step aside & talk with officers is consensual encounter which does not implicate 4th Amend. In alternative, Ct. held that even if "seizure" had occurred, it was justified on basis of articulable suspicion. Investigatory stop based on "reasonable suspicion" was recently reaffirmed in drug courier profile context in US v. Sokolow (1989), 490 U.S. 1, 109 S. Ct. 1581, 104 L.Ed.2d 1. Here, officers meticulously followed format set forth in Mendenhall & Rodriguez. This was merely "stop & frisk" situation at time D volunteered information that he had drugs. At that point, officers took D to office & administered Miranda warnings, after which D voluntarily removed packages of cocaine from his person. Held, evidence was properly seized & was admissible; conviction affirmed. DeBruler, J., DISSENTS, arguing that initial stop must be justified by articulable suspicion, Sokolow & Rodriguez, *supra*, & that no such suspicion justified detaining D after observing that his Florida license & plane ticket were in his name & he offered reasonable explanation for his trip. Dickson, J., DISSENTS, arguing that reasonable suspicion did not exist to justify initial stop.

TITLE: People v. Shapiro

INDEX NO.: Z.7.a.1.

CITE: 283 Ill.App.3d 343; 669 N.E.2d 1200 (Ill. Ct. App. 1996)

SUBJECT: Detention of Mail Package -- Three Days Unreasonable

HOLDING: While express mail package's conformity with Postal Service's "drug package profile" provided reasonable suspicion to remove it from mail and detain it, detention for more than three full days while it was diverted to office in another state was unreasonable. The package was wrapped in heavy brown paper, had heavily taped seams, bore a handwritten address label, was mailed between two individuals, and had a return address outside the zip code from which it had been mailed, which are five criteria of the "drug package profile." The postal inspector to whom the package was diverted also determined that the return address was bogus. However, the actual city from which the package was mailed was not known as a drug source city. Court holds that the five initial criteria provided reasonable suspicion, which was sufficient to justify initial seizure of the package. However, three-day delay was unreasonable. Package was diverted from Chicago to St. Louis only to comply with postal regulations giving St. Louis regulatory jurisdiction over mail addressed to the destination city. While these regulations may serve legitimate purpose in another context, Ds' interest in the preservation of their fourth amendment rights take precedence here.

TITLE: U.S. v. Johnson

INDEX NO.: Z.7.a.1.

CITE: 171 F.3d 601 (8th Cir. 1999)

SUBJECT: Package "Narcotics Profile" -- Insufficient Grounds for Detention

HOLDING: The mere fact that potentially innocent characteristics of a package sent by express mail appear on an "Express Mail/Narcotics Profile" developed by the U.S. Postal Service does not, by itself, provide reasonable suspicion to intercept and detain package. Profile match is insufficient, absent an articulation by law enforcement officer who intercepted it as to why, in his or her experience, the profile factors are consistent with characteristics of packages found to contain contraband. The package had hand-written return and destination address labels, was sent from narcotics "source" state (California), was mailed from one individual to another at the same address and had a different return address zip code than the postal center from which it was mailed. None of these facts are inherently suspicious, and all can easily fit conduct of innocent vacation or business travelers.

TITLE: United States v. Mendenhall

INDEX NO.: Z.7.a.1.

CITE: 446 U.S. 544, 100 S. Ct. 1870, 64 L.Ed.2d 497 (1980)

SUBJECT: Investigatory stop - Drug courier profile; "seizure"

HOLDING: Person is "seized" within meaning of Fourth Amendment only if, in view of all of circumstances surrounding incident, reasonable person would have believed that he was not free to leave, & as long as person to whom questions are put remains free to disregard questions & walk away, there has been no intrusion upon person's liberty or privacy as would under Constitution require some particularized & objective justification. Here, agents wore no uniforms & displayed no weapons, did not summon D to their presence but instead approached her & identified themselves as federal agents & requested, but did not demand, to see D's identification & airline ticket. Events took place in public concourse at airport & nothing suggested that D had any objective reason to believe that she was not free to end conversation & proceed on her way. Agents' conduct did not amount to intrusion upon any constitutionally protected interest. Agents' initial approach to D was not "seizure," even though D was not expressly told by agents that she was free to decline to cooperate with their inquiry. Fact that D was carrying narcotics did not preclude finding that D consented to search of her person in DEA office at airport, as question was not whether D acted in her ultimate self-interest, but whether she acted voluntarily, & it was arguable that D might have thought she was acting in her self-interest by voluntarily cooperating in hopes of receiving more lenient treatment. Held, judgment reversed & remanded; Burger, C.J., Blackmun & Powell, JJ., concurring; White, Brennan, Marshall, & Stevens, JJ., dissenting.

TITLE: United States v. Mendenhall

INDEX NO.: Z.7.a.1.

CITE: 446 U.S. 544, 100 S. Ct. 1870, 64 L.Ed.2d 497 (1980)

SUBJECT: Investigatory stops/searches/detentions - Drug courier profile

HOLDING: Evidence was sufficient to support trial Ct.'s finding that D, 22-year-old African-American female with 11th grade education, freely & voluntarily consented to search of her person after accompanying federal agents from airport concourse to DEA office. D, meeting profile for persons unlawfully carrying drugs, was twice expressly told by officers she was free to decline to consent to search & only thereafter explicitly consented to it. Although D stated to female police officer, she had plane to catch, when assured by officer there would be no problem if nothing turned up by search, D began to undress without further comment. Although Constitution does not require proof of knowledge of right to refuse to consent to search as indicator of effective consent to search, such knowledge is highly relevant to determination that there has been consent. Fact that D was in DEA office when she consented to search did not require finding that D's consent resulted from inherently coercive nature of surroundings, in view of finding that D's presence in office was voluntary. Fact that D was carrying narcotics did not preclude finding that D consented to search of her person in DEA office at airport, as question was not whether D acted in her ultimate self-interest, but whether she acted voluntarily, & it was arguable that D might have thought she was acting in her self-interest by voluntarily cooperating with officers in hope of receiving more lenient treatment. Held, judgment of Ct. of Appeals reversed & case remanded. Powell, Blackmun, JJ. & Burger, C.J., concurred. White, Brennan, Marshall, & Stevens, JJ., dissented.

TITLE: U.S. v. Salzano

INDEX NO.: Z.7.a.1.

CITE: 149 F.3d 1238 (10th Cir. 1998)

SUBJECT: Drug Travel Profile Not Sufficient to Justify Detention for Dog Sniff

HOLDING: State trooper's half-hour delay of motorist driving large R-V, so that drug sniffing dog could be brought to scene, was not supported by reasonable suspicion. Officer stopped driver after observing him stray onto shoulder of highway. Before conducting sobriety tests, which came up negative, officer asked driver about his travel plans. Driver stated that he had been visiting family and had rented R-V rather than flying because he had intended to bring his father home with him. Driver was alone. It was five days after Christmas. Officer issued verbal warning about driving while sleepy, then asked for consent to search R-V, which driver refused to give. Officer then detained driver for half-hour to get dog to scene. In support of detention, government relied on following factors: (1) driver's uneconomical decision to rent and drive large R-V rather than fly; (2) discrepancy between number of persons listed on rental agreement and fact that driver was alone; (3) size of motor home and officer's knowledge that such vehicles are often used to haul large quantities of drugs; (4) odor of evergreen emerging from vehicle; (5) driver's visible nervousness while handing over rental papers; (6) driver's statement that he had come from California. Court finds that first four factors are "so innocent or susceptible to varying interpretations as to be innocent." Detention was not supported by reasonable suspicion.

Z. SEARCH AND SEIZURE

Z.7. Investigatory stops/ searches/detentions

Z.7.b. Search of persons (Terry v. Ohio)

TITLE: Abel v. State

INDEX NO.: Z.7.b.

CITE: (8-20-02), Ind., 773 N.E.2d 276

SUBJECT: Pat-down search upheld

HOLDING: Police officers did not violate D's Fourth Amendment right to be free from unreasonable searches & seizures by conducting pat-down search for weapons & seizing D's handgun. Based on information from dispatch, police officers who stopped D believed they were on lookout for fleeing suspect who had just been involved in robbery. Although stop of D was reasonable because he fit general description of sought-after person & was in general area, D argued that subsequent pat-down search was not reasonable because no information had been broadcast that man sought was armed. Ct. disagreed & held that officers acted reasonably under circumstances, even though there was no evidence in record that robbery had in fact occurred. Whether first police officer was reasonably justified in his belief concerning possible robbery suspect had no bearing on whether his fellow officers were entitled to rely on his representation. Moody v. State, 448 N.E.2d 660 (Ind. 1983). Although not every robbery is committed while armed with deadly weapon, officer need not be absolutely certain that individual is armed & considering early morning high-speed chase by car & on foot, a reasonably prudent officer would be warranted in belief that his safety or that of others was in danger. Held, judgment affirmed.

RELATED CASES: Saffold, 938 N.E.2d 837 (Ind. Ct. App 2010) (officer properly conducted second pat-down search to determine whether D had a gun after discovering ammunition on him and in his car).

TITLE: Abner v. State

INDEX NO.: Z.7.b.

CITE: 741 So.2d 440 (Ala. Crim. App. 1998)

SUBJECT: Seizure of Plastic Bag from Pocket Not Supported by Probable Cause

HOLDING: Officer's knowledge that plastic bags are often used to carry drugs did not justify his retrieval of bag he saw protruding from pocket of individual he encountered in high crime area. Nor did individual's apparent attempt to shield bag from officer's view support finding of probable cause. D was one of about a dozen people whom officer approached. As officer got closer, D turned away from him. Officer removed bag and found large amount of cash inside. Removal of bag exposed smaller bag in watch pocket, which officer removed and discovered to contain drugs. Officer's knowledge that plastic bags are often used to carry drugs did not give him probable cause to seize bag, nor did D's presence in high crime area or his turning his back toward officer. This turning away should have been viewed as manifestation of right to privacy rather than as evidence of guilty knowledge.

TITLE: Aslinger v. State
INDEX NO.: Z.7.b.
CITE: (1/23/2014), 2 N.E.3d 84 (Ind. Ct. App 2014)
SUBJECT: Observation of hand-rolled cigarette did not justify seizure & incidental search
HOLDING: The reasonable suspicion which gives authority to a police officer to conduct a Terry stop does not authorize the examination of contents of items carried by the suspicious person. See Corwin v. State, 962 N.E.2d 118 (Ind. Ct. App 2011) (merely suspecting that an item is unlawful is not sufficient to conduct a warrantless seizure).

Here, officer's Terry stop of D was reasonable, as he was investigating vehicle break-ins in the area. But officer's seizure of a hand-rolled cigarette behind D's ear and thorough search of his pockets was unrelated to the purpose justifying the original Terry stop and not subject to seizure under the plain view doctrine. A hand-rolled cigarette is not per se illegal, and the officer only deduced there was a drug in it after removing it from D's ear. The officer did not have probable cause to make an arrest and conduct an incidental search, which resulted in the discovery of methamphetamine and paraphernalia. Once officer received confirmation that D was not involved in the break-ins, the purpose of the stop was satisfied, and he was not justified in extending the investigation. Holly v. State, 918 N.E.2d 323 (Ind. 2009). Held, judgment affirmed in part, reversed in part, and remanded with instructions. Robb, J., concurring, believes the majority's statement of law applicable to the "immediately apparent" prong of the plain view doctrine too broad.

NOTE: Court upheld admission into evidence of second pipe used for smoking marijuana, which officer discovered pursuant to lawful pat-down search after noticing knife in D's pocket.

TITLE: Carter v. State
INDEX NO.: Z.7.b.
CITE: (5th Dist., 12-30-97), Ind. App., 692 N.E.2d 464
SUBJECT: Search of person - insufficient evidence of criminal activity or flight
HOLDING: Tr. Ct. erred in denying D's motion to suppress gun obtained during warrantless search. Police may, without warrant or probable cause, briefly detain individual for investigatory purposes if, based on specific & articulable facts, officer has reasonable suspicion of criminal activity. Reasonable suspicion requirement is satisfied where facts known to officer, together with reasonable inferences arising from such facts, would cause ordinarily prudent person to believe that criminal activity has or is about to occur. Flight from police officer generates suspicious behavior which warrants investigatory stop. Here, after plain clothed officer recognized D in restaurant, D placed his hand in right coat pocket & walked with "long steps" toward door, during which he bumped into officer's partner. Without D turning around, officer followed D to his car & reached in D's pocket from which he retrieved gun. Neither officer's characterization of D as fleeing from him nor officer's knowledge of D's prior criminal record constituted suspicious behavior of D. Thus, because facts & reasonable inferences arising from D's leaving restaurant would not cause ordinarily prudent person to believe that criminal activity had or was about to occur, D's constitutional protections were violated by stop, & motion to suppress should have been granted. Held, judgment reversed.

TITLE: Castle v. State

INDEX NO.: Z.7.b.

CITE: (3d Dist. 4/16/85), Ind. App., 476 N.E.2d 522

SUBJECT: Investigatory search of person following traffic stop

HOLDING: Gun & marijuana discovered during search of D (passenger in car stopped for making illegal turn) was properly admitted at trial. Here, officer followed car matching description of car used in armed robbery. Car made illegal turn & sped up. Officer stopped car & asked passenger (D) to keep hands on dashboard, which D refused to do, fumbling inside jacket. Officer awaited backups, then searched D, finding gun & 3 bags of marijuana on D's person. D was then arrested. Police have duty to stop & investigate situations posing possible traffic hazards. Johnson, App., 450 N.E.2d 123 & Harts, App., 441 N.E.2d 714 (erratic driving). However, D contends violation of traffic infraction does not give police probable cause to arrest or search vehicle's occupants. Following a traffic stop, police may search for weapons if officer reasonably believes he/she/others may be in danger. Terry v. OH, (1968), 392 U.S. 1, 88 S. Ct. 1868, 20 L.Ed.2d 889; Collett, App., 338 N.E.2d 286. Held, no error.

RELATED CASES: O'Keefe, 139 N.E.3d 263 (Ind. Ct. App. 2019) (chaotic scene that the officer happened upon, coupled with his observations of large bulges in D's vest that he believed could be weapons, formed an objectively reasonable basis for a pat down search); Sweeney, 704 N.E.2d 86 (officer's decision to conduct warrantless search of vehicle was reasonable where he noticed D lean over as though he was placing something under seat, D was nervous & shaking, officer observed 2 loaded handgun clips in trunk, & learned of D's extensive criminal history); Burkett, App., 691 N.E.2d 1241 (officer who performed pat down properly seized contraband under plain feel doctrine).

TITLE: Commonwealth v. E.M.
INDEX NO.: Z.7.b.
CITE: 735 A.2d 654 (Pa. 1999)
SUBJECT: Swap of Cash for Unseen Object -- Reasonable Suspicion but not Probable Cause
HOLDING: Police officer in "high crime" area late at night who saw D with plastic baggie in his hand signal to two men, who then engaged in street-side exchange of cash for unidentified small object, had reasonable suspicion for stop, but not probable cause for arrest and search incident to arrest.

TITLE: Commonwealth v. Gonsalves

INDEX NO.: Z.7.b.

CITE: 711 N.E.2d 108 (Mass. 1999)

SUBJECT: Traffic Stop -- Ordering Occupants Out of Vehicle

HOLDING: The Massachusetts Supreme Judicial Court holds that its state constitution prohibits police officers from routinely ordering occupants out of their vehicles during traffic stops. In reaching this conclusion, Court held that ordering passengers out of vehicle was more than minimal intrusion into privacy, and as such should be justified by particularized concern about officer safety. Court disagrees with U.S. Supreme Court, which has held that ordering occupants out of vehicle is minimal intrusion on privacy interests and need not be justified by particularized concern. U.S. Supreme Court has held that federal constitution allows that drivers may routinely be ordered to exit vehicle, Pennsylvania v. Mimms, 434 U.S. 106 (1977), and extended this holding to passengers in Maryland v. Wilson, 519 U.S. 408 (1997). Massachusetts court not only disagreed with U.S. S. Ct. as to degree of intrusion into privacy, but also noted that routinely ordering occupants to exit vehicles may in fact increase the risk of confrontation that could escalate into violent encounter endangering officers. As to particularized concern which must be shown, Court wrote that it would require more than a hunch but would not take much.

TITLE: Dixon v. State

INDEX NO: Z.7.b.

CITE: (7/22/2014), 14 N.E.3d 59 (Ind. Ct. App 2014)

SUBJECT: Unlawful pat-down search

HOLDING: Tr. Ct. abused its discretion in denying D's motion to suppress drug evidence found on him as a result of an unlawful patdown search. D made a turn without signaling and a police officer activated his emergency lights. D stopped his car in a residential neighborhood, turned it off and began to walk away. The officer ordered him to come back and sit in the car and D eventually complied. The officer recognized D's name as a possible drug dealer. The officer called for backup and performed a pat-down search. The officer grabbed a baggie in D's front pants pocket and decided to handcuff him before searching further. D resisted the attempt to handcuff him and tried to flee. Officers tased D and eventually found three baggies of cocaine on his person. The validity of an investigatory stop and Terry patdown depends on the facts of each particular case. In denying D's motion to suppress, Tr. Ct. emphasized the "extreme" nervousness displayed by D while in the car, i.e., failure to make eye contact with the officer, rocking back and forth in his seat, and sticking his hands in his pockets. But this can reasonably be explained by the fact the officer, who conceded that D did not exhibit any threatening conduct, displayed his taser during the entire duration of the traffic stop, including when he was standing next to the open driver's door. It was only after the officer recognized D's name as a possible drug dealer, did he believe he needed "to put this guy in handcuffs until [he] find[s] out what's going on." Officer did not have any reason to believe D was engaged in criminal activity at the time he pulled him over, he saw no weapon on D when he was out of the car, and there were no open warrants or issues with D's identification. A Terry stop does not allow for a generalized cursory search for weapons, or any search for anything but weapons. Ybarra v. Illinois, 444 U.S. 85 (1979). Court concluded officer's actions ostensibly belie the fact that he was concerned for his safety. Held, denial of motion to suppress reversed and remanded; Bradford, J., dissenting, believes overall circumstances supported pat-down search for officer's safety.

TITLE: D.Y. v. State

INDEX NO.: Z.7.b.

CITE: (3/11/2015), 28 N.E.3d 249 (Ind. Ct. App 2015)

SUBJECT: Unlawful pat-down before placement in police car

HOLDING: Tr. Ct. abused its discretion in admitting firearm because it was obtained through a pat-down search incident to J.Y.'s unlawful arrest, prior to being placed in a police vehicle. Involuntary transportation to police headquarters may be a factor in determining whether a "seizure" has occurred. Buckley v. State, 886 N.E.2d 10 (Ind. Ct. App 2008). Here, officer did not ask D.Y. if he would accompany him to the station for questioning about burglary investigation, and he did not give D.Y. the option to meet at the police station independently. Instead, he explained to D.Y. that he would be transporting D.Y. to the police station and that D.Y. was a possible suspect. Because D.Y. was a juvenile, there was no indication that officer had contacted D.Y.'s parents, and officer did not give any indication to D.Y. that his transportation to the station was voluntary, Court concluded that officer seized D.Y., such that he would not have felt free to leave, even though the transportation did not occur prior to the officer's pat down. Because the officer did not have probable cause or a warrant to arrest D.Y., the seizure violated the Fourth Amendment, and his subsequent pat down was unlawful. Firearm discovered pursuant to the unlawful search was inadmissible at D.Y.'s delinquency hearing. Held, judgment reversed and remanded with instructions to vacate true findings and D.Y.'s adjudication as a delinquent child.

TITLE: Edmond v. State
INDEX NO: Z.7.b.
CITE: (07-14-11), 951 N.E.2d 585 (Ind. Ct. App. 2011)
SUBJECT: Smell of burnt marijuana from D's car and breath gave probable cause to search D's person
HOLDING: Where officer smelled burnt marijuana emanating from D's car and breath, and where D was sole occupant of the car, officer had probable cause to arrest D and lawful basis to search his person. Officer stopped D's car because he disregarded a stop sign. The officer directed D to exit the car, and D complied. He was "polite and cooperative" and did not make any furtive movements or threats. As was his custom, the officer conducted a pat down search for officer safety. He conducted the pat down also because he smelled burnt marijuana. During the pat down, the officer felt a bulge in D's pocket, which he believed was marijuana but conceded he "couldn't be positive." The bulge was, in fact, marijuana. D was charged for and convicted of possessing marijuana.

The odor of burnt marijuana provides probable cause to search a car, see Hawkins v. State, 766 N.E.2d 749, 752 (Ind. Ct. App. 2002), but Court has never determined whether the smell of burnt marijuana alone may constitute probable cause to support an arrest and a search incident to an arrest. "Because the odor of burnt marijuana might linger in a vehicle for a period of time, that odor does not necessarily indicate illegal activity by a current occupant [of a car.]" However, besides smelling marijuana from the car, the officer also smelled marijuana on D's breath. Further, D was alone in the car. The officer had probable cause to arrest D for possession of marijuana and a legal basis to search his person. See Sebastian v. State, 726 N.E.2d 827 (Ind. Ct. App. 2002).

The pat-down search also did not violate D's rights under Article I, 11 of the Indiana Constitution. The "reasonableness of a search turns on a balance of: 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 citizens ordinary activities, and 3) the extent of law enforcement needs. Baniaga v. State, 891 N.E.2d [615], 618 [(Ind. Ct. App. 2008)]. The burden is on the State to show that under the totality of the circumstances, the intrusion was reasonable. Id. Hathaway v. State, 906 N.E.2d 941, 945 (Ind. Ct. App. 2009), *trans. denied*." Because there was sufficient evidence to establish probable cause for the arrest, the degree of intrusion weighs in the State's favor. The officer conducted only a pat-down search of D's clothes, so the intrusion was minimal. Powell v. State, 898 N.E.2d 328, 336 (Ind. Ct. App. 2008). Also, a "search incident to arrest serves important purposes, such as ensuring that the arrestee is unarmed, preventing the arrestee from bringing contraband into jail, and preventing the destruction of evidence." Andrews v. State, 588 N.E.2d 1298, 1303 (Ind. Ct. App. 1992). This factor also weighed in favor of the State. Because all factors support the officer's actions, D's rights under Article I, § 11 were not violated. Nonetheless, Court cautioned officers against routinely searching people stopped for traffic violations. It is "not inevitable that there will always be a valid basis for doing so." Held, judgment affirmed.

RELATED CASES: State v. Parrott, 69 N.E.3d 535 (Ind. Ct. App. 2017) (odor of raw marijuana in vehicle in which D was sole occupant gave police probable cause to search his person; see full review , this section); K.K., 40 N.E.3d 488 (Ind. Ct. App 2015) (disagreeing with Edmond, ruling that for probable cause, the driver being alone when the smell is detected and the officer detecting it on the individual's person or breath are mere factors to be considered in the analysis, not bright-line prerequisites

necessary for probable cause); Bell, 13 N.E.3d 543 (Ind. Ct. App 2014) (like the smell of burnt marijuana, the smell of raw marijuana on a person is sufficient to provide probable cause that the person possesses marijuana); Meek, 950 N.E.2d 816 (Ind. Ct. App, July 15, 2011) (odor of raw marijuana emanating from vehicle provided sufficient probable cause for search of car and its occupants; the absence of marijuana on D's passenger's person supported the subsequent and more thorough pat-down search of D's person that ultimately led to the discovery of the contraband).

TITLE: Grier v. State

INDEX NO: Z.7.b.

CITE: (06-21-07), Ind., 868 N.E.2d 443

SUBJECT: Choke hold - excessive force under Indiana Constitution

HOLDING: Tr. Ct. erred in denying D's motion to suppress evidence obtained by the application of physical force to his throat to prevent him from swallowing suspected bag of drugs. Ct. construes Ind. Const. art. 1, § 11 liberally in favor of protecting individuals from unreasonable intrusions on their privacy. State v. Gerschoffer, 763 N.E.2d 960 (Ind. 2002). In assessing reasonableness of a search or seizure under totality of circumstances, consideration must be given both to the interests of the individual affected & those of law enforcement. In particular Ct. considers: 1) degree of concern, suspicion, knowledge that a violation has occurred; 2) degree of intrusion the method of search or seizure imposes on citizen's ordinary activities, & 3) extent of law enforcement needs. Litchfield v. State, 824 N.E.2d 356 (Ind. 2005).

In Conwell v. State, 714 N.E.2d 764 (Ind. Ct. App 1999), Ct. noted the application of force to a person's throat invaded the person's bodily integrity, posed great health & safety risks to the detainee, & also was likely to incite violent resistance, thus presenting additional risks to safety of both detainee & investigating officer(s). Further, the need of police to preserve evidence & to protect the person from harmful ingestion is relatively insubstantial, largely because person can be taken into custody where police can allow drugs to pass through his system or be absorbed into bloodstream, permitting evidence to be taken in a less harmful & violent manner. Danger of gagging or choking may also be alleviated by common therapeutic maneuvers that serve to expel throat obstructions.

Above analysis & general rule from Conwell, although resulting from a claim under Fourth Amendment, is equally compelled under Section 11. The application of force to a detainee's throat to prevent swallowing of suspected contraband violates constitutional prohibitions against unreasonable search & seizure. Held, transfer granted, Ct. App.' opinion at 855 N.E.2d 1043 vacated, denial of motion to suppress reversed.

RELATED CASES: Gaines, 973 N.E.2d 1239 (Ind. Ct. App 2012) (distinguishing Conwell, Ct. held officer did not use unreasonable force by ordering D to spit out contraband under the threat of being tazed).

TITLE: Harris v. State

INDEX NO.: Z.7.b.

CITE: (1st Dist., 12-31-07), Ind. App., 878 N.E.2d 534

SUBJECT: Unlawful search of pill bottle incident to Terry stop

HOLDING: Although removal of pill bottle from D's pocket was permissible under Terry v. Ohio, 392 U.S. 1 (1968) for officer's safety, police officer's warrantless search inside the pill bottle went beyond the scope permitted by Terry. D was handcuffed, frisked, & all unknown items were taken from him. Once all unknown items were removed from D's pocket, officer's safety fears should have diminished, especially in light of fact D was cooperating with the officer. Officer never testified he thought the bottle might contain a weapon & could not have immediately identified the contents of the bottle as contraband by touch or sight because it was inside a blue pill bottle. Reasonable suspicion that gives authority to a Terry stop does not, without more, authorize the examination of the contents of items carried by the suspicious person. Berry v. State, 704 N.E.2d 462 (Ind. 1998). The opening of the pill bottle, & thus the testing of the substance inside, was impermissible & the evidence should have been suppressed.

Rejecting State's argument that methamphetamine was properly seized pursuant to a search incident to D's arrest, Court could not say a person of reasonable caution would believe D had committed a crime simply because he was hiding behind water heater & basement contained evidence suggesting drugs had been used there in the past. Held, conviction reversed.

RELATED CASES: Miller, 991 N.E.2d 1025 (Ind. Ct. App 2013) (paraphernalia found in D's backpack should have been suppressed because officer cited no articulable facts that supported probable cause); Clanton, 977 N.E. 2d 1018 (Ind. Ct. App 2012) (officer exceeded scope of a reasonable search under the Fourth Amendment at point when he saw that the pen cap was not a weapon, but removed the baggie and searched it; officer admitted he had to make a closer examination of the bag before he realized it contained drugs); Corwin, 962 N.E.2d 118 (Ind. Ct. App 2011) (when officer determined that pill bottle was not a weapon, he should not have opened the bottle; the illicit nature of the bottle was not immediately apparent from the fact that the part of the label with the prescription written on it was torn off).

TITLE: Hayes v. State

INDEX NO.: Z.7.b.

CITE: (1st Dist., 8-28-03), Ind. App., 794 N.E.2d 492

SUBJECT: Constitutionality of "knock & talk" investigation - validity of subsequent consent

HOLDING: A "knock & talk" investigation involves police officers knocking on door of house, identifying themselves as officers, asking to talk to occupant about criminal complaint, & eventually requesting permission to search house. Although knock & talk procedure does not per se violate Fourth Amendment, it "pushes the envelope" & can easily be misused. Ct. concluded that better practice in conducting a knock & talk investigation would be for officer to identify himself & advise occupant of his right to deny entry. Best practice would be for officer to obtain written consent prior to entering a residence. Here, evidence showed that detective asked D for permission to enter motel room to discuss complaints of drug activity, & D opened door & verbally assented before allowing detective & other officers inside. Ct. held that under totality of circumstances, no illegal seizure occurred as result of knock & talk investigation.

Ct. also concluded that D's consent to search motel room as result of knock & talk investigation was voluntary. In dealing with consent to search in knock & talk setting, Cts. have considered number of officers present, the age, maturity, intelligence, & experience of consenting party, officers' conduct & other circumstances under which consent was given, & duration, location, & time of encounter. Here, the four police officers' encounter with D & others lasted approximately fifteen minutes from entry to their arrest. Encounter was described as "casual," & detective asked D at least two or three times to be sure he didn't mind if officers looked around. Detective advised D that he did not have to let them search room. D was just three months' shy of graduating from high school with honors, had received his GED while incarcerated, & had three prior felony convictions. Despite number of officers & small confines of room, & fact that detective told another occupant to return to main room from bathroom, Ct. concluded that D's consent to search room was voluntary. Held, judgment affirmed.

RELATED CASES: Brown, 913 N.E.2d 1253 (Ind. Ct. App 2009) (knock & talk investigation upheld where four officers arrived at D's home at 2:30 a.m. after receiving an uncorroborated statement from a "concerned citizen" that an arrested suspect whom officers were investigating obtained methamphetamine from D); Redden, App., 850 N.E.2d 451 (no 4th Amendment or Art. 1, § 11 violation occurred as result of knock & talk investigation).

TITLE: Howard v. State

INDEX NO.: Z.7.b.

CITE: (1st Dist.; 03-19-07), Ind. App., 862 N.E.2d 1208

SUBJECT: Occupants of car- no reasonable suspicion to order driver from car & pat down

HOLDING: Tr. Ct. erred in denying D's motion to suppress evidence found as a fruit of an illegal pat down. The purpose of a Terry pat down search is not to discover evidence of a crime, but rather to allow an officer to pursue his investigation without fear of violence. Here, the police were called to a high crime area on a report involving a man named Baker. However, the police stopped a vehicle driven by Howard, who one of the officers knew from prior arrests. As they approached the vehicle, Howard was fidgeting & failed to comply with the officer's initial request to show his hands. Howard did not comply with the officer's request to step out of the car until the officer opened the driver-side door & ordered him to step out. However, neither officer testified that any of Howard's actions caused them concern for their safety. In fact, one officer testified that he had previously told Howard that he was going to search him every time he saw him. Thus, these circumstances did not warrant a pat-down search incident to the Terry stop, assuming without deciding, that the initial stop was proper. Held, judgment reversed.

RELATED CASES: Mitchell, 745 N.E.2d 775 (test, under Ind. Const., for determining whether a police officer was justified in ordering driver out of car during traffic stop is whether totality of circumstances supports a reasonable suspicion justifying requiring the driver exit the car and submit to a pat-down).

TITLE: Hulse v. State
INDEX NO.: Z.7.b.
CITE: 55 Mont. St. Rep. 415, 961 P.2d 75 (Mont. 1998)
SUBJECT: Field Sobriety Test Like Terry Search
HOLDING: Montana S. Ct. finds that field sobriety tests are searches under both state and federal constitutions but may be justified by reasonable suspicion rather than probable cause. The tests involve more than mere observance of a subject's physical behavior. They are akin to Terry searches, and as such must be supported by particularized suspicion, but need not be supported by probable cause.

TITLE: In re M.D.B
INDEX NO.: Z.7.b.
CITE: 601 N.W.2d 214 (Minn. Ct. App. 1999)
SUBJECT: Concern That Suspect Will Flee Does Not Alone Justify Frisk During Traffic Stop
HOLDING: The Minnesota Court of Appeals has held that an officer who does not have reasonable suspicion for a Terry frisk may not rely on the possibility that a suspect will flee to justify a frisk for weapons during a traffic stop.

TITLE: Jackson v. State

INDEX NO.: Z.7.b.

CITE: (3rd Dist., 9-26-73), Ind. App., 301 N.E.2d 370

SUBJECT: Investigatory search of persons

HOLDING: Officer who has reason to believe he is dealing with armed and presently dangerous individual may make reasonable search for weapons, although officer may lack probable cause to arrest. Terry v. Ohio, 88 S. Ct. 1868 (1968) However, such search must be based upon more than mere hunch or suspicion. Officer must be able to point to definite facts from which he could reasonably infer individual confronted is armed and dangerous. Here, absent corroboration of tip by unknown source that accused was carrying gun, officers were not justified in seizure of D, and pistol sticking out of D's pocket at time of seizure was not admissible. Held, judgment reversed.

RELATED CASES: Tribble, 169 N.E.3d 430 (Ind. Ct. App. 2021) (officer could rely on criminal history to determine if D was "armed and dangerous").

TITLE: Johnson v. State

INDEX NO.: Z.7.b.

CITE: (6/23/2015), 38 N.E.3d 658 (Ind. Ct. App 2015)

SUBJECT: Pat down justified by D's refusal to remove hands from pockets after failing to produce ID

HOLDING: Tr. Ct. did not abuse its discretion in admitting evidence of handgun obtained following pat down of D. And off-duty police officer detained D and his stumbling, intoxicated friend at the Greyhound bus station at 2:00 a.m. because he suspected them of violating policies prohibiting loitering and intoxication. D indicated he was not traveling by Greyhound and placed his hand in his pocket after informing officer that he did not have his identification. D refused officer's multiple commands to remove his hand from his pocket. Pat down search was justified by officer's concern for safety "because of the possibility that [D] could have a weapon on him and that is how several officers are killed in this country every year." Although officer agreed during cross examination that he did not have any particular reason to believe that D was armed, a reasonably prudent man would be warranted in his belief that his safety was potentially in danger. Search did not violate the Fourth Amendment or Article 1, Section 11 of Indiana Constitution. Held, possession of firearm by SVF affirmed; Crone, J., dissenting, believes that Majority did not adhere to the standard for reviewing constitutionality of pat down and that D's act of putting his hand in his pants pocket and refusing to remove it did not create reasonable suspicion that he was armed and dangerous.

RELATED CASES: Johnson, 157 N.E.3d 1199 (Ind. 2020) (evidence of drug involvement, and whether the suspect and officer are in a confined space, are both part of the totality of the circumstances contributing to an officer's reasonable belief that a subject is armed and dangerous as to permit a Terry frisk); Durstock, 113 N.E.3d 1272 (Ind. Ct. App 2018) (police were justified in conducting pat-down search where officers were aware a loaded handgun had been found in a backpack in a restroom D had recently occupied; backpack contained men's clothing, and the other resident of the apartment was female; also, D appeared to be "nervous and shaking and sweating"); Johnson, 157 N.E.3d 1199 (Ind. 2020) (evidence of drug involvement, and whether the suspect and officer are in a confined space, are both part of the totality of the circumstances contributing to an officer's reasonable belief that a subject is armed and dangerous as to permit a Terry frisk).

TITLE: Kelly v. State
INDEX NO.: Z.7.b.
CITE: (11/21/2013), 997 N.E.2d 1045 (Ind. 2013)
SUBJECT: D's encounter with police constituted arrest lacking probable cause
HOLDING: Police lacked probable cause to support warrantless seizure and search of D and her vehicle. Officers responded to a tip from a concerned citizen who set up a sting operation to catch an alleged drug dealer. D rode with her cousin (Lamont Day) to the home of concerned citizen (Goodwin). Goodwin had never been a confidential informant and she did not provide the man's name or physical description of him or his car, but that man turned out to be Day. When the two arrived at Goodwin's home, police ordered Day and D out of the car at gunpoint, handcuffed her, and questioned her about whether she knew about the cocaine in the car.

Court held that the scope of the encounter was more than a Terry stop - it was an arrest requiring probable cause. Police never corroborated the claim that Day had cocaine and he intended to sell it. Moreover, Goodwin never told police anything about D. Officers' reliance on an untested informant's uncorroborated report about a man coming to sell cocaine was not sufficient. Susceptibility to prosecution for false reporting or participation in criminal enterprise is a relevant factor in the analysis but not enough on its own to infuse Goodwin's statements with reliability sufficient to support a finding of probable cause. Kellems v. State, 842 N.E.2d 352 (Ind. 2006), modified on *reh'g*, 849 N.E.2d 1110 (Ind. 2006). Held, transfer granted, Court of Appeals' memorandum opinion vacated, reversed and remanded for further proceedings.

TITLE: L.A.F. v. State

INDEX NO.: Z.7.b.

CITE: (2nd Dist., 8-5-98), Ind. App., 698 N.E.2d 355

SUBJECT: Unconstitutional warrantless search - general assertion of "officer safety"

HOLDING: Tr. Ct. erred in admitting into evidence gun which was obtained as result of unconstitutional search. While patrolling housing complex, police officers noticed individual standing next to car & approached him to check for possible curfew violation. While they questioned that individual, officers noticed D, who was sleeping in back seat of car. D exited car at officers' request, & pat-down search revealed handgun in D's pocket. During investigative detention, police officer may conduct limited frisk of individual where officer has reason to believe that his safety or that of others is in danger. Terry v. Ohio, 392 U.S. 1, 88 S. Ct. 1868, 20 L.Ed.2d 889 (1968). Although initial detention of D to check for curfew violation may have been constitutionally appropriate, officer failed to identify any specific & articulable facts which justified additional frisk that resulted in gun being discovered. Officer did testify that pat-down was conducted for "officer safety," but this general assertion does not articulate specific facts which caused officers to fear for their safety. Even if officers were aware of additional facts & circumstances which caused them to believe D was armed & dangerous, State failed to present them. Held, delinquency adjudication reversed.

RELATED CASES: Hill, 956 N.E.2d 174 (Ind. Ct. App 2011) (where D complied with officer's order to take his hand out of his pocket, fact that D was looking around as if he was going to flee and officer had a general concern about people having weapons did not justify a pat-down); Harper, 922 N.E.2d 75 (Ind. Ct. App 2010) (officers did not have legitimate safety concerns to perform the pat down after the passenger and driver had complied with their orders; however, search was constitutional because both the passenger and driver consented); A.M., App., 891 N.E.2d 146 (distinguishing L.A.F., Ct. noted that officers had received reports of gunshots fired in the area they were patrolling; moreover, officer knew that D was a juvenile walking several miles from home well after curfew, that D previously had been shot in the leg and frequented the area with other individuals the officer had arrested); Mitchell, 745 N.E.2d 775 (neither police officer's routine traffic stop of D for stop sign violation, nor D's nervous demeanor after being stopped, provided any basis justifying officer's pat down search of D); Jett, App., 716 N.E.2d 69 (suspect exiting car immediately upon being stopped by officer did not justify Terry frisk because suspect then complied with officer's order to get back in car); Banks., App., 681 N.E.2d 235 (officer's suspicion that person is drinking underage is insufficient to justify Terry frisk).

TITLE: Malone v. State

INDEX NO.: Z.7.b.

CITE: (2nd Dist., 03-20-08), Ind. App., 882 N.E.2d 784

SUBJECT: Seizure of gun from D on porch of his home not justified under officer safety exception

HOLDING: Police officers may not seize a handgun from an individual standing on front porch of his home without a search warrant and in the absence of an articulable basis for concerns of officer safety or reasonable belief that a crime was afoot. Here, officers responded to a report of someone possessing a shotgun on front porch of house, which is not a crime. They did not inquire about presence of weapons or pat down anyone present. Neither D nor anyone else present threaten police officers either verbally or physically. In fact, officer testified that D was respectful and polite. It was only when D asked police officers to leave and began to walk back into his house that officer saw what he believed indicated presence of gun and seized it from D. Although State claimed on appeal that the seizure of the weapon was done in interest of officer safety, none of the officers testified to any such concerns prior to seizing gun. Further, at time they seized gun, officers did not have information leading them to believe D had been convicted of any crime, which could render him a serious violent felon, or his possession of a weapon illegal. Held, denial of motion to suppress evidence reversed.

TITLE: Matter of C.D.T.

INDEX NO.: Z.7.b.

CITE: (4th Dist., 7-26-95), Ind. App., 653 N.E.2d 1041

SUBJECT: Warrantless seizure - plain touch exception inapplicable

HOLDING: Police officer's seizure & removal of crumbled plastic bag from pants pocket of juvenile suspect was not justified under any exception to Fourth Amendment. Initial investigatory stop & protective "pat down" frisk of D's outer garments for weapons was reasonable under Terry v. Ohio (1968), 392 U.S. 1. However, after ascertaining that D possessed no weapons, officer's continued exploration of pocket exceeded scope of lawful Terry search. Police officers may seize non-threatening contraband detected during pat down search so long as search stays within confines of valid Terry search. Minnesota v. Dickerson (1983), 113 S. Ct. 2130. Here, "plain touch" doctrine was inapplicable, & officer lacked probable cause for full custodial arrest & search incident thereto, because incriminating character of plastic bag & contents was not immediately apparent at time, he patted bag & felt crumbled plastic. Fact that bag contained contraband was not known until after seizure & further examination of inner bags' contents. Held, reversed & remanded to vacate delinquency adjudication.

RELATED CASES: Willis, 907 N.E.2d 541 (Ind. Ct. App 2009) (because officer was unable to confirm by pat down alone the identity of a hard object in D's front pant pocket because of the placement of a soft object on top of the hard object, the officer was justified in removing both the soft and hard object from D's pants); Fentress, App., 863 N.E.2d 420 (opening of foil ball found during pat down search was justified only because probable cause to arrest arose between seizure of foil ball & opening of foil); Granados, App., 749 N.E.2d 1210 (police officer's removal of folded five-dollar bill from D's sock & subsequent search of folded bill, exceeded protective scope of Terry search); Jackson, App., 669 N.E.2d 744 (although officer lawfully removed partially transparent container from D's pocket, D's 4th Amendment rights were violated when officer opened & seized contents of container; at point officer removed container, he determined that it did not contain weapon & identity of contents was not immediately apparent); D.D., App., 668 N.E.2d 1250 (State failed to prove that identity of cocaine in D's pocket was immediately apparent to officer, or that he had probable cause; officer's general declaration that bulge felt like "contraband" was insufficient to satisfy plain feel doctrine); Drake, App., 655 N.E.2d 574 (seizure of cocaine was completed during course of weapons search within scope of Terry).

TITLE: N.W. v. State

INDEX NO.: Z.7.b.

CITE: (2nd Dist., 09-14-05), Ind. App., 834 N.E.2d 159

SUBJECT: Pat-down search - investigation of "inherently dangerous" crime

HOLDING: Police officer's pat-down search of juvenile D was reasonable thus Tr. Ct. did not abuse its discretion by admitting into evidence marijuana found during search of D. Officer stopped D because he wanted to see if he was possibly one of the two burglary suspects & patted him down because he was concerned for his safety. Officer was alone when he came upon two individuals at 1:30 a.m. that matched description of suspects who had recently fled from scene of burglary. Given inherent danger associated with burglary, it was reasonable that officer may have feared that these burglary suspects might pose a danger to him or others. In so holding, Ct. agreed with State v. Ochoa, 93 P.3d 1286 (N.M. 2004), & other cases which support proposition that the right to frisk is automatic when a suspect has been stopped on the suspicion of committing or preparing to commit an "inherently dangerous" crime such as burglary. Held, judgment affirmed.

RELATED CASES: Holbert, 996 N.E.2d 396 (Ind. Ct. App 2013) (where it was undisputed that police officers stopped D based on reasonable suspicion that he had committed a burglary, officers' right to conduct a protective search by briefly placing D in handcuffs and frisking him was automatic).

TITLE: Negash v. State

INDEX NO.: Z.7.b.

CITE: (12/11/2018), 113 N.E.3d 1281 (Ind. Ct. App 2018)

SUBJECT: Encounter and pat-down search upheld

HOLDING: Police officer's initial approach toward vehicle parked behind bar, request for D to exit vehicle and subsequent pat-down did not violate Fourth Amendment or Article 1, Section 11 of the Indiana Constitution. While investigating a report of shots fired with an alleged suspect still at large, officer approached D seated in vehicle along with two other occupants. Front-seat passenger acted suspiciously and made furtive gestures, while back-seat passenger pointed to D and made "the outline [of] a gun with his index finger and thumb." After ordering D to exit the vehicle, officer observed a "huge bulge" protruding from his right pocket. Officer then patted down the outer layer of D's clothing and felt and saw a baggie of synthetic marijuana in D's pocket. Pat-down search was reasonable because officer had reason to believe he was dealing with an armed and dangerous individual. Seizure of the baggie was proper pursuant to the plain view doctrine. Thus, Tr. Ct. did not abuse its discretion in admitting into evidence the synthetic marijuana discovered in D's pocket.

Court also held that although D did not have exclusive possession of the vehicle, he had the knowledge of the handgun's presence in the glovebox and the ability to control it so as to support his conviction for carrying a handgun without a license. Held, judgment affirmed in part and remanded with instructions to hold an indigency hearing upon completion of D's sentence.

RELATED CASES: Miller, 201 N.E.3d 683 (Ind. Ct. App. 2023) (detective had objectively reasonable basis to believe that D may have been armed and potentially posed a threat to officer or public safety including that D backed away from uniformed officer, put hands in his pockets, and was congregating after dark in a high-crime area).

TITLE: Peel v. State

INDEX NO.: Z.7.b.

CITE: (08/15/2019), 130 N.E.3d 1195 (Ind. Ct. App 2019)

SUBJECT: Drugs found in sock exceeded scope of lawful Terry search

HOLDING: Warrantless search of a sock that fell from Defendant's pants exceeded the limits of a Terry search in violation of the Fourth Amendment. During traffic stop for turn signal violation, officer testified that Defendant exhibited behaviors that indicated he might be armed, including patting his pockets and raising his entire body to look in the area around the vehicle's center armrest. During a subsequent pat-down search, officer felt a non-anatomical object in Defendant's waistband which he suspected was "contraband" and "possibly a weapon." A sock then rolled out of the leg of Defendant's pants, and inside the sock officers found baggies containing methamphetamine marijuana and pills. Court held that the State did not justify the search of the sock on the basis of the plain feel doctrine, noting that "the testimony of possibility is insufficient." Further, when the sock rolled out of Defendant's pants, he was handcuffed and was no longer in possession or control of the sock, thus he could not have abandoned it. Rather than pushing the sock aside and obtaining a warrant, officer conducted a general search, "possibly for a weapon or perhaps for other contraband. In doing so, he broadened the scope of the Terry search beyond its protective purpose." Thus, evidence obtained in the search should not have been admitted at trial. Held, judgment reversed.

TITLE: Reinhart v. State
INDEX NO.: Z.7.b.
CITE: (07-09-10), 930 N.E.2d 42 (Ind. Ct. App 2010)
SUBJECT: Excessive force converted Terry stop into arrest requiring probable cause
HOLDING: Tr. Ct. abused its discretion by admitting evidence of marijuana and D's intoxication, because even though officers may take reasonable steps during a Terry stop to ensure safety, drawing a gun on D, ordering him to kneel with hands behind his head and then lie flat on his stomach were excessive and not the least intrusive means to investigate a traffic stop. Wilson v. State, 745 N.E.2d 789, 792 (Ind. 2001). Initial stop was legitimate because D swerved across center line, but excessive force converted Terry stop into an arrest lacking probable cause. See Illinois v. Caballes, 543 U.S. 405, 407 (2005) (seizure lawful at its inception can violate Fourth Amendment if execution unreasonably infringes Constitutional interests); Taylor v. State, 464 N.E.2d 1333, 1335 (Ind. Ct. App. 1984) (holding D at gunpoint is an arrest where officer has no reason to believe D is armed); and Payne v. State, 854 N.E.2d 1199, 1205-05 (Ind. Ct. App. 2006) (under totality of circumstances, handcuffing D makes investigatory stop an arrest).

Here, D drove into driveway where officer had parked his car. D yelled at officer, who told D to back up his vehicle. D pulled back on road. Officer stopped D, drew his gun, and ordered him to ground. Second officer on scene conducted pat-down search, revealing glass marijuana pipe, and noticed that D smelled of alcohol, had bloodshot eyes, and slurred speech. First officer conducted another pat-down search, which uncovered marijuana baggie. Held, D's convictions for class D felony operating a vehicle while intoxicated and class A misdemeanor possession of marijuana reversed.

RELATED CASES: Wilson, 2018 Ind. App. LEXIS 108 (Ind. Ct. App 2018) (because police officers lacked probable cause to arrest D prior to their search of his vehicle and seizure of drugs, admission of evidence obtained from the search was in error).

TITLE: Rybolt v. State

INDEX NO.: Z.7.b.

CITE: (4th Dist., 6-28-02), Ind. App., 770 N.E.2d 935

SUBJECT: Unreasonable, invalid pat-down search

HOLDING: Tr. Ct. erred in denying D's motion to suppress evidence of marijuana found as result of unreasonable pat-down search conducted during traffic stop. D's vehicle was sitting on crosswalk of intersection, & D was unconscious in driver's seat. Police officer roused D by tapping repeatedly on window of vehicle. Upon attaining D's license, officer believed that D was under influence of narcotics. Officer then asked D to step out of vehicle & immediately conducted pat-down search. At suppression hearing, officer's reasons for justifying pat-down search included: 1) that he was sole officer initially present at traffic stop & 2) that he believes that individuals who use narcotics also carry weapons. Officer also admitted that he almost always conducts pat-down search when he suspects individual has committed drug offense.

Ct. agreed with D that pat-down search was unlawful under Fourth Amendment, because reasonable person in officer's circumstances would not have reasonable & particularized suspicion that D was armed & dangerous. Officer's authority to perform pat-down search is dependent upon nature & extent of his particularized concern for his safety. Williams, App., 754 N.E.2d 584. D made no furtive movements & was completely cooperative. Officer did not testify that D's actions made him nervous or caused him to fear for his safety. Based upon his suspicion that D was under influence of narcotics, officer could have conducted field sobriety tests on D, & had D failed those tests, officer would have had probable cause to arrest & search him. Under these facts, officer's pat-down search of D was unreasonable & marijuana found in his pocket as result of that search should have been suppressed. Held, judgment reversed; Barnes, J., dissenting, believed that marijuana was lawfully seized during search incident to arrest.

RELATED CASES: Ammons, App., 770 N.E.2d 927 (prior to consensual search of D's vehicle, officer performed an unjustified pat-down of D).

TITLE: Sibron v. New York

INDEX NO.: Z.7.b.

CITE: 92 U.S. 40, 88 S. Ct. 1889 (1968)

SUBJECT: Investigatory stops - Search of persons

HOLDING: Mere fact that officer, who had no information concerning D, saw D talking to known drug addicts over 8-hour period without knowing conversations' contents or seeing anything pass between D & addicts did not give police probable cause to arrest D. Therefore, warrantless search by which police officer discovered heroin on D's person could not be justified as incident to lawful arrest. Officer's warrantless search could not be justified as self-protective weapons search. Officer placed hand in D's pocket to find narcotics, not acting in self-defense upon fear D was going for weapon. Even if officer had adequate grounds to search D for weapons, warrantless search, which resulted in discovery of heroin on D's person, was so clearly unrelated to justification of protection of officer by disarming potentially dangerous man that heroin found was inadmissible. Officer made no attempt at limited exploration for arms, but merely thrust his hand into D's pocket to find the drugs he was looking for. Held, D's conviction reversed, other D's conviction affirmed. White, Fortas, Harlan, Douglas, JJ. concurred. Black, J., concurred in part & dissented in part.

TITLE: State v. Barnes

INDEX NO.: Z.7.b.

CITE: 159 P.3d 589 (Az. Ct. App. 2007)

SUBJECT: Rectum search violated Fourth Amendment

HOLDING: The Arizona Court of Appeals held a police officer violated the Fourth Amendment when she seized a plastic bag, she saw protruding from D's rectum during a strip search incident to arrest. Court said that the touching of the bag turned the lawful strip search into a body cavity search, which requires a warrant. During the strip search, officer asked D to bend over and spread her buttocks. Officer saw something and when D refused to remove the object herself, the officer grabbed it and it fell out. Court said that the instant the officer touched the bag the search escalated into a body cavity search, which the U.S. Supreme Court has stated generally requires a warrant. Court rejected State's argument that there was no body cavity search because the officer did not touch even the outside of D's body when she touched the bag, noting the line is crossed "once an officer's actions have the effect of exerting force within an arrestee's body." Court also stated that removal of the bag did not qualify as a plain view seizure, because the act of grabbing the plastic to remove unexposed portions of the bag from D's rectum constituted a separate intrusion from the observance of the bag. A dissent was entered to the majority opinion.

TITLE: State v. Gay

INDEX NO.: Z.7.b.

CITE: 748 N.W.2d 408 (N.D. 2008)

SUBJECT: Failure to remove passenger's handcuffs after frisk violated Fourth Amendment

HOLDING: North Dakota Supreme Court held police officers who were initially justified in handcuffing a passenger to protect their safety during a vehicle stop violated the passenger's Fourth Amendment rights by failing to remove the cuffs after they frisked him and determined that he was not a threat. D was a passenger in a vehicle stopped by police after they received a tip that the driver, who was on probation, was in route to a drug deal. They put both occupants in handcuffs, frisked them for weapons, and advised them of their rights. D remained in handcuffs for about 15 minutes while the officer's dealt with the probationer. An officer then returned to D, readvised him of his interrogation rights, and elicited statements D sought to suppress. Majority acknowledged that the Fourth Amendment allows police to place a motorist in handcuffs during a vehicle stop when they have cause to be concerned about their safety. Majority emphasized, however, that one of the findings made by the Tr. Ct. was that officers kept D in cuffs after they had frisked him and after their concerns about their safety had dissipated. Court also held that the interrogation warnings D received were insufficient to purge his statements of the taint of the unconstitutional use of the handcuffs. Two justices dissented on basis that simply because frisk did not turn up weapon did not mean D no longer posed a threat to the officers.

TITLE: State v. Parrott
INDEX NO.: Z.7.b.
CITE: (2/6/2017), 69 N.E.3d 535 (Ind. Ct. App 2017)
SUBJECT: Odor of raw marijuana in vehicle gave police probable cause to search Defendant's person

HOLDING: Warrantless search of Defendant's person based on strong odor of raw marijuana emanating from his vehicle did not violate Fourth Amendment or Article 1, Section 11 of the Indiana Constitution. A police officer pulled Defendant over for running a stop sign. The officer detected the odor of raw marijuana coming from the vehicle but did not smell marijuana on Defendant after he exited the vehicle. The officer handcuffed Defendant (who was sole occupant of the vehicle), searched him, and discovered crack cocaine, pills and marijuana. Officers also searched vehicle but did not find any contraband.

Court reversed trial court's grant of Defendant's motion to suppress because the odor of raw marijuana in the vehicle gave probable cause to arrest Defendant and search his person. The smell of raw marijuana "makes it more likely that [Defendant] was presently in possession of marijuana. Butler v. United States, 102 A.2d 736, 742 (D.C. 2014). Defendant cited no authority for his suggestion that the officer was required to search the vehicle before he could search Defendant's person. Held, suppression order reversed and remanded.

RELATED CASES: I.G., 177 N.E.3d 75 (Ind. Ct. App. 2021) (police did not have probable cause to arrest D for possession of marijuana based solely on the odor of raw and burnt marijuana in a car with three occupants).

TITLE: State v. Setterstrom
INDEX NO.: Z.7.b.
CITE: 163 Wash. 621, 183 P.3d 1075 (Wash. 2008)
SUBJECT: Officer improperly frisked man reasonably believed to be high on meth
HOLDING: Washington Supreme Court held a police officer violated the Fourth Amendment and its state constitutional counterpart by conducting a protective frisk of a man the officer reasonably believed was high on methamphetamine. Officers responded to a complaint concerning two young men in a social services lobby, one of whom appeared to be under the influence. When officers arrived, D was sitting on the floor filling out a benefits form. The officer looked at the name on the form and asked D whether that was him, to which D initially responded yes, and then said that he was filling the form out for a friend. The officer stated that based on D's escalating, fidgety behavior and the officer's past experience with drug users led the officer to believe D was under the influence of methamphetamine. He also testified that, as a result of his frequent encounters with tweakers, he believes they are erratic and can be violent without notice. The officer frisked D for weapons, and the frisk led to the officer's discovery of meth in D's pocket and backpack. Court held that the situation faced by the officer - a man under the influence of meth who lied about his name - did not support a reasonable belief that D posed a threat justifying a frisk. Court stressed that D did not place his hands in his pockets, stand up, or otherwise exhibit "threatening gestures or words." It noted that being under the influence of meth is not a crime, that the officer had no other grounds for detaining D, and that the encounter took place in a public lobby of a government service building rather than "in a dark alley in a crime-ridden neighborhood." "It seems likely that some people filling out benefits forms exhibit erratic behavior, making employment difficult and benefits applicable."

TITLE: State v. Smith

INDEX NO.: Z.7.b.

CITE: 345 Md. 460; 693 A.2d 749 (Md. Ct. App. 1997)

SUBJECT: Terry Stop -- Double-Checking Negative Pat down by Lifting Suspect's Shirt Exceeds Scope

HOLDING: Police officer exceeded bounds of lawful Terry frisk when, after detecting no weapon-shaped object during pat down, he performed "double-check" by lifting suspect's shirt. Officer was responding to broadcast reporting that individuals were selling drugs and discharging weapons. As officer arrived, he saw suspect and other individuals dispersing, and reported that he saw suspect tuck something in his waistband. Measures which are more intrusive than pat down may be justified by facts of particular case, but such justification did not exist here. Pat down was sufficient to determine whether suspect had weapon in waistband. Proper scope of Terry frisk is to discover weapons readily available to suspect, not to ferret out carefully concealed items that could be accessed only with some difficulty. Terry does not give police right to make "absolutely sure" that suspect does not have weapon.

TITLE: State v. Webber
INDEX NO.: Z.7.b.
CITE: 141 N.H. 817; 694 A.2d 970 (N.H. 1997)
SUBJECT: "Identification Search" Beyond Scope of Terry Stop; Not Exception to Warrant Requirement
HOLDING: Search of wallet, found during valid Terry pat-down, for purpose of finding identification for suspect, was beyond scope of Terry stop and was unreasonable under New Hampshire Constitution. State argued that stop fit under "identification search" exception to warrant requirement, but Court rejects such an exception under state constitution's prohibition against unreasonable searches.

TITLE: State v. Whitney
INDEX NO.: Z.7.b.
CITE: (4th Dist., 06-30-08), Ind. App., 889 N.E.2d 823
SUBJECT: Investigatory stops - offer of PBT requires reasonable suspicion
HOLDING: Tr. Ct. erred in granting D's motion to suppress. Reviewing the implied consent law and related statutes, Court determined that the Legislature intended to differentiate between chemical tests and portable breath tests ("PBTs"). PBTs provide a simple method for a threshold determination whether a person has consumed alcohol and are not admissible at trial; whereas chemical tests require probable cause and are admissible. Although Court finds no reason to require probable cause to offer a PBT, PBTs may not be administered randomly. Thus, a police officer needs reasonable suspicion to offer a PBT to determine whether a driver is intoxicated.

Here, an officer stopped D at 12:30 a.m. for traveling fifteen miles per hour over the speed limit. When D spoke, the officer "thought he could smell an odor of an alcoholic beverage coming from him" but was not positive the smell was alcohol. Thus, the officer administered a PBT prior to offering field sobriety tests. The PBT indicated D had a breath alcohol concentration of .13%. Although an officer's uncertain belief that he smells alcohol may not constitute probable cause, it is reasonable suspicion to offer a PBT. Held, judgment reversed.

TITLE: State v. Varnado
INDEX NO.: Z.7.b.
CITE: 582 N.W.2d 886 (Minn. 1998)
SUBJECT: Ordering Stopped Driver to Sit in Police Car -- MN Rejects Blanket Authorization
HOLDING: Police officers conducting traffic stops may not routinely order lawfully detained drivers to sit in police car, then frisk them before they get inside. MN S. Ct. finds that, in order to justify both the move and the frisk, officers must have some articulable basis for believing that particular motorist poses threat.

TITLE: Stone v. State

INDEX NO.: Z.7.b.

CITE: (2nd Dist., 10-22-96), Ind. App., 671 N.E.2d 499

SUBJECT: Scope of pat down search - removal of shoes

HOLDING: It is not unreasonable for reasonable & prudent person to suspect weapon could be hidden in untied high top athletic shoe. Requesting removal of shoe is not overly intrusive in situation where police officer sincerely fears hidden weapon might be concealed. Here, during valid Terry stop & pat down search of person suspected of drug dealing, officer found loaded pistol, cocaine & marijuana. This strengthened officer's suspicion that he had interrupted drug transaction, & he was concerned that there may be other weapons involved. At officer's request, D removed his untied high top athletic shoes, where officer observed & seized marijuana. Under these circumstances, Tr. Ct. had discretion to determine that officer checked D's shoes for safety purposes & had reason to be concerned about hidden weapons after finding loaded pistol on the other suspect. Held, denial of motion to suppress affirmed; Darden, J., dissenting.

RELATED CASES: Granados, App., 749 N.E.2d 1210 (police officer's removal of folded five-dollar bill from D's sock & subsequent search of folded bill, exceeded protective scope of Terry search).

TITLE: Swanson v. State

INDEX NO.: Z.7.b.

CITE: (3rd Dist.; 6-13-00), Ind. App., 730 N.E.2d 205

SUBJECT: Pat down search - not justified by "high drug area"

HOLDING: Neither officer's standard practice of patting down everyone he stops nor fact that D was in "high drug area" with his hands in his pockets justified pat down of D. Although Ct. acknowledges safety concerns of officers who must patrol areas where drugs are pervasive, individuals who enter these "high drug areas" do not lose their Fourth Amendment protections; there must be something about individual or situation in these areas to cause officer to reasonably believe that certain individual is carrying weapon. Standard practice is not permissible reason to conduct pat down. Pease, App., 531 N.E.2d 1207. Here, officer saw D & others get out of car & immediately put alcoholic beverages on top of car. Officer approached D in order to investigate possible alcohol violations. Because D had his hands in his pockets, D was in "high drug area" & officer routinely pats down individuals that he stops, officer told D to take his hands out of his pockets so he could perform pat down. Upon taking his hands out of his pockets, crack cocaine fell to ground. Because officer did not have articulable facts to support reasonable suspicion that D had weapon, pat down was illegal. Thus, regardless of whether D abandoned crack cocaine by it falling out of his pocket, abandonment was result of illegal pat down, & cocaine must be suppressed. Held, judgment reversed.

NOTE: Ct. also found that D did not waive issue by failing to object at trial. Tr. Ct. made it clear in its denial of motion to suppress that D preserved issue for appeal.

TITLE: Thomas v. State

INDEX NO.: Z.7.b.

CITE: (12/21/2016), 65 N.E.3d 1096 (Ind. Ct. App 2017)

SUBJECT: Dog alert did not give probable cause to detain and transport D to police station

HOLDING: Tr. Ct. did not abuse its discretion in admitting heroin recovered from D after a warrantless arrest following a traffic stop. Police stopped the van D was riding in after observing a lane change without signaling. Officers had been watching the vehicle based on a reliable confidential informant's tip. Once the traffic stop was initiated, both D and driver told officers they were visiting family, but neither man could identify where in Indiana their respective family members lived. Officers ran a trained canine simultaneous to the lawful stop, which initially resulted in an alert to the presence of narcotics, but the dog no longer detected the narcotics after the suspects were removed from the vehicle. Police then obtained permission to search the vehicle but did not find contraband in the van. After the driver was arrested for having a suspended license, he consented to a strip search but D declined. Police took him to the station and placed him in an interview room. When officers saw D remove something from his jacket and place it in his mouth, they forced him to open his mouth and discovered a plastic baggie containing heroin.

Court held that dog's alert on the van did not provide probable cause for a fishing expedition into the occupants' pockets. Probable cause must be particularized to the premises, vehicle or individual to be searched or seized. Ybarra v. Illinois, 444 U.S. 85, 90-91 (1979). Detaining Defendant and transporting him to the police station for strip search after finding no narcotics in the vehicle was unreasonable and the evidence obtained as a result must be excluded as fruit of the poisonous tree. Held, Class A felony dealing in narcotic drug conviction reversed.

TITLE: Townsend v. State

INDEX NO.: Z.7.b.

CITE: (3/5/84), Ind., 460 N.E.2d 139

SUBJECT: Investigatory search of person

HOLDING: Tr. Ct. did not err in denying motion to suppress evidence seized prior to & following D's arrest. Here, police went to D's home to question him concerning armed robbery. When D opened door, police immediately removed knife attached to D's belt. Police subsequently arrested D & searched his person & found money. Warrant requirement has exceptions. Police may search a person prior to questioning to remove weapons which could be used against officer or to escape. Chimel v. CA, (1969), 395 U.S. 752, 89 S. Ct. 2034, 23 L.Ed.2d 685; Elliott, App., 435 N.E.2d 302. Police may search incident to lawful arrest. Such search must be substantially contemporaneous with arrest & confined to immediate vicinity of arrest. Murrell, 421 N.E.2d 638. Ct. finds police had probable cause to question D & arrest was lawful. Held, no error.

TITLE: Upshur v. U.S.
INDEX NO.: Z.7.b.
CITE: 716 A.2d 981 (D.C. Cir. 1998)
SUBJECT: Terry Stop -- Forcing Suspect to Open Fist
HOLDING: Officers exceeded scope of investigative detention and protective search by forcing suspect to open his fist, which officers testified they believed contained drugs. Under Terry, officers must have reasonable basis for believing that suspect is armed and dangerous before conducting protective search. Court will not impute such belief where officers' testimony indicates otherwise.

TITLE: U.S. v. Burton

INDEX NO.: Z.7.b.

CITE: 228 F.3d 524 (4th Cir. 2000)

SUBJECT: Officer Cannot Conduct Protective Frisk During Suspicionless Encounter

HOLDING: An officer who reasonably fears for his safety during a suspicionless police-citizen encounter may not conduct a protective search. Although Florida v. Bostick, 501 U.S. 429 (1991) allows officers to approach individuals in public and ask questions even absent reasonable suspicion, individual may refuse to answer questions, and cannot be subjected to protective frisk because officer fears for his safety. Officer must have reasonable suspicion of criminal activity before he may conduct a protective frisk.

TITLE: U.S. v. Johnson

INDEX NO.: Z.7.b.

CITE: 170 F.3d 708 (7th Cir. 1999)

SUBJECT: Suspicions About Dwelling Don't Support Terry Frisk of Person Exiting It

HOLDING: Police officers' general suspicions about drug dealing at a particular apartment did not justify a stop and frisk of person who opened door and attempted to leave as officers were standing outside listening in. Recognizing that they lacked probable cause for search warrant, officers conducted a "knock and talk" procedure, in which they go to a dwelling where they generally suspect drug dealing, listen outside door for brief time, knock on door and attempt to get consent to enter and interview occupants. If they cannot get consent to enter, they attempt to see whether drugs or paraphernalia are in plain view from their vantage point, and if so, make a warrantless, non-consensual entry. Here, as police were standing outside listening at door, D opened door to leave, surprising everyone. Officers wrestled D to ground and frisked him. While Court does not find knock and talk procedure unconstitutional, it holds that this search of D should have been suppressed. Officers' general suspicions about dwelling did not give them reasonable suspicion that D was engaged in criminal activity or that he was armed and posed a danger to the officers.

TITLE: Walker v. State

INDEX NO.: Z.7.b.

CITE: (2nd Dist., 2-21-96), Ind. App., 661 N.E.2d 869

SUBJECT: Warrantless seizure upheld under "plain feel" doctrine

HOLDING: Police officer's warrantless seizure of marijuana was justified under Terry v. Ohio, because officer determined that item was marijuana contemporaneous with lawful weapons search. During lawful execution of Terry search, seizure of contraband detected through officer's sense of touch is permissible as long as contraband's identity is immediately apparent. Michigan v. Long, 463 U.S. 1032 (1983); Minnesota v. Dickerson, 113 S. Ct. 2130 (1993). Here, officer testified that during search for weapons, he felt article in D's right hip pants pocket which he "instantaneously" believed to be marijuana. Officer also indicated that he squeezed object in pocket with his fingers but did not manipulate it in any way. Accordingly, Tr. Ct. did not abuse discretion in denying D's motion to suppress marijuana evidence. Held, judgment affirmed.

RELATED CASES: Smith, App., 780 N.E.2d 1214 (officer determined that item in D's coat pocket was drugs contemporaneous with lawful weapons search; officer's testimony did not suggest that he had to actually manipulate object in any way before he was able to determine it was contraband); Shinault, App., 668 N.E.2d 274 (although incriminating character of object protruding from D's jacket was not immediately apparent to officer, seizure of marijuana was permissible because officer had not dispelled fear that object was not weapon until he pulled it out of D's pocket); Parker, App., 662 N.E.2d 994 (seizure of cocaine did not exceed permissible scope of Terry, because officer was still in process of conducting pat down search when he reached object in D's pocket, & had not yet concluded that D did not have weapon), But see: C.D.T. card, this section; Bratcher, App., 661 N.E.2d 828 (seizure of marijuana upheld where officer discovered it during lawful weapons search & State met burden of proving that incriminating character of plastic bag was immediately apparent to officer).

TITLE: Westmoreland v. State
INDEX NO.: Z.7.b.
CITE: (04-17-12), 965 N.E.2d 163 (Ind. Ct. App 2012)
SUBJECT: Pat down search - no reasonable suspicion passenger was armed and dangerous
HOLDING: Under the Fourth Amendment, police officers conducting routine traffic stops may order passengers out of a vehicle and conduct a pat-down search in the absence of reasonable suspicion of criminal activity, as long as the officers have reason to believe that the passenger may be armed and dangerous. Arizona v. Johnson, 555 U.S. 323, 129 S. Ct. 781 (2009). Johnson requires articulable facts for believing the person is armed and dangerous.

Here, police officer unlawfully patted down passenger of vehicle for "officer safety" because the officers did not reasonably believe that the passenger was armed and dangerous. D was the passenger in a car lawfully stopped by police. The driver had warrants out in two counties, so police placed her in custody and decided to tow the car. D did not have any outstanding warrants and cooperated with police. One officer performed a pat down on D, saw a piece of baggie sticking out of his pants and discovered a plastic baggie with marijuana in it. On interlocutory appeal, Court applied Johnson and noted that to justify pat down, "police must harbor reasonable suspicion that the person subjected to the frisk is armed and dangerous." There was no evidence presented that D was armed and dangerous, so officers should not have performed the pat down. Held, denial of motion to suppress reversed.

TITLE: Wilson, et. al. v. Isaacs
INDEX NO.: Z.7.b.
CITE: (06-28-10), 929 N.E.2d 200 (Ind. 2010)
SUBJECT: Police liability for excessive force
HOLDING: Indiana Supreme Court reversed Tr. Ct.'s entry of summary judgment for D Cass County Sheriff, holding that a law enforcement officer's use of excessive force, that exceeding reasonable force authorized by Ind. Code 34-41-3-3(b) is not shielded from liability by the "enforcement of law" immunity provided by Ind. Code 34-13-3-3(8). Kemezy v. Peters, 622 N.E.2d 1296, 1297 (Ind. 1993). If an officer uses unnecessary or excessive force, the officer may commit the torts of assault and battery. Crawford v. City of Muncie, 655 N.E.2d 614, 622 (Ind. Ct. App. 1995).

Here, the plaintiffs allege that Deputy Craven discharged his Taser gun into plaintiff Richardson Wilson three times, two of which occurred after Wilson was allegedly lying motionless on the ground.

Trier of fact is to resolve genuine issues of fact about whether Deputy Craven's conduct was reasonable and whether he reasonably believed that the force he used was "necessary to effect a lawful arrest." Ind. Code 35-41-3-3(b). Held, transfer granted, Court of Appeals opinion vacated, and Tr. Ct.'s entry of summary judgment to Cass County Sheriff reversed.

TITLE: Wilson v. State
INDEX NO: Z.7.b.
CITE: (4-16-01), Ind., 745 N.E.2d 789
SUBJECT: Search for officer safety - placing D in police car after routine traffic stop; failure to use least intrusive means
HOLDING: Because pat-down search following traffic stop was not supported by particularized reasonable suspicion that D was armed, & because there was no reasonably necessary basis for placing D in squad car, search violated Fourth Amendment. After inspecting D's driver's license, police officer asked D to step out of car & accompany officer to his police car to further investigate whether D was intoxicated. Officer testified that he always pats down someone before placing that person in his police car. Prior to & at time of pat-down search, D had not exhibited any violent, resistant, or furtive movements, & officer did not have any suspicion that D was armed.

Ct. acknowledged that, when police officer places person into patrol car, there is increased risk of danger to those in car in event detainee is armed. Thus, it is generally reasonable for prudent officer to pat down persons placed in his patrol car, even absent belief of dangerousness particularized to specific detainee. However, police must use least intrusive means reasonably available to verify or dispel officer's suspicion in short period of time. Florida v. Royer, 460 U.S. 491, 103 S. Ct. 1319, 75 L.Ed.2d 229 (1983). There are various particularized circumstances that may make it reasonably necessary for police to require stopped motorist to enter police vehicle. But Ct. declined to hold that Fourth Amendment permits police routinely to place traffic stop detainees in police vehicle if this necessarily subjects detainee to preliminary pat-down frisk. Officer is not using least intrusive means if, without particularized justification making it reasonably necessary, he places person into his patrol vehicle & thereby subjects person to pat-down search. Pease, App., 531 N.E.2d 1207. Here, with all options that were available to officer, neither officer nor State identified any reasonably necessary basis to place D in police car justifying heightened intrusion of pat-down search. Held, transfer granted, judgment of Tr. Ct. reversed.

RELATED CASES: Lucas, 15 N.E.3d 96 (Ind. Ct. App 2014) (Tr. Ct. should have suppressed evidence officer gained from observing and questioning D in police car because officer had no legitimate reason to continue investigation of traffic infraction in police car); Taylor, 904 N.E.2d 259 (Ind. Ct. App 2009 (where D was not under arrest and only consented to talking with police at station, he did not consent to being transported by police to station; thus, pat-down was not justified and violated the Indiana Constitution); Lewis, App., 755 N.E.2d 1116 (it was reasonably necessary for officer to place D inside police vehicle & conduct pat-down search prior to transporting him to next highway exit).

Z. SEARCH AND SEIZURE

Z.7. Investigatory stops/ searches/detentions

Z.7.c. Search of premises

TITLE: Hanna v. State

INDEX NO.: Z.7.c.

CITE: (1st Dist., 4-11-00), Ind. App., 726 N.E.2d 384

SUBJECT: Invalid warrantless search based on illegal entry into residence

HOLDING: Tr. Ct. erred in denying motion to suppress evidence obtained by warrantless search of residence where D was invited overnight guest. In response to loud music complaint, police officer forcefully knocked on door of apartment several times, receiving no response from within. Officer continued to forcefully knock until he broke both trim around door & security chain. Officer then proceeded into & through residence to bedroom, where he saw D with cocaine. State argued that officer had probable cause to enter apartment because of possibility that crime was being committed due to volume of noise emitting from apartment, & apparent absence of residents inside dwelling which could indicate that occupants were either hurt or injured. However, officer testified that before entering apartment, he did not believe or suspect that occupants were committing any type of criminal activity, besides violating noise ordinance. Thus, officer did not have facts upon which he could reasonably conclude that occupants were engaging in or were victims of criminal activity. Fruit of poisonous tree doctrine barred admission of drugs into evidence, as D showed that drugs obtained during search of apartment were seized in violation of his Fourth Amendment rights. Held, judgment reversed.

TITLE: Illinois v. Caballes

INDEX NO.: Z.7.c.

CITE: 543 U.S. 405, 125 S. Ct. 834, 160 L. Ed. 2 842 (2005)

SUBJECT: Dog sniff, 4th Amendment, traffic stop

HOLDING: A dog sniff to the exterior of a vehicle, conducted during a lawful traffic stop, that does not improperly extend the duration of the stop and that reveals no information other than the presence and location of contraband, does not violate the 4th Amendment. Official conduct that does not compromise any legitimate expectation in privacy is not a search subject to the 4th Amendment. Conducting a dog sniff does not change the character of a traffic stop that is legal at its inception and otherwise conducted in a lawful manner.

RELATED CASES: Rodriguez, 135 S. Ct. 1609 (U.S. Supreme Court 2015) (absent reasonable suspicion, prolonging the duration of a traffic stop to conduct a dog sniff constitutes an unreasonable seizure; see full review, this section).

TITLE: State v. Fisher
INDEX NO.: Z.7.c.
CITE: 283 Kan. 272, 154 P.3d 455 (Kan. 2007)
SUBJECT: "Knock and talk" inappropriate where police already have probable cause
HOLDING: The Kansas Supreme Court held that an otherwise constitutional "knock and talk" cannot be used by law enforcement officers to justify their intrusion onto premises to seize evidence in plain view that they already had probable cause to seize before they conducted the knock-and-talk. Court decided such use of the knock-and-talk tactic runs afoul of Fourth Amendment limits on the plain-view doctrine.

Conducting surveillance of a farmhouse set back 25 yards from a highway with binoculars, a detective saw a white translucent, white garbage bag that contained yellow plastic bottles that were consistent with those of a popular fuel additive used in manufacturing methamphetamine. The detective also smelled ether. After consulting a prosecutor, the detective was told that he could seize the bag without a warrant but decided instead to conduct a knock-and-talk at the farmhouse. Nobody answered when the detective conducted the knock-and-talk and he drove further up the driveway where he could see the garbage bag as well as blister packs containing pseudoephedrine. The officer seized the garbage bag and used his observations and the contents of the bag to obtain a search warrant, which yielded evidence used to convict D of drug crimes.

Court rejected State's contention that the detective's lawful observation of the suspicious yellow bottles in the bag was enough, by itself, to justify the officer's seizure of the bag pursuant to the plain-view doctrine. Court noted in Horton v. California, 496 U.S. 128 (1990) the U.S. Supreme Court distinguished between the plain-view doctrine, which governs warrantless seizures, and the "open-view" or open fields doctrine, which governs observations from nonintrusive vantage points, such as the long-range surveillance in this case. State's if-you-can-see-it-you-can-seize-it approach conflates these two doctrines. "Absent a justifiable intrusion onto [D's] curtilage, the mere observation of the bag from the highway does not itself allow the bag's seizure."

Nor could the State rely on the detective's knock-and-talk to provide the requisite "justifiable intrusion." Court acknowledged that the Fourth Amendment permitted the detective to drive up to D's house to conduct a knock-and-talk and agreed with other courts that have held the Fourth Amendment permits officers conducting a knock-and-talk to walk around a house to knock on more doors once initial knocks have gone unanswered, but "specifically disapproved of any State attempt to 'piggy-back,' *i.e.* observe an object in open view from off the premises, to use knock and -- in these cases, unsuccessful -- talk for justified entry onto the premises, and then assert plain view while on the premises as a legal basis to seize the identical object that had been observed earlier." Such a tactic would smear the careful distinctions drawn by the Horton court.

As an alternative holding, Court held the detective exceeded the scope of the knock-and-talk when he proceeded further down the driveway directly to where the garbage bag was located. However, Court held the independent information collected prior to illegal seizure of the garbage bag still provided probable cause for the warrant. A concurrence was entered disputing that the detective already had independent evidence of probable cause but finding that the officer did not exceed the scope of a lawful knock-and-talk and a dissent was entered finding that the independent information was insufficient to provide probable cause.

TITLE: State v. Sodoyer

INDEX NO.: Z.7.c.

CITE: 156 N.H. 84, 931 A.2d 548 (N.H. 2007)

SUBJECT: Silence about residential status did not waive Fourth Amendment rights

HOLDING: New Hampshire Supreme Court held D's statement to police officers that he did not live in an apartment that they wanted to search, and his subsequent silence while they searched a bedroom without a warrant, did not constitute a waiver of his Fourth Amendment rights in possessions he had in the room. Officers investigating a possible assault in the apartment arrived to find several people, including D. D argued that, in the absence of a warrant or his consent, the search of the bedroom violated his Fourth Amendment rights. State argued that D waived his rights due to his silence about his residential status while the officers searched the room, after first denying he lived there. Court found warrantless search unlawful without D's consent. Court noted a split of authority on whether denying a possessory interest in premises automatically amounts to a waiver of privacy rights in the place being searched. However, Court found it did not need to resolve issue because D's denial of residency was not tantamount to disavowing any privacy interest in his belongings. "He simply denied *living* in the apartment; he was not asked, nor did he answer any other question or volunteer any statement about what kind of connection he had to the second bedroom." Pointing out that D might have had a legitimate expectation of privacy if he had been a temporary house guest, Court said that his initial denial of residency and ensuing silence during the search could not amount to a waiver of his Fourth Amendment rights.

Z. SEARCH AND SEIZURE

Z.7. Investigatory stops/ searches/detentions

Z.7.d. Search of Personal Property (U.S. v. Place)

TITLE: People v. Shapiro
INDEX NO.: Z.7.d.
CITE: 687 N.E.2d 65; 177 Ill. 2d 519 (Ill. Ct. App. 1996)
SUBJECT: Detention of Mail Package -- Diverting to Site 300 Miles Away Was Unreasonable
HOLDING: Postal Service officials who forwarded suspicious package from Chicago to St. Louis for investigation violated 4th Amendment. Package arriving in Chicago and addressed to individual in Champaign, IL, fit three criteria of Postal Service's "drug package profile, " in that it was wrapped in heavy brown paper, was heavily taped, and was addressed from one individual to another. As result, it was shipped to St. Louis, MO for investigation. Postal inspector there, contacted officials in city of origin, Eugene, OR, and learned that return address was fictitious. He then arranged for drug-detection dog to check package, and dog alerted to it. Inspector then obtained search warrant from federal magistrate. Packages deposited in mail are protected by 4th Amendment just as if they were located in private residence. In re Jackson, 96 U.S. 727 (1878). They may be subjected to minimally intrusive detention and investigation under doctrine of Terry v. Ohio, on basis of reasonable suspicion. Here, package's meeting three criteria of drug package profile supplied reasonable suspicion for Terry type detention. However, diverting package 300 miles away, resulting in 5-day delay in delivery, was unreasonable extension of Terry detention, and because it was not supported by probable cause, contents of package should have been suppressed.

TITLE: Rios v. State

INDEX NO.: Z.7.d.

CITE: (1-31-02), Ind. App., 762 N.E.2d 153

SUBJECT: Setting aside package for canine sniff is not seizure

HOLDING: Setting aside package for canine sniff, conducting canine sniff, & anticipatory search warrant based on that information was proper. Fact that package was sent next day air, had handwritten label, was paid for in cash, smelled like dryer sheets, & came from address in California could not have provided probable cause to search package or even reasonable suspicion to seize it. However, alert of narcotics dog is by itself sufficient to provide probable cause necessary to obtain search warrant & is not considered search within meaning of Fourth Amendment. Neuhoff v. State, 708 N.E.2d 889 (Ind. Ct. App. 1999). D argued that package addressed to him could not be set aside for canine sniff without reasonable, articulable suspicion & constitutes seizure. Although there is split in authority on subject, Ct. held that there is no seizure of mailed package within meaning of Fourth Amendment when it is briefly detained for further law enforcement investigation & its delivery is not substantially delayed. Further, anticipatory search warrant for delivery residence & persons present therein, was not deficient because affidavit plainly stated that law enforcement authorities believed that package contained cocaine, which had been examined pursuant to search warrant, & was being shipped to D, which permitted reasonable inference that D may have been trafficking controlled substances. Although it might have been beneficial if affidavit indicated how law enforcement authorities came to conclusion that package contained cocaine, it did not invalidate warrant. Held, judgment affirmed.

TITLE: State v. Ressler
INDEX NO.: Z.7.d.
CITE: 701 N.W.2d 915 (N.D. 2005)
SUBJECT: Transporting Package for Dog Sniff - Seizure Requiring Probable Cause
HOLDING: North Dakota S. Ct. holds that transporting a suspect package to a different location where it can be subjected to a dog sniff is a seizure requiring a warrant or probable cause. Reasonable suspicion of criminal activity is not sufficient to support such action. North Dakota S. Ct. joins courts that find that such actions constitute a seizure, recognizing and validating the "minimal, yet ever-present, possessory rights an individual maintains in shipped articles," and providing a check on "what would otherwise be a nearly unrestrained power of government to temporarily confiscate any shipped package."

TITLE: United States v. Flores-Lopez

INDEX NO.: Z.7.d.

CITE: (02-29-12), 670 F.3d (7th Cir. 2012)

SUBJECT: Warrantless search of cell phone

HOLDING: Warrantless search of cell phone solely for its telephone number, which government later used to subpoena call history, was not unreasonable. Court engaged in a lengthy discussion of cell phone technology, including "remote-wiping capability," "jailbroken" I-phones, "roving bugs" and "Faraday bags," but declined to consider what level of risk to personal safety or to the preservation of evidence would be necessary to justify a more extensive search of a cell phone without a warrant, as not presented here. Held, judgment affirmed.

TITLE: United States v. Place

INDEX NO.: Z.7.d.

CITE: 462 U.S. 696, 103 S. Ct. 2637, 77 L.Ed.2d 110 (1983)

SUBJECT: Investigatory stops - search of personal property

HOLDING: Investigative detention of traveler's luggage is permissible on less than probable cause under Terry principles. Here, when officer's observations lead him to reasonably believe that traveler was carrying luggage that contained narcotics, principles of Terry & its progeny permitted officer to detain luggage temporarily to investigate circumstances that aroused officer's suspicion, provided that investigative detention was properly limited in scope. Exposure of luggage to trained narcotics detection dog is not search under Fourth Amendment purposes. However, 90-minute detention of D's luggage was unreasonable & Fourth Amendment violation was exacerbated by agent's failure to tell D where agents were taking D's luggage, how long they would keep it, & how they would return it to D. Held, judgment affirmed; Blackmun, Brennan, & Marshall, JJ., concurring.

RELATED CASES: U.S. v. Ward, 928 F. Supp. 1423 (S.D. Ind.) (luggage can be treated differently when traveler & his luggage travel to same destination by different means; D's bag was more like piece of freight transported by common carrier than piece of luggage accompanying traveler on his or her journey).

Z. SEARCH AND SEIZURE

Z.7. Investigatory stops/ searches/detentions

Z.7.e. Detention for fingerprinting, etc. (Davis v. Mississippi) (Juveniles, see also U.4.c)

TITLE: Davis v. Mississippi

INDEX NO.: Z.7.e.

CITE: 394 U.S. 721, 89 S. Ct. 1394 (1969)

SUBJECT: Investigatory detentions - Detention for fingerprinting

HOLDING: Trustworthiness of fingerprint evidence does not except it from proscriptions of Fourth & Fourteenth Amendments. Detentions for sole purpose of obtaining fingerprints are subject to constraints of Fourth Amendment. Detention for fingerprinting may not be employed repeatedly to harass any individual. Here, city police made no attempt to employ procedures which might comply with Fourth Amendment requirements. Detention at police headquarters of D & others was not authorized by judicial officer. D was unnecessarily required to undergo two fingerprinting sessions, & D was not merely fingerprinted during first detention but was also subjected to interrogation. Fingerprints obtained from D during first detention were improperly admitted into evidence by Tr. Ct. Held, judgment reversed; Stewart & Black, JJ., dissenting.

TITLE: Porter v. State

INDEX NO.: Z.7.e.

CITE: (3d Dist. 1/28/87), Ind. App., 503 N.E.2d 424

SUBJECT: Detention for fingerprinting (F)

HOLDING: Requiring a person properly under arrest to submit to F procedures did not constitute seizure within meaning of 4th Amend. or Ind. Const. Art. 1, §2. Here, D was legally under arrest & incarcerated in St. Joseph County Jail. On 12/13, prosecutor petitioned for order to secure F exemplar & copy of that petition was delivered to sheriff's office. D was F after being told Tr. Ct. had so ordered. On 12/16, D was again F pursuant to actual Tr. Ct. order. Exemplar taken on 12/13 was one submitted to FBI & used at trial. D contends F on 12/13 constituted illegal seizure, requiring suppression of evidence pursuant to opinions in Davis v. MS (1969), 394 U.S. 721, 89 S. Ct. 1394, 22 L.Ed.2d 676 & Schmerber v. CA (1966), 384 U.S. 757, 86 S. Ct. 1826, 16 L.Ed.2d 908. Ct. assumes representations made to D vitiate any possible consent to F. In Davis, 25 black youths were detained for F. Issue was illegal detention of D during which F occurred. Reversing Davis' conviction, U.S. S. Ct. held that detention for sole purpose of taking F is no less subject to constraints of 4th Amend. than other forcible detentions by police officers. However, F itself does not involve same probing into life/thoughts as interrogation or search. See U.S. v. Dionisio (1973), 410 U.S. 1, 93 S. Ct. 764, 35 L.Ed.2d 67. Held, no error.

RELATED CASES: Palmer, 679 N.E.2d 887 (fingerprinting is not type of intrusion protected by constitution, regardless of its use as evidence or for identification purposes); Hayes v. FL (1985), 470 U.S. 811, 105 S. Ct. 1643, 84 L. Ed.2d 704 (D neither consented to be taken to police station for F nor was there probable cause for his arrest); Spikes 501 N.E.2d 423 (Crim L 339.6; D consented to be taken to police station for F).

Z. SEARCH AND SEIZURE

Z.8. Containers/luggage (U.S. v. Chadwick, Arkansas v. Sanders, Colorado v. Bertine)

TITLE: Arkansas v. Sanders

INDEX NO.: Z.8.

CITE: 442 U.S. 753, 99 S. Ct. 2586, 61 L.Ed.2d 235 (1979)

SUBJECT: Containers / Luggage

HOLDING: In absence of exigent circumstances, police are required to obtain warrant before searching luggage taken from automobile properly stopped & searched for contraband. In absence of exigent circumstances, even though police had probable cause to search D's suitcase for marijuana after seizing it from trunk of taxicab in which D was passenger, police could not do so without first obtaining warrant. Held, judgment affirmed; Burger, C.J., & Stevens, J., concurring; Blackmun & Rehnquist, JJ., dissenting.

TITLE: Bond v. U.S.

INDEX NO.: Z.8

CITE: 529 U.S. 334, 120 S. Ct. 1462, 146 L. Ed. 2d 365 (2000)

SUBJECT: Luggage, expectation of privacy

HOLDING: D's bag was in the overhead storage compartment of a cross-country bus. A border patrol agent at a checkpoint walked down the aisle, squeezing soft-sided luggage in the overhead compartment. When the agent felt an object "like a brick" in one bag, the petitioner admitted that the bag was his and permitted the agent to open it. The "brick" was methamphetamine. First question in Fourth Amendment analysis is whether the individual has exhibited an expectation of privacy, Smith v. Maryland, 442 U.S. 735, 740 (1979); second question is whether that expectation of privacy is one society recognizes as reasonable. Id. Held, a traveler's luggage is an "effect" protected by the Fourth Amendment and placing his luggage in an overhead storage compartment where other passengers could touch and handle it did not mean that the petitioner had given up his privacy interests entirely. The agent's warrantless physical manipulation of the bag in an exploratory manner violated the Fourth Amendment.

TITLE: California v. Acevedo

INDEX NO.: Z.8.

CITE: 500 U.S. 565, 111 S. Ct. 1982, 114 L.Ed.2d 619 (1991)

SUBJECT: Containers in automobiles

HOLDING: Police may search automobile & containers within it where they have probable cause to believe contraband or evidence is contained. Here, officers had probable cause to search container in trunk of automobile but did not have probable cause to search entire vehicle. Police had been conducting surveillance of residence where they believed marijuana was stored. They watched D enter residence, stay 10 minutes, & place brown paper bag which was same size as one of wrapped marijuana packages they knew to be in residence in trunk of D's vehicle. As D started to drive away, police stopped vehicle, opened trunk & bag, & found marijuana. Warrantless search of automobile based upon probable cause to believe vehicle contains evidence of crime is exception to warrant requirement because of mobility of automobile. Carroll v. U.S. (1925), 267 U.S. 132, 45 S. Ct. 280, 69 L.Ed.2d 543 (upholding warrantless search under upholstery of vehicle). However, in Arkansas v. Sanders (1979), 442 U.S. 753, 99 S. Ct. 2586, 61 L.Ed.2d 235, court held search of luggage found in trunk of automobile required warrant because of heightened privacy expectation in personal luggage which was not diminished by location in automobile. In U.S. v. Ross (1982), 456 U.S. 798, 102 S. Ct. 2157, 72 L.Ed.2d 572, court explained that Carroll doctrine covered searches of automobiles when police had probable cause to search entire vehicle, but that Sanders rule governed searches of luggage when officers had probable cause to search only container within vehicle. Court questions whether Sanders rule substantially serves privacy interests. Held, one rule governs all auto mobile searches: police may search automobile & containers within it without warrant where they have probable cause to believe contraband/ evidence is contained. Scalia, Concurring in Judgment; White, dissenting; Stevens, joined by Marshall, Dissenting.

RELATED CASES: Wertz, 41 N.E.3d 276 (Ind. Ct. App 2015) (warrantless search of D's GPS device, found near his wrecked vehicle at scene of a fatal accident, violated 4th Amendment); Riley v. California, 134 S. Ct. 2473 (2014) (electronic storage devices are not properly treated as "containers" that may be searched under the automobile exception to warrant requirement).

TITLE: Florida v. Wells

INDEX NO.: Z.8.

CITE: 495 U.S. 1, 110 S. Ct. 1632, 109 L.Ed.2d 1 (1990)

SUBJECT: Standardized procedures - inventory search

HOLDING: Where no standardized policy exists governing the opening of closed containers encountered during inventory search cannot be justified under inventory exception to warrant requirement. Here, police impounded D's car after taking him into custody for suspicion of DWI. After obtaining D's consent to open trunk, police discovered locked suitcase. Police forced open suitcase & discovered large quantity of marijuana. Record of suppression hearing contained no evidence of any police policy regarding opening of closed containers found during inventory search. Inventory search must not be ruse for general rummaging in order to discover incriminating evidence. Held, search here violated 4th Amend. Brennan, joined by Marshall, CONCURRING IN JUDGMENT; Blackmun, CONCURRING IN JUDGMENT; Stevens, CONCURRING IN JUDGMENT.

RELATED CASES: Marling, 964 F.3d 667 (7th Circuit Court of Appeals 2020) (finding that police acted within discretion authorized by their local policy in conducting inventory search and that the U.S. District court "misunderstood" the holding in Wells).

TITLE: Klopfenstein v. State

INDEX NO.: Z.8.

CITE: (2d Dist. 9/21/82), Ind. App., 439 N.E.2d 1181

SUBJECT: Containers - vehicle; Tylenol bottle

HOLDING: No warrant is required for search incident to lawful arrest. US v. Robinson (1973), 414 U.S. 218, 94 S. Ct. 467, 38 L.Ed.2d 427. Scope of search limited to person & area within immediate control. Chimel v. CA (1969), 395 U.S. 752, 89 S. Ct. 2034, 23 L.Ed.2d 685. Upon lawful custodial arrest of occupant of car, police may search passenger compartment. NY v. Belton (1981), 453 U.S. 454, 101 S. Ct. 2860, 69 L.Ed.2d 768. Containers, including any open/closed containers, found on arrestee may be searched. Robinson, *supra*; Jenkins; Easley; Moss; Taylor (Ind. App. cases). Here, responding to dispatcher's description of car & people involved in shooting incident, police stopped D's car, observed guns, arrested D & 3 passengers. Search of D's person following arrest revealed Tylenol bottle containing 2.2 grams of hashish. Ct. explicitly declines to rule on effect or retroactivity of US v. Ross (1982), 456 U.S. 798, 102 S. Ct. 2157, 72 L.Ed.2d 572. Held, possession conviction affirmed.

RELATED CASES: Garcia, 25 N.E.3d 786 (Ind. Ct. App 2015) (opening a pill bottle found in D's pants pocket during a pat-down search incident to his arrest for driving without a valid license was reasonable under Article 1, Section 11 of the Indiana Constitution; see full review at Z.3.a).

TITLE: McDonald v. United States

INDEX NO.: Z.8.

CITE: 100 F.3d 1320 (7th Cir. 1996)

SUBJECT: Containers / luggage - feeling outside of bags

HOLDING: Mere touching and feeling of outside of D's luggage did not constitute 4th Amendment search. Here, police conducted warrantless search of Greyhound bus with bus driver's permission. Officers felt two of D's bags suspected of containing "brick" of drugs. D denied bags were hers. Court ruled mere touching and feeling of outside of D's luggage did not constitute 4th Amendment search. Reasonable expectation of privacy inherent in contents of luggage was not compromised by officer's physical touching of exterior of luggage left exposed in overhead rack of bus. Also, officer's type of investigation was narrowly tailored to reveal limited information without displaying contents of bag to anyone. In addition, D's denial bags were hers constituted abandonment. Abandoned property is not subject to 4th Amendment protection. Held, judgment affirmed.

TITLE: McDowell v. State

INDEX NO.: Z.8.

CITE: 407 Md. 327, 965 A.2d 877 (Md. Ct. App. 2009)

SUBJECT: Container Search -- Much Show Why Frisk Futile

HOLDING: A police officer who reasonably believed a suspect was dangerous and may gain access to a weapon inside an opaque container must first try to determine nature of contents without opening it, or else be able to show why that was not reasonable, and a mere frisk would have been futile. Here, officer stopped pickup truck weaving erratically from lane to lane, and during the stop, observed passenger twisting in seat and fumbling with gym bag behind him. Officer ordered passenger to get out of car and bring gym bag with him. Office requested permission to open bag and then ordered passenger to open it. Md. Ct. App. holds that "officer safety" exception to search warrant requirement requires least intrusive means of determining whether suspect was armed and dangerous. Officer should have "patted down" the gym bag to determine whether it contained a weapon, or else made a showing as to why that would not be effective.

TITLE: Paschall v. State

INDEX NO.: Z.8.

CITE: (6/8/88), Ind., 523 N.E.2d 1359

SUBJECT: Containers - vehicle; reasonableness of search

HOLDING: Drugs found in gym bag pursuant to search for vehicle registration were properly admitted; however, drugs found in further container searches should have been suppressed. D was injured & his car totally disabled in accident. Police, preparing accident report while D was receiving medical treatment, looked in car for registration. After checking usual places, officer unzipped gym bag behind front seat & found scales, plastic bag with white powder, & document apparently describing drug transactions. He then unzipped suitcase & found other drug paraphernalia. These items served as basis for warrant to search locked briefcase in which 14 grams of cocaine were found. Automobile searches may be reasonable even absent consent or valid warrant. See Cady v. Dombrowski (1973), 413 U.S. 433, 93 S. Ct. 2523, 37 L.Ed.2d 706. Here, when officer opened gym bag, he was making reasonable search for registration. However, search of suitcase was not merely to look for registration, but to conduct further search for drugs. Once they had probable cause for criminal investigation, police should have obtained warrant. No exigent circumstances existed since car was in police control. See AR v. Sanders (1979), 442 U.S. 753, 99 S. Ct. 2586, 61 L.Ed.2d 235. Contents of bag should have been suppressed, as should contents of briefcase as fruit of poisonous tree. [Citations omitted.] Givan, J., & Pivarnik, J., DISSENT, arguing entire search was permissible inventory search.

TITLE: Rios v. State

INDEX NO.: Z.8.

CITE: (1-31-02), Ind. App., 762 N.E.2d 153

SUBJECT: Setting aside package for canine sniff is not seizure

HOLDING: Setting aside package for canine sniff, conducting canine sniff, & anticipatory search warrant based on that information was proper. Fact that package was sent next day air, had handwritten label, was paid for in cash, smelled like dryer sheets, & came from address in California could not have provided probable cause to search package or even reasonable suspicion to seize it. However, alert of narcotics dog is by itself sufficient to provide probable cause necessary to obtain search warrant & is not considered search within meaning of Fourth Amendment. Neuhoff v. State, 708 N.E.2d 889 (Ind. Ct. App. 1999). D argued that package addressed to him could not be set aside for canine sniff without reasonable, articulable suspicion & constitutes seizure. Although there is split in authority on subject, Ct. held that there is no seizure of mailed package within meaning of Fourth Amendment when it is briefly detained for further law enforcement investigation & its delivery is not substantially delayed. Further, anticipatory search warrant for delivery residence & persons present therein, was not deficient because affidavit plainly stated that law enforcement authorities believed that package contained cocaine, which had been examined pursuant to search warrant, & was being shipped to D, which permitted reasonable inference that D may have been trafficking controlled substances. Although it might have been beneficial if affidavit indicated how law enforcement authorities came to conclusion that package contained cocaine, it did not invalidate warrant. Held, judgment affirmed.

TITLE: United States v. Chadwick

INDEX NO.: Z.8.

CITE: 433 U.S. 1, 97 S. Ct. 2476, 53 L.Ed.2d 538 (1977)

SUBJECT: Containers

HOLDING: Despite contention that only homes, offices, & private communications implicate interests which lie at core of Fourth Amendment, protection of warrant clause is not limited to dwellings & other specifically designated locales. Here, by placing personal effects inside double-locked footlocker, Ds manifested expectation that contents would remain free from public examination, was no less than one who locks doors of his home against intrusion. Since there was no exigency, it was unreasonable for Government to conduct search of footlocker without safeguards that judicial warrant provides, even where agents lawfully seized footlocker at time of arrest of its owners & there was probable cause to believe that it contained contraband. Held, judgment affirmed; Brennan, J., concurring; Blackmun & Rehnquist, JJ., dissenting.

TITLE: U.S. v. Maple
INDEX NO.: Z.8.
CITE: 2003 U.S. App. LEXIS 23026 (D.C. 2003)
SUBJECT: Opening Console to Store Valuables While Securing Arrestee's Car was Search
HOLDING: Where officer found cocaine inside console of arrestee's car, opening console constituted a search, regardless of the officer's intent in opening the console. Officer was taking D to station, and rather than impounding his car, opened console to store D's cellphone and other valuables to protect them from theft. When he opened the console, he found cocaine. State argued that because he was not looking for anything and the discovery was "inadvertent," opening the console did not constitute a search. D.C. Circuit Court held that officer's intent in opening console was irrelevant.

TITLE: Wyoming v. Houghton
INDEX NO.: Z.8.
CITE: 526 U.S. 295; 119 S. Ct. 1297; 143 L.Ed.2d 408 (1999)
SUBJECT: Automobile Search -- Containers Belonging to Passengers
HOLDING: When police have probable cause to believe a vehicle contains contraband, the "automobile exception" to the 4th Amendment warrant requirement permits them to search any container in the vehicle that might contain the object of the search, regardless of whether the container belongs to the driver or to a passenger. Majority finds no historical basis for distinguishing between containers in the car based on ownership. The scope of a warrantless search "is defined by the object of the search & the places in which there is probable cause to believe that it may be found." U.S. v. Ross, 456 U.S. 798, 824 (1982). Passengers' containers are as much "in" the vehicle as those of the driver, & probable cause extends to all containers "in" the vehicle that may contain the object of the search. Even if historical evidence were equivocal, balancing of interests would lead to same conclusion, since there is reduced expectation of privacy in a vehicle. Finally, a rule that required officers to determine ownership of containers would be unworkable. Stevens, Souter, & Ginsburg, JJ., DISSENT, noting the established preference for warrants & individualized suspicion.

Z. SEARCH AND SEIZURE

Z.9. Exclusionary Rule

TITLE: Shadler v. State

INDEX NO.: Z.9.

CITE: 761 So.2d 279 (Fla. 2000)

SUBJECT: Invalid Stop Due to BMV Computer Error Triggers Exclusionary Rule

HOLDING: An erroneous computer entry in the Florida state licensing agency's database, which led to an invalid traffic stop, was a "law enforcement" error triggering the exclusionary rule. Courts have previously held that court employees are not adjuncts of the law enforcement team and have no stake in criminal prosecutions, so that exclusion of evidence would not deter future errors. The licensing agency, however, has a stated role in promoting highway safety and in assisting law enforcement officers at all levels via its comprehensive records management system.

Z. SEARCH AND SEIZURE

Z.9. Exclusionary Rule

Z.9.a. In general

TITLE: Arizona v. Evans

INDEX NO.: Z.9.a.

CITE: 514 U.S. 1, 115 S. Ct. 1185, 131 L.Ed.2d 34 (1995)

SUBJECT: Exclusionary Rule - Computer Errors by Court Clerical Employees

HOLDING: Errors caused by court's clerical employees which result in illegal arrest do not trigger exclusionary rule. D was stopped after he was observed driving wrong way on one-way street. Officer placed D under arrest after computer inquiry indicated that there was an outstanding misdemeanor warrant for his arrest. While D was being handcuffed, he dropped marijuana cigarette. Officer then searched D's car and discovered bag of marijuana under passenger's seat. Arrest warrant had in fact been quashed 17 days prior to D's arrest, but court clerical employee had failed to contact sheriff's department, which therefore failed to remove warrant from computer records. Majority finds that exclusionary rule does not apply. First, exclusionary rule was historically designed as means of deterring police misconduct, not mistakes by court employees. Second, D has offered no evidence that court employees are inclined to ignore or subvert Fourth Amendment so as to require application of extreme sanction of exclusion of evidence. Finally, and most important, there is no basis for believing that application of exclusionary rule would have significant impact upon court employees responsible for informing law enforcement that warrant has been quashed, since they have no stake in outcome of particular prosecution. Further, there is no indication that arresting officer was not acting objectively reasonably when he relied upon computer record. Application of Leon good faith framework supports categorical exception to exclusionary rule for clerical errors of court employees.

TITLE: Bailey v. State
INDEX NO.: Z.9.a.
CITE: (1/30/23), Ind. Ct. App., 202 N.E.3d 485
SUBJECT: Fundamental error exception for illegally seized evidence is only available on direct appeal where there is a claim of fabrication of evidence or willful malfeasance by police
HOLDING: Responding to a domestic disturbance call, police went to hotel room and encountered Defendant. The hotel staff allowed officers in the room. Defendant sat down on a corner of a bed and when police had him move, they found drugs underneath the mattress. To avoid waiver, Defendant challenged the admission of drugs and other contraband under fundamental error. The Court of Appeals finds fundamental error exception for illegally seized evidence is only available where there is a claim of fabrication of evidence or willful malfeasance on the part of police, which was not present here. Even though Defendant occupied the hotel room with another person and that person's possessions were also in the room, Defendant had some drugs on his person, he was the only one in the room when police arrived and police believed he sat on the bed in an effort to keep police from searching that area, all of which was sufficient to support a finding of constructive possession of the drugs.

The Court remanded for a new sentencing hearing because the judge wrongly sentenced Defendant to a concurrent count, apparently believing it to be a level 6 felony when it was a level 2 felony.

TITLE: Hewell v. State

INDEX NO.: Z.9.a.

CITE: (1st Dist. 12/20/84), Ind. App., 471 N.E.2d 1235

SUBJECT: Exclusionary rule - illegally seized evidence used at trial

HOLDING: Reversal is required where evidence improperly admitted over D's motion to suppress contributed to verdict. Candler 363 N.E.2d 1233. Here, Tr. Ct. erred in admitting evidence, which was neither described in search warrant nor seized pursuant to plain view (its discovery was not inadvertent because police expected to find it). Remedy for illegal seizure is exclusionary rule, which protects D's right to be free from unreasonable searches & seizures under IN & US constitutions. Mapp v. OH (1961), 367 U.S. 643, 81 S. Ct. 1684, 6 L.Ed.2d 1081; Callender (1923), 193 Ind. 91. Tr. Ct.'s error in admitting evidence was of constitutional dimension & can be affirmed only if error was harmless beyond a reasonable doubt. Chapman v. CA (1967), 386 U.S. 18, 87 S. Ct. 824, 17 L.Ed.2d 705; US v. Posey (CA7 1981), 663 F.2d 37; Ortez, App., 333 N.E.2d 838. Held, reversed & remanded for new trial.

RELATED CASES: Levenduski, App., 876 N.E.2d 798 (evidence of methamphetamine manufacturing was illegally seized as part of over-broad catch-all phrase of warrant because State failed to present any evidence that the evidence was in plain view; Bailey, J., dissenting)

TITLE: Geimer v. State

INDEX NO.: Z.9.a.

CITE: (05/27/92), Ind., 591 N.E.2d 1016

SUBJECT: Search & seizure - no 4th or 5th Amend. violations

HOLDING: Tr. Ct. did not err in denying D's motions to suppress his statements, nor evidence obtained from search of home in which he lived with murder victim. D's father was found dead in his home after other son & his wife became concerned & contacted police. Upon arriving at home, police & other son found victim's car in garage & all windows & doors locked. Son, who had lost his key, broke in home, & he & police discovered father's body in basement. Police learned that D was on way to Louisiana, contacted Louisiana to request that he be apprehended in connection with homicide. Louisiana police arrested D & read rights. On way to Louisiana jail, D confessed, & at jail he was advised of rights again, & gave taped statement admitting killing. Ct. found Ind. authorities had sufficient probable cause to justify D's arrest, including tension between D & his father, conflicting stories by D about his father's absence, fact victim's behavior was out of character, & absence of any evidence of break-in or robbery. Once this information was communicated to Louisiana authorities, they were justified in executing valid warrantless arrest of D. Because arrest was valid, statements made subsequent thereto were admissible.

TITLE: Hudson v. Michigan

INDEX NO.: Z.9.a.

CITE: 547 U.S. 586 (2006)

SUBJECT: “Knock and announce” Rule, 4th Amendment; exclusionary rule

HOLDING: Violation of the “knock-and-announce” rule does not require suppression of evidence found in a search. Since the State conceded that the entry here was a knock-and-announce violation, the only issue is whether the exclusionary rule is appropriate for such a violation. This Court has rejected “[i]ndiscriminate application” of the exclusionary rule, United States v. Leon, 468 U. S. 897, 908, holding it applicable only “where its deterrence benefits outweigh its ‘substantial social costs,’” Pennsylvania Bd. of Probation and Parole v. Scott, 524 U. S. 357, 363. Exclusion may not be premised on the mere fact that a constitutional violation was a “but-for” cause of obtaining the evidence. The illegal entry here was not the but-for cause, but even if it were, but-for causation can be too attenuated to justify exclusion. Attenuation can occur not only when the causal connection is remote, but also when suppression would not serve the interest protected by the constitutional guarantee violated. The interests protected by the knock-and-announce rule include human life and limb (because an unannounced entry may provoke violence from a surprised resident), property (because citizens presumably would open the door upon an announcement, whereas a forcible entry may destroy it), and privacy and dignity of the sort that can be offended by a sudden entrance. But the rule has never protected one's interest in preventing the government from seeing or taking evidence described in a warrant. Since the interests violated here have nothing to do with the seizure of the evidence, the exclusionary rule is inapplicable. The social costs to be weighed against deterrence are considerable here. In addition to the grave adverse consequence that excluding relevant incriminating evidence always entails the risk of releasing dangerous criminals imposing such a massive remedy would generate a constant flood of alleged failures to observe the rule and claims that any asserted justification for a no-knock entry had inadequate support. Another consequence would be police officers’ refraining from timely entry after knocking and announcing, producing preventable violence against the officers in some cases, and the destruction of evidence in others. Next to these social costs are the deterrence benefits. The value of deterrence depends on the strength of the incentive to commit the forbidden act. That incentive is minimal here, where ignoring knock-and-announce can realistically be expected to achieve nothing but the prevention of evidence destruction and avoidance of life-threatening resistance, dangers which suspend the requirement when there is “reasonable suspicion” that they exist, Richards v. Wisconsin, 520 U. S. 385, 394. Massive deterrence is hardly necessary. Contrary to the argument that without suppression there will be no deterrence, many forms of police misconduct are deterred by civil-rights suits, and by the consequences of increasing professionalism of police forces, including a new emphasis on internal police discipline. Scalia, joined by The Chief Justice, Thomas, and Alito, concluded that Segura v. United States, 468 U. S. 796, New York v. Harris, 495 U. S. 14, and United States v. Ramirez, 523 U. S. 65, confirm the conclusion that suppression is unwarranted in this case. Held, judgment affirmed; Kennedy, J., concurred in part and concurred in the judgment; Breyer, J., filed a dissenting opinion, in which Stevens, Souter, and Ginsburg, JJ., joined. The lengthy dissent centered on the significant departure from the Court's precedents, the past significance the Court had given privacy in relation to an individual's home, and its weakening of much of the practical value of the Constitution's knock-and-announce protection. It also challenged the majority's speculation that other avenues (civil suits, internal investigation, etc. . .) will address violations of the rule noting the legion of cases reporting

knock-and announce violations and the nominal damages available in civil suits and significant costs associated with such suits.

TITLE: James v. Illinois
INDEX NO.: Z.9.a.
CITE: 493 U.S. 307, 110 S. Ct. 648, 107 L.Ed.2d 676 (1990)
SUBJECT: Exclusionary rule - impeachment exception to admissibility of tainted evidence
HOLDING: Impeachment exception to rule prohibiting admission of illegally seized evidence applies only to impeachment of D - not all defense witnesses. Here, D gave pretrial statement admitting that he changed hairstyle day after offense "in order to change his appearance." Statement was excluded at trial as fruit of warrantless arrest without PC. At trial State's witnesses described shooter as having red hair & identified D. Defense witness testified on day of shooting D's hair was black. D did not testify. Tr. Ct. permitted state to introduce D's pretrial statement in rebuttal. Impeachment exception leaves Ds free to testify in own behalf without opening door to excluded statements by avoiding testimony that directly contradicts excluded statement. Expanding rule to permit impeachment of all defense witnesses with D's excluded statement would create intolerable chill on D's right to present witnesses & would not prevent perjury more than the threat of subsequent perjury prosecution. Expansion of impeachment exception would dilute exclusionary rule's deterrent effect on police misconduct. Held, impeachment exception to exclusionary rule applies only to impeachment of D - not all defense witnesses. Sevens, CONCURRING; Kennedy, joined by Rehnquist, O'Connor, & Scalia, DISSENTING.

TITLE: Membres v. State
INDEX NO.: Z.9.a.
CITE: (06-27-08), Ind., 889 N.E.2d 265
SUBJECT: Exclusionary rule - new rule of state criminal procedure only applies to searches conducted after rule was announced
HOLDING: Indiana Supreme Court's decision in Litchfield v. State, 824 N.E.2d 356 (Ind. 2005), requiring articulable reasonable suspicion prior to a trash search, is a new rule of state criminal procedure that does not affect the reliability of the fact-finding process, and thus is not to be applied retroactively. Federal law does not govern retroactivity of a new rule of criminal procedure that derives from the state constitution. In determining whether to apply new rules of state criminal procedure retroactively, the court is to consider the purpose to be served by the new standards, the extent of the reliance by law enforcement authorities on the old standards, and the effect on the administration of justice of a retroactive application of the new standards. Enlow v. State, 303 N.E.2d 658 (Ind. 1973).

Here, D's trash was searched based on a tip from a known informant that he was "pretty sure" that D was selling "large quantities" of marijuana from his home. At the time of the search, the law was that trash searches must be reasonable under the totality of circumstances. See Moran v. State, 644 N.E.2d 536 (Ind. 1994). Two weeks after the trash search, the Supreme Court in Litchfield specifically held that reasonableness requires articulable reasonable suspicion. The Litchfield rule is designed to deter random intrusions into the privacy of all citizens. Retroactive application of that rule would not advance its purpose for the obvious reason that deterrence can operate only prospectively. Thus, the law at the time of the search is to apply unless D raised a claim substantially similar to Litchfield pre-Litchfield, which he did not. Because the trash search was at least reasonable under the law at the time of the search, i.e., Moran, the Tr. Ct. properly denied the motion to suppress. Held, transfer granted, Court of Appeals' opinion at 851 N.E.2d 990 (Ind. Ct. App. 2006) *overruled*, and judgment of Tr. Ct. denying motion to suppress and granting State's motion for turnover order affirmed; Sullivan, J., dissenting on basis that Enlow, upon which the majority relies, has been *overruled* and that judicial integrity, as well as deterrence, is a purpose of the exclusionary rule; Rucker, J., dissenting in part on basis that Litchfield should apply retroactively, but concurring on basis that there was articulable reasonable suspicion for the trash search.

RELATED CASES: Hoop, 909 N.E.2d 463 (Ind. Ct. App. 2009) (in issue of first impression, Court held that Indiana Constitution requires reasonable suspicion to conduct dog sniff of private residence; however, because at the time of the search, the officer had no reason to think the dog sniff upon which the search warrant was based was unlawful, the officers relied on the search warrant in good faith); Belvedere, 889 N.E.2d 286 (because trash search occurred pre-Litchfield, it is to be analyzed under the reasonableness standard of Moran; here, a confidential informant's tips, accompanied by the running of D's plate corroborating where he lived, was sufficient to search his trash; Sullivan and Rucker, JJ., dissenting); Bowles, 891 N.E.2d 30 (although Ct. in Membres held that a D who raised a claim substantially similar to Litchfield prior to Litchfield should get the benefit of Litchfield, D's claim that his trash search violated Article I, Section 11 was not substantially similar to Litchfield's claim because it was based on the officer entering his private property and not the lack of reasonable suspicion; held, trash search reasonable under Moran; Sullivan and Rucker, JJ., dissenting).

TITLE: Osborne v. State
INDEX NO.: Z.9.a.
CITE: (1st Dist., 3-25-04), Ind. App., 805 N.E.2d 435
SUBJECT: Exclusionary rule - illegal, outrageously dangerous conduct instigated by police
HOLDING: In case of first impression, Ct. extended exclusionary rule to cover not only illegal police conduct, but also outrageously dangerous conduct such as encouraging a D to drive under influence of alcohol & drugs. In this case, police officer encouraged a person on home detention to speed through an inhabited area while under influence of alcohol & cocaine in order to effectuate a pretextual stop to allow officers to search & detain D, who was a passenger in vehicle. Given compelling public policy concern to prevent impaired driving & accidents caused by intoxicated drivers, Ct. found police officers' conduct in this case to have been outrageously dangerous.

Although pretextual stops are not unreasonable under either federal or Indiana constitutions, police created probable cause to stop vehicle by allowing someone they knew to be under influence of alcohol & drugs to speed through community. The actions of police officers went above & beyond pretext, & under particular circumstances of this case, were unreasonable. Thus, D's rights under Indiana Constitution Article 1, Section 11 were violated. Moreover, police by their actions encouraged informant to violate terms of his home detention without permission from supervising entity, in violation of Ind. Code 35-38-2.5-13. Held, judgment reversed & remanded with instructions to grant D's motion to suppress.

RELATED CASES: McCaa, 963 N.E.2d 24 (Ind. Ct. App. 2012) (although the court had concerns with the officer's order of possibly impaired driver whose truck was blocking traffic in a downpour to drive a few miles down the road to a gas station, such request was not outrageously dangerous; here, officer did not create the dangerous situation like the officers in Osborne did, but rather was responding to it).

TITLE: People v. Boyer
INDEX NO.: Z.9.a.
CITE: 713 N.E.2d 655 (Ill. App. Ct., 1999)
SUBJECT: Exclusionary Rule -- Prosecutorial Negligence
HOLDING: Exclusionary rule applies to exclude evidence seized during arrest on warrant that would have been recalled but for error in prosecutor's office. Unlike in Arizona v. Evans, 514 U.S. 1 (1995), error here was product of prosecutor's office, rather than court clerk. In Evans, U.S. S. Ct. reasoned that because exclusionary rule is intended to deter misconduct by law enforcement, errors by those not part of law enforcement team should not trigger it. But here, because prosecutor's office is indeed part of law enforcement team, exclusionary should apply.

TITLE: Sanchez-Llamas v. Oregon

INDEX NO.: Z.9.a.

CITE: 548 U.S. 331, 126 S. Ct. 2669, 165 L.Ed.2d 557 (2006)

SUBJECT: Vienna Convention violation, suppression inappropriate

HOLDING: Court determined that suppression was not an appropriate remedy where a D is not accorded rights under the Vienna Convention to notify his nation's consulate of his detention. Article 36(1)(b) of the Vienna Convention on Consular Relations provides that if a person detained by a foreign country "so requests, the competent authorities of the receiving State shall, without delay, inform the consular post of the sending State" of such detention, and "inform the [detainee] of his rights under this subparagraph." Article 36(2) specifies: "The rights referred to in paragraph 1 . . . shall be exercised in conformity with the laws and regulations of the receiving State, subject to the proviso . . . that the said laws . . . must enable full effect to be given to the purposes for which the rights accorded under this Article are intended." Along with the Convention, the United States ratified the Optional Protocol Concerning the Compulsory Settlement of Disputes, which provides: "Disputes arising out of the . . . Convention shall lie within the compulsory jurisdiction of the International Court of Justice [(ICJ)]." The United States withdrew from the Protocol on March 7, 2005. Court held that even assuming without deciding that the Convention creates judicially enforceable rights, suppression is not an appropriate remedy for a violation, and a State may apply its regular procedural default rules to Convention claims. The convention does not mandate suppression or any other specific remedy, but expressly leaves Article 36's implementation to domestic law. "It is beyond dispute that [this Court does] not hold a supervisory power over the [state] courts." Dickerson v. United States, 530 U. S. 428, 438. The exclusionary rule cases on which D principally relies are inapplicable because they rest on the Court's supervisory authority over federal courts. The Court's authority to create a judicial remedy applicable in state court must therefore lie, if anywhere, in the treaty itself. Where a treaty provides for a particular judicial remedy, courts must apply it as a requirement of federal law. United States v. Giordano, 416 U. S. 505, 524, 525. But where a treaty does not provide a particular remedy, either expressly or implicitly, it is not for the federal courts to impose one on the States through lawmaking of their own. Majority did not find that Article 36 even addresses searches or interrogations nor that it provides Ds any rights at all. It secures for foreign nationals only the right to have their consulate informed of their arrest or detention, not to have their consulate intervene, or to have police cease their investigation pending any such notice. Further, States may subject Article 36 claims to the same procedural default rules that apply generally to other federal-law claims. This claim is controlled by Breard v. Greene, 523 U.S. 371 (1998) (*per curiam*). Of the challenges raised to this ground, the more difficult to dismiss is that the International Court of Justice has interpreted the Vienna Convention to preclude the application of procedural default rules to Article 36 claims. Court disagreed that it was obligated to comply with the Convention as interpreted by the ICJ. Although the ICJ's interpretation deserves respectful consideration, nothing in the structure or purpose of the ICJ suggests that its interpretations were intended to be conclusive on our courts. Held, judgments of the supreme courts of Oregon and Virginia are affirmed; Ginsburg, concurring in the judgment, agreed with the majority on the suppression and procedural default issues, but agreeing with the dissent of Justice Breyer that Article 36 of the Vienna Convention grants rights that may be invoked by an individual in a judicial proceeding but did not believe the dissent was narrowly addressing the cases at hand; Breyer, J., with whom Stevens, J. And Souter, J. join, and with whom Ginsburg, J. joins in part, dissenting in short would hold that a criminal D may raise a claim that state authorities violated the Convention in his case; sometimes state procedural

default rules must yield to the Convention's insistence that domestic laws “enable full effect be given to the purposes” for which Article 36's rights are intended; and suppression may sometimes provide an appropriate remedy.

TITLE: Stinchfield v. State

INDEX NO.: Z.9.a.

CITE: (1st Dist., 10-6-77), Ind. App., 367 N.E.2d 1150

SUBJECT: Exclusionary rule - Motion to suppress - private citizens and agents of police

HOLDING: Informant's action was inextricably that of State, where purpose of police in taking informant to D's residence was to secure controlled substance. Informant, who was "contingent fee" part-time agent of police, was police agent for purpose of informant's warrantless seizure of controlled substance from D's residence. Evidence showed informant entered D's house without warrant and obtained controlled substance. Evidence did not reveal how controlled was obtained or where within house it was obtained. Record was silent on State's assertion that D consented to informant's actions. Even if D had consented to informant's entry, evidence subsequently acquired by State through seizure of items from D's residence pursuant to search warrant based on informant's warrantless seizure was inadmissible. D need not be aware of informant-invitee's true identity and purpose before he can said to have given consent to informant's warrantless seizure of controlled substance from D's residence. However, it must be shown, before informant's seizure can be upheld, that D consented to informant's relevant actions where informant is acting as police agent. Held, judgment reversed and remanded with instructions.

RELATED CASES: Smith, Ind., 283 N.E.2d 365 (Fourth Amendment protections do not apply to searches conducted by private citizens when the private citizens are not acting as agents of the police.)

TITLE: Zanders v. State
INDEX NO.: Z.9.a.
CITE: (3/8/2019), 118 N.E.3d 736 (Ind. 2019)
SUBJECT: Warrantless acquisition of historical cell phone location information - harmless error
HOLDING: On remand from U.S. Supreme Court for reconsideration in light of Carpenter v. U.S., 138 S. Ct. 2206 (2018), Court held that accessing D's cell phone location information (CSLI) was a Fourth Amendment search under Carpenter, but even if the CSLI evidence should have been excluded, the error did not warrant a new trial because any error was harmless beyond a reasonable doubt. The Court had previously held that police could obtain CSLI evidence without a warrant. However, Carpenter subsequently held that the third-party doctrine did not apply to seven days or more of CSLI, so law enforcement must get a search warrant to obtain those records.

After reconsideration, the Court declined to address the State's argument that exigent circumstances justified the warrantless search, finding instead that the admission of the CSLI evidence was harmless beyond a reasonable doubt. If the CSLI was illegally obtained, only records and testimony related to the location data would have been excluded, not evidence obtained via subsequent search warrants, which D argued relied on the CSLI and should be considered fruit of the poisonous tree. The good-faith exception to the exclusionary rule applied because officers had reasonable grounds for believing that the warrants were properly issued. When officers applied for and obtained search warrants for D's residence, they did not have the benefit of Carpenter or other precedent establishing that the Fourth Amendment generally requires a warrant before police may access CSLI. "This is true even if the warrants - without the CSLI information in the affidavits - were unsupported by probable cause. In that case, each warrant was still not so facially deficient that executing officers could not reasonably presume it to be valid."

Court then recounted other "weightier" evidence that pointed toward D's guilt, including the fact that the robberies occurred near his home; that a gun found at D's home was "indistinguishable" from the gun seen on surveillance footage during the robberies, and that photos and video of the stolen goods were posted to D's Facebook page the day after each robbery. That evidence, among other evidence and corroborating eyewitness testimony, showed that the CSLI evidence was only cumulative. "[T]he importance of the CSLI evidence was diminished by the non-CSLI evidence's strength," as well as cross-examination of the CSLI evidence's weaknesses. In a footnote, Court declined to revisit its original holding under Article 1, Section 11 of the Indiana Constitution. Held, convictions affirmed.

Z. SEARCH AND SEIZURE

Z.9. Exclusionary Rule

Z.9.b. Derivative evidence/fruit of poisonous tree

TITLE: C.P. v. State
INDEX NO.: Z.9.b.
CITE: (6/23/2015), 39 N.E.3d 1174 (Ind. Ct. App 2015)
SUBJECT: "New-crime" exception to exclusionary rule applies under Indiana Constitution
HOLDING: In affirming juvenile's adjudication as a delinquent, Court recognized the "new-crime" exception to the Fourth Amendment's exclusionary rule and also found it applies equally to the Indiana Constitution. Thus, notwithstanding a strong causal connection in fact between an illegal search or seizure by law enforcement and a D's response, if the D's response is itself a new and distinct crime, then evidence of the new crime is admissible notwithstanding the prior illegality. The purpose of the Fourth Amendment's exclusionary rule--to deter police misconduct--is not advanced by suppressing evidence of a new crime committed by the D after an illegal search or seizure.

Here, C.P., who was wearing saggy pants and cursing, was illegally seized when an off-duty uniformed police officer working security for church festival twice put his hand on juvenile's shoulder to steer him off church property. However, despite the illegal seizure, evidence that C.P. responded by shoving the officer was not suppressed because it was a new and distinct crime of battery. Held, judgment affirmed.

NOTE: In footnote, Court acknowledged that the "new crime" exception does not apply to the crime of resisting law enforcement by fleeing. See Gaddie v. State, 10 N.E.3d 1249 (Ind. 2014) (a person cannot be prosecuted for resisting law enforcement by fleeing unless the officer has, at a minimum, the reasonable suspicion necessary to conduct a Terry stop).

RELATED CASES: K.C., 84 N.E.3d 646 (Ind. Ct. App 2017) (even assuming school police officers' pat-down search of Ds was not reasonable under totality of circumstances, juvenile court properly admitted evidence under the "new-crime" exception to the exclusionary rule as recognized in C.P.).

TITLE: Clark v. State
INDEX NO.: Z.9.b.
CITE: (3/31/2014), 6 N.E.3d 992 (Ind. Ct. App 2014)
SUBJECT: Seizure of marijuana was not result of pat-down search so not fruit of poisonous tree
HOLDING: Tr. Ct. did not commit fundamental error when it admitted marijuana seized from D when he was searched on street after police saw him purchase K-2 spice at a convenience store. Even assuming unlawful pat-down search of D, seizure of marijuana from his coat pocket was not fruit of the unconstitutional search because it was found in plain view and not as a result of the pat down search. Held, conviction affirmed.

TITLE: Gyamfi v. State

INDEX NO: Z.9.b.

CITE: (9/4/2014), 15 N.E.3d 1131 (Ind. Ct. App 2014)

SUBJECT: Fruit of poisonous tree - inevitable discovery doctrine

HOLDING: Tr. Ct. abused its discretion in admitting evidence of D's alleged use of a stolen credit card at gas station in Hancock County, which derived from evidence obtained during an unlawful search and seizure in Boone County. Although D failed to object to some of the evidence at trial, Court addressed D's claim under fundamental error standard. Because the evidence admitted was fruit of the poisonous tree, D's convictions were reversed and his case remanded for a new trial. In so holding, Court rejected the State's reliance on doctrines of attenuation and inevitable discovery because they have no place in the jurisprudence of Article 1, Section 11 of Indiana Constitution. Held, judgment reversed and remanded; Bradford, J., joined by Robb, J., concurred in part and concurred in result with a separate opinion, noting that the inevitable discovery rule could apply under both federal and state constitutions if State could demonstrate by preponderance of evidence that the challenged evidence would have been discovered but for the unlawful search, which State failed to do in this case.

RELATED CASES: Wright, 108 N.E.3d 307 (Ind. 2018) (the attenuation exception to the fruit of the poisonous tree doctrine applies to claims challenging the reasonableness of a search or seizure under Art. 1, § 11 of Ind. Const.; see full review, this section).

TITLE: Mundy v. State
INDEX NO.: Z.9.b.
CITE: (11/19/2014), 21 N.E.3d 114 (Ind. Ct. App 2014)
SUBJECT: Evidence suppressed due to unlawful police entry onto private property
HOLDING: Detectives' intrusion onto private property while looking for another person despite clear signs of "no trespassing" was unreasonable under balancing of factors set forth in Litchfield v. State, 824 N.E.2d 356 (Ind. 2005), and ran afoul of Article 1, Section 11 of Indiana Constitution.

Detectives were looking for a man they thought might have been involved with a handgun theft. They went to an address they thought correct and got no answer, so decided to "try another home" located at the end of a long driveway. Police drove up a long private drive, removed a cable stretched across the drive, drove past a "No Trespassing" sign and a security camera. As they walked toward the home, they detected an odor of marijuana coming from the garage and from D, who came from the garage. D and the homeowner told police they did not know the man police were looking for, and the homeowner refused to consent to search. The two were then handcuffed for "officer safety." Police entered the home without a warrant and brought out two other occupants who also told them they were at the wrong address. Police then obtained a search warrant for the premises and found 100 marijuana plants.

Applying Litchfield factors, Court held the degree of concern, suspicion, or knowledge that police had "was not terribly strong." The degree of intrusion was the "most troubling" about the actions of the police, who disregarded clear signs that strangers were not welcome. Distinguishing Baxter v. State, 891 N.E.2d 110 (Ind. Ct. App 2008), Court noted that police did not simply walk to the front door of residence along paths that normal visitors would take. Considering the extent of law enforcement needs, police were investigating serious crimes, but there were no circumstances such as hot pursuit that would justify their intrusion. Considering totality of circumstances and distinguishing Trimble v. State, 842 N.E.2d 798 (Ind. 2006), Court could not say that State met its burden of establishing that the actions of the detectives in this case were reasonable. Thus, the search warrant that was subsequently issued based on information gathered unconstitutionally should not have been issued pursuant to "fruit of poisonous tree" doctrine. Held, denial of motion to suppress reversed and remanded.

RELATED CASES: Ogburn, 53 N.E.3d 464 (Ind. Ct. App 2016) (Two 20-pound bundles of marijuana found in truck should have been suppressed as fruit of poisonous tree because illegal search of apartment led to discovery of key fob, which led officers to search truck and find marijuana).

TITLE: Murray v. U.S.

INDEX NO.: Z.9.b.

CITE: 487 U.S. 533, 108 S. Ct. 2529, 101 L.Ed.2d 472 (1998)

SUBJECT: Independent source doctrine

HOLDING: Exclusionary rule (ER) prohibits introduction into evidence of tangible materials seized during an unlawful search & of testimony concerning knowledge acquired during unlawful search. (Citations omitted). ER also prohibits introduction of derivative evidence, both tangible & testimonial, that is acquired as indirect result of unlawful search. (Citations omitted). Where evidence seized as result of unlawful search has "independent source" it may be admitted because "exclusion of such evidence would put the police in a worse position than they would have been absent any error or violation." Nix v. Williams, (19840, 467 U.S. 431, 443, 104 S. Ct. 2501, 81 L.Ed.2d 377. Here, police illegally entered warehouse & viewed bales of marijuana in plain view. They left without disturbing bales & obtained warrant without disclosing prior entry to magistrate. Marijuana later seized pursuant to warrant. Provided later acquisition was not result of earlier entry, independent source doctrine applies. Invoking ER would put police in a worse position, not the same position they would have occupied had no violation occurred. Evidence will not have independent source if agents' decision to seek warrant was prompted by what they saw during initial entry or if information obtained during entry was presented to magistrate & affected decision to issue warrant. Remanded for determination whether search pursuant to warrant was genuinely independent source of information & tangible evidence at issue. Brennan & Kennedy, not participating; Marshall, joined by Stevens, & O'Connor, DISSENTING.

RELATED CASES: Ogburn, 53 N.E.3d 464 (Ind. Ct. App 2016) (Marijuana found in truck that should have been suppressed as fruit of poisonous tree was not admissible under independent source exception to the fruit-of-poisonous-tree doctrine; State could not show that it would have sought warrant to search truck and other vehicles in parking lot without information gained from illegal search).

TITLE: Quinn v. State

INDEX NO.: Z.9.b.

CITE: (1st Dist., 7-31-03), Ind. App., 792 N.E.2d 597

SUBJECT: Fruit of poisonous tree – D’s lawful arrest removed taint of illegal stop

HOLDING: Where police stopped D’s car without reasonable suspicion, but with purpose of executing a lawful outstanding arrest warrant, Tr. Ct. properly denied D’s motion to suppress evidence of methamphetamine found during search, because intervening lawful arrest was sufficient to remove taint of any police illegality. Not all evidence is fruit of poisonous tree and subject to suppression merely because it would not have come to light but for illegal police activity. U.S. v. Green, 111 F.3d 515 (7th Cir. 1997). Rather, question is whether evidence was obtained by exploitation of illegal stop or instead by means sufficient to purge any taint of illegal stop, e.g., a lawful arrest based on an outstanding warrant. Evidence may be purged of primary taint if causal connection between illegal police conduct & procurement of evidence is “so attenuated as to dissipate taint of illegal action.” Id. Three factors for consideration in determining whether causal chain is sufficiently attenuated are: 1) time elapsed between illegality & acquisition of evidence; 2) presence of intervening circumstances; and 3) purpose & flagrancy of official misconduct. Id. (citing Brown v. Illinois, 422 U.S. 590, 95 S. Ct. 2254 (1975)).

Here, following rationale in Green & declining to follow Jefferson, App., 780 N.E.2d 398, Ct. concluded that causal chain was sufficiently attenuated to dissipate any taint of officer’s illegal stop, allowing evidence seized during search to be admitted. Police officer stopped D’s car solely on information he received that there was an outstanding arrest warrant for her, & she matched description given by dispatcher. Although ten minutes that elapsed between illegal stop & acquisition of evidence was not significant, D’s lawful arrest clearly was intervening circumstance. Moreover, because purpose of police misconduct was to lawfully arrest D rather than circumvent protections of Fourth Amendment & engage in “fishing expedition” to obtain evidence against D, flagrancy of misconduct was negligible. There was no evidence indicating D was stopped so that police could search her car, thus Ct. could not conclude that officer’s actions were flagrant or intended to exploit illegal arrest. Held, denial of motion to suppress affirmed.

RELATED CASES: Wright, 108 N.E.3d 307 (Ind. 2018) (the attenuation exception to the fruit of the poisonous tree doctrine applies to claims challenging the reasonableness of a search or seizure under Art. 1, § 11 of Ind. Const.; see full review, this section); Utah v. Strieff, 136 S. Ct. 2056 (U.S. 2016) (Drugs seized from D were admissible, even though there was no legal basis to stop him, because there was a pre-existing warrant to arrest D; the discovery of the warrant severed the causal chain between the illegal stop and the discovery of the drugs; see full review, this section); C.P., 39 N.E.3d 1174 (Ind. Ct. App 2015) (Court recognizes “new-crime” exception under Indiana Constitution; see full review, this section); N.S., 25 N.E.3d 198 (Ind. Ct. App 2015) (Tr. Ct. abused discretion in denying motion to suppress; even though accomplice testified he knew N.S. possessed drugs and a gun before officer illegally searched N.S.’s backpack, police had no source independent of illegal search to learn about the contraband and seek accomplice’s statement about the contraband); Jackson, 996 N.E.2d 378 (Ind. Ct. App. 2013) (Police had independent evidence of D’s illegal drug activities to purge taint of warrantless attachment of GPS device to D’s car); Clark, 994 N.E.2d 252 (Ind. 2013) (because only 3 minutes elapsed between the illegal detention and confession, there was no intervening event to remove taint of the initial illegal detention from the confession); Joseph, 975 N.E.2d 420 (Ind. Ct. App 2012) (where officers entered D’s home, handcuffed him, and searched his home without a warrant or probable cause, the fact that the police Mirandized D prior to interrogating him at the station did not remove the taint of the illegal entry and the statements should have been suppressed); Foster, 950 N.E.2d 760 (Ind. Ct. App

2011) (there was very little lapsed time between arrest and D's statements, and there is little doubt that D's statements came from the exploitation of the unlawful arrest; giving of Miranda warnings did not constitute an intervening circumstance); Cole, App., 878 N.E.2d 882 (eluding police & resisting arrest in response to an unconstitutional stop or pat down constitute intervening acts & therefore evidence seized incident to those intervening criminal acts will not be subject to suppression); Turner, App., 862 N.E.2d 695 (given detective's intent & short amount of time that elapsed before the conversation with detective began, Court declined to hold D's initial agreement to talk was an intervening circumstance sufficient to remove the taint of the illegality of the traffic stop; see full review at Z.4.d); Sanchez, App., 803 N.E.2d 215 (causal chain between the commencement of the illegality & the seizure of the evidence was not sufficiently attenuated to purge the primary taint; unlike Quinn, officer's actions in this case were flagrant & intended to exploit an illegal arrest).

TITLE: Randall v. State

INDEX NO.: Z.9.b.

CITE: (2/19/85), Ind., 474 N.E.2d 76

SUBJECT: Unlawful arrest not grounds for vacating conviction

HOLDING: D's contention that Tr. Ct. erred by finding probable cause existed to arrest/detain him does not entitle him to reversal of conviction. Valid conviction may rest upon invalid arrest; legality of arrest is relevant only to admissibility of evidence resulting from search based upon alleged illegal arrest. Glispie, 412 N.E.2d 234; Adams, 314 N.E.2d 53. Here, Ct. notes validity of arrest/detention was considered in D's brother's appeal (Randall 455 N.E.2d 916) & probable cause for D's arrest was found. Held, conviction affirmed. DeBruler CONCURS IN RESULT without opinion.

RELATED CASES: Dennis, App., 736 N.E.2d 300 (threatening statements made by D in retaliation to arrest that was not based on probable cause were not subject to exclusionary rule).

TITLE: Shultz v. State
INDEX NO.: Z.9.b.
CITE: (3rd Dist.; 1-11-01), Ind. App., 742 N.E.2d 961
SUBJECT: Inevitably discovery rule – Ind. Constitution
HOLDING: Although, under U.S. constitution, suppression of evidence was not required because of inevitable discovery doctrine, suppression of evidence was required under Indiana Constitution.

Inevitable discovery exception to exclusionary rule permit's introduction of evidence that eventually would have been located had there been no error. Banks, App., 681 N.E.2d 235. However, to determine if search is unconstitutional under Ind. Constitution, courts must consider each case on its own facts to decide whether police behavior was reasonable. Brown, 653 N.E.2d 77. Here, police entered D's land in order to determine if vehicle on his property was stolen. After police used flashlight to read part of vehicle's identification number (VIN), police also used rag to clean off dirt so more of VIN could be read. Finding that VIN matched stolen VIN, police knocked on back door, but no one answered. Police then toured land to look for owner, during which they found more incriminating evidence.

Under both U.S. & Indiana constitutional analysis, wiping dirt off of vehicle's VIN without obtaining warrant was unconstitutional search. However, under U.S. Constitution & doctrine of inevitable discovery, Tr. Ct. was not required to suppress evidence because police could have secured warrant without VIN, & VIN & all remaining evidence would have been inevitably & lawfully discovered in execution of search warrant. Nevertheless, under Indiana Constitution, Tr. Ct. should have suppressed evidence of VIN & subsequent warrantless searches of D's property because each search was unreasonable. Thus, Ct. implicitly held that there is no inevitable discovery doctrine under Indiana Constitution. Held, judgment affirmed in part & reversed in part.

RELATED CASES: Utah v. Strieff, 136 S. Ct. 2056 (U.S. 2016) (Drugs seized from D were admissible, even though there was no legal basis to stop him, because there was a pre-existing warrant to arrest D; the discovery of the warrant severed the causal chain between the illegal stop and the discovery of the drugs; see full review, this section); N.S., 25 N.E.3d 198 (Ind. Ct. App 2015) (Tr. Ct. abused discretion in denying motion to suppress; even though accomplice testified he knew N.S. possessed drugs and a gun before officer illegally searched N.S.'s backpack, police had no source independent of illegal search to learn about the contraband and seek accomplice's statement about the contraband); Clark, 994 N.E.2d 252 (Ind. 2013) (where police illegally seized D, obtained contraband from his bag 3 minutes later, and found other contraband in his car in a relatively short period of time, nothing in record showed that contraband would have been inevitably discovered); Ammons, App., 770 N.E.2d 927 (because inevitable discovery rule is not applicable under Art. 1, Sect. 11 of Ind. Constitution, cocaine recovered from D's person was inadmissible).

TITLE: State v. Farber

INDEX NO.: Z.9.b.

CITE: (5th Dist., 3-26-97), Ind. App., 677 N.E.2d 1111

SUBJECT: Erroneous suppression of evidence under "fruit of poisonous tree" doctrine

HOLDING: When applied, "fruit of poisonous tree" doctrine operates to bar not only evidence directly obtained, but also evidence derivatively gained as result of information learned or leads obtained during unlawful search or seizure. Wong Sun v. United States, 371 U.S. 471, 83 S. Ct. 407 (1963); Jackson, App., 669 N.E.2d 744. To invoke "fruit of poisonous tree" doctrine, D must show that challenged evidence was obtained by State in violation of D's Fourth Amendment rights. New York v. Harris, 495 U.S. 14, 110 S. Ct. 1640 (1990). Here, pursuant to spousal privilege provisions of Ind. Code 34-1-14-5, Tr. Ct. properly suppressed evidence of audio-taped conversation between D & his wife & any testimony regarding contents of recorded statement. However, because there was no police misconduct & therefore no Fourth Amendment violation in recording conversation, Tr. Ct. erred by applying "fruit of poisonous tree" doctrine to D's subsequent confession to police & physical evidence recovered from lake. Where there is no illegal search or seizure, there can be no "fruit of poisonous tree." Deckard v. State, 670 N.E.2d 1 (Ind. 1996). Fact that conversation is excluded as evidence based on statutory privilege does not automatically mean that officers acted illegally in obtaining evidence. Held, judgment affirmed in part & reversed in part.

TITLE: State v. Hall

INDEX NO.: Z.9.b.

CITE: 115 P.3d 908 (Ore. 2005)

SUBJECT: Consent Search Following Illegal Stop

HOLDING: Oregon S. Ct. holds that its state constitution may require exclusion of evidence from otherwise valid consent search that follows illegal stop. Oregon's exclusionary rule, the Court writes, is "a [state] constitutionally mandated rule that serves to vindicate a D's personal rights," and the focus of the inquiry is to restore a D to the same position as if "the government's officers had stayed within the law... A causal connection requiring suppression ... may exist because the unlawful police conduct, even if not overcoming the D's free will, significantly affected the D's decision to consent."

TITLE: State v. Owens

INDEX NO.: Z.9.b.

CITE: (8/15/2013), 992 N.E.2d 939 (Ind. Ct. App 2013)

SUBJECT: Attenuation doctrine - drug evidence suppressed, but not battery & resisting law enforcement

HOLDING: Tr. Ct. properly suppressed all evidence related to marijuana D allegedly attempted to inject and alleged cocaine found on his person during illegal stop. However, Tr. Ct. need not suppress evidence related to D's flight from and battery of police officers, regardless of whether D conceded that this evidence is admissible. State argued that D's subsequent actions in violently resisting law enforcement were sufficient to remove taint of police illegality, rendering all evidence admissible. See Quinn v. State, 792 N.E.2d 597 (Ind. Ct. App 2003).

Court disagreed, concluding that although the cocaine was not discovered until after D's attempted flight from and battery of the officers, the record clearly indicates that the decision to arrest D was made before his flight, rendering discovery of the cocaine all but inevitable. Thus, D's actions cannot be said to have caused discovery of cocaine in any meaningful sense unlike in Cole v. State, 878 N.E.2d 882 (Ind. Ct. App 2007), where D's flight caused the discovery of contraband.

Under circumstances of this case, the causal connection between the illegal police conduct and the discovery of the cocaine was not broken. Court noted the result in this case neither rewards D for his alleged flight nor the police for their illegal stop of D, fully satisfying the attenuation doctrine. Held, judgment affirmed in part, reversed in part, and remanded; Riley, J., concurring and dissenting, agrees to affirm Tr. Ct.'s suppression of evidence pertaining to cocaine possession, dealing and obstruction of justice, but would affirm suppression pertaining to battery upon and flight from officers. Dissent disagrees that D conceded at oral argument that this evidence is admissible, and Tr. Ct. was in the best position to assess whether D's actions resulted from the officers' exploitation of the illegal stop.

RELATED CASES: C.P., 39 N.E.3d 1174 (Ind. Ct. App 2015) (Court recognizes "new crime" exception under Indiana Constitution.

TITLE: Taylor v. State

INDEX NO.: Z.9.b.

CITE: 4th Dist. (6/21/84), Ind. App., 464 N.E.2d 1333

SUBJECT: Exclusionary rule - fruit of poisonous tree

HOLDING: Tr. Ct. erred in refusing to suppress evidence obtained from D at time of arrest. Here, anonymous caller told police drug dealers were back in Barrington in a white car. Four plain clothes officers drove to area, spotted white car & surrounded it. D was 1 of 4 persons near car. Officer approached D with gun drawn & told D to put his hands on car. D said he had "bad luck" & had just "copped" (purchased drugs). Officer searched D & discovered drugs. Ct. finds holding D at gunpoint constituted arrest. Police had no probable cause to make arrest. Neither did police have "articulable suspicion" required for investigative stop. Evidence obtained through unlawful arrest is inadmissible. US v. Mendenhall (1950), 446 U.S. 544, 100 S. Ct. 1870, 64 L.Ed.2d 497. Tr. Ct. found arrest unlawful but did not suppress evidence because it found D made voluntary admission of guilt. Ct. finds holding improper; issue is was statement an act of free will sufficient to purge taint of unlawful arrest. Wong Sun v. US (1963), 371 U.S. 471, 83 S. Ct. 407, 9 L.Ed.2d 441; Morris 399 N.E.2d 740. State bears burden of proving no taint. Factors important in determination are time lapse between arrest/admission, presence of intervening circumstances & purpose of official misconduct. Brown v. IL (1975), 422 U.S. 590, 95 S. Ct. 2254, 45 L.Ed.2d 416. Only 45 seconds elapsed from police arrival to admission, no intervening circumstances existed & arrest was investigatory - made in hope of discovering evidence to justify arrest. "Such investigative techniques cannot be tolerated by the Cts." Held, reversed.

RELATED CASES: Utah v. Strieff, 136 S. Ct. 2056 (U.S. 2016) (Drugs seized from D were admissible, even though there was no legal basis to stop him, because there was a pre-existing warrant to arrest D; the discovery of the warrant severed the causal chain between the illegal stop and the discovery of the drugs; see full review, this section); Buckley, App., 886 N.E.2d 10 (evidence seized as a result of an illegal detention was suppressed); Cain, 594 N.E.2d 835, *reh'g granted on other grounds*, App., 599 N.E.2d 625 (evidence obtained as direct result of search conducted after illegal arrest is excluded under fruit of poisonous tree doctrine).

TITLE: Timmons v. State
INDEX NO.: Z.9.b.
CITE: (4th Dist.; 9-7-00), Ind. App. 734 N.E.2d 1084
SUBJECT: Exclusionary Rule - intoxicated demeanor was fruit of poisonous tree
HOLDING: On rehearing, Ct. reversed, in part, its decision at 723 N.E.2d 916, App., & held that D's intoxicated demeanor was fruit of illegal arrest warrant upon which officers relied when entering D's home to effectuate arrest. Incriminating statements made by suspect following illegal arrest in his home may not be subject to exclusionary rule. There is nothing in reasoning that police need arrest warrant to enter home to arrest suspect that suggests that arrest in home without warrant but with probable cause somehow renders unlawful continued custody of suspect once he is removed from house. See New York v. Harris, 495 U.S. 14 (1990). Here, police entered D's home with invalid arrest warrant. While in home & after removing D from home, police observed D's intoxicated demeanor. Instant case is distinguishable from Harris in following ways: (1) officers in Harris could have made public warrantless arrest of Harris because they had probable cause that Harris committed felony, whereas, here, officers could not have made public warrantless arrest of D because they had only probable cause that D committed misdemeanor; (2) officers in Harris did not learn of new crime after illegally entering Harris' home, whereas, officers learned of possible drunk driving after illegally entering D's home; & (3) Harris gave statement outside of home, whereas, D's demeanor was observed inside of home. Thus, because police could not have arrested D outside of his home & did not have, prior to entering home, probable cause that D operated vehicle while intoxicated, any evidence of D's intoxicated demeanor was fruit of entry into home based on invalid warrant. Held, judgment reversed & portion of earlier Ct. App.' opinion dealing with motion to suppress is vacated.

TITLE: Utah v. Strieff

INDEX NO.: Z.9.b.

CITE: (6/20/2016), 136 S. Ct. 2056 (U.S. 2016)

SUBJECT: Evidence from illegal stop admissible under attenuation doctrine

HOLDING: Drugs seized from D were admissible, even though there was no legal basis to stop him, because there was a pre-existing warrant to arrest D, which broke the causal chain between the illegal stop and the discovery of drugs. For several weeks Officer Fackrell surveilled a residence for suspected drug activity. One day he saw D leave the residence, and, with no reasonable suspicion, stopped him, acquired his identification, and radioed a dispatcher, who told the officer that D had an outstanding warrant for a traffic violation. Officer Fackrell arrested D, searched him, and found methamphetamine and drug paraphernalia. Even though the initial stop was illegal, the drugs were admissible under the attenuation doctrine and its three-part test under Brown v. Illinois, 422 U.S. 590 (1975). First, the “temporal proximity” test favored suppression because Officer Fackrell found the drugs only minutes after he stopped D. However, the second factor, the presence of intervening factors, favored the State because the existence of a valid warrant, predating the investigation and unconnected to the stop, created a sufficient attenuation between the illegal arrest and the discovery of drugs. In other words, the discovery of the warrant severed the causal chain between the illegal stop and the discovery of the drugs. The third factor, “the purpose and flagrancy of the official misconduct,” also favored the State. At most, Officer Fackrell was negligent; he did not purposefully or flagrantly violate D’s Fourth Amendment rights. After the unlawful stop, Officer Fackrell’s conduct was lawful, and there was no indication the stop was part of systemic or recurrent police misconduct. Justice Sotomayor dissented, arguing the attenuation doctrine did not apply because Officer Fackrell did not inadvertently learn about the warrant but discovered it by exploiting the opportunity presented to him by illegally arresting D. She also contended the majority’s decision gives license to police officers to use suspicionless stops to run warrant checks, with people of color bearing the lion’s share of such misconduct. Held, cert, granted, opinion of the Utah Supreme Court reversed, and judgment affirmed. Thomas, J., joined by Roberts, C.J., Kennedy, Breyer, and Alito, JJ; Sotomayor, J., dissenting, joined in part by Ginsburg, J.; Kagan, J., dissenting, joined by Ginsburg, J.

TITLE: Winborn v. State
INDEX NO.: Z.9.b.
CITE: (4/12/2018), 100 NE 3d 710 (Ind. Ct. App 2018)
SUBJECT: Handgun found inside D's backpack admissible under inevitable discovery doctrine
HOLDING: Because gun recovered from D's backpack would have been admissible at trial under the inevitable discovery exception to the exclusionary rule, Tr. Ct. did not abuse its discretion when it denied D's motion to suppress. The inevitable discovery exception permits the introduction of evidence that eventually would have been located regardless of any constitutional violation. Gyamfi v. State, 15 N.E.3d 1131 (Ind. Ct. App 2014). D allegedly battered and choked his girlfriend, who escaped her apartment, called 911 and gave police permission to enter the apartment. Police officers went to the apartment and arrested D, who admitted to an officer that there was a gun located in a backpack inside the apartment. Another officer, however, was unaware of this conversation and later discovered the gun as part of a search of D's belongings. Because D would have been allowed to gather his belongings prior to being arrested and leaving the scene, police would have discovered the gun during processing, making the gun admissible under the inevitable discovery exception. Held, judgment affirmed.

TITLE: Wright v. State
INDEX NO.: Z.9.b.
CITE: (10/4/2018), 108 N.E.3d 307 (Ind. 2018)
SUBJECT: Indiana Constitution recognizes attenuation exception to fruit of poisonous tree doctrine
HOLDING: The attenuation exception to the fruit of the poisonous tree doctrine applies to claims challenging the reasonableness of a search or seizure under Article 1, Section 11 of the Indiana Constitution. Considering whether evidence is sufficiently attenuated from illegal search N.E.3d seizure is a reasonable check on the exclusionary rule's fruit of poisonous tree doctrine. The attenuation exception "strikes the right balance" between the competing interests of deterring police misconduct and punishing guilty criminals.

The attenuation inquiry under Art 1, Sec 11 begins, but is not limited to, consideration of: (1) the timeline between the illegality and acquisition of the derivative evidence; (2) intervening circumstances occurring over that timeline; and (3) the initial police misconduct. Courts should also consider other circumstances that strengthen or weaken attenuation.

Here, Tr. Ct. found D's consent to search his computer was invalid under state and federal constitutions, but denied suppression of his incriminating statements to FBI agents two days later because they were sufficiently independent and attenuated from the illegal search. Applying the three-part test laid out above, Supreme Court agreed. D had a weekend between the illegal search and his incriminating statements to determine what he would say to FBI agents upon their return, he voluntary spoke with federal and local law enforcement, and "police did not commit flagrant misconduct here or exploit the illegal search." Thus, D's statements were admissible. Held, transfer granted, Court of Appeals' opinion at 92 N.E.3d 1127 vacated, judgment affirmed.

Z. SEARCH AND SEIZURE

Z.9. Exclusionary Rule

Z.9.c. Good faith exception (Ind. Code 35-37-4-5) (U.S. v. Leon)

Z.9.d.

TITLE: Blalock v. State

INDEX NO.: Z.9.c.

CITE: (10/3/85), Ind., 483 N.E.2d 439

SUBJECT: Good faith exception

HOLDING: Although Ct. finds probable cause affidavit sufficient, Ct., in dictum, finds good faith exception articulated in US v. Leon, (1984), U.S., 104 S. Ct. 3424, 82 L.Ed.2d 737 would justify police action in executing warrant & thus, evidence would be admissible. Ct. notes information in affidavit in question (aerial surveillance - plants observed but not identifiable, see card at Z.1.c) was approved by prosecuting attorney who prepared a filed affidavit. Held, Ct. App. decision at 476 N.E.2d 901 vacated; conviction affirmed.

RELATED CASES: Doss, App., 649 N.E.2d 1045 (good faith exception inapplicable; see card at Z.2.b.1); Moran, App., 625 N.E.2d 1231 (Good faith applied to illegal search used to obtain warrant, see review at Z.1.a.); Matter of M.R.D., App., 482 N.E.2d 306 (although affidavit, based on hearsay of concerned mother whose minor daughter was attending party with alcoholic beverages, lacked probable cause & did not comply with Ind. Code 35-33-5-2 (requiring evidence of source's credibility & factual basis), Ct. finds officer was justified in his good faith reliance on warrant; held, grant of juvenile's motion to suppress reversed & cause remanded).

TITLE: Blankenship v. State
INDEX NO.: Z.9.c.
CITE: (3/12/2014), 5 N.E.3d 779 (Ind. Ct. App. 2014)
SUBJECT: Good faith reliance on search warrant after dog sniff-search in hotel hallway
HOLDING: Tr. Ct. did not abuse its discretion in admitting contraband found in D's hotel room that police seized pursuant to a search warrant. Hotel manager was concerned that drug use was occurring in the hotel after finding paraphernalia in its rooms, so she asked police to bring canine units to the hotel to conduct free air sniffs in the common areas and hallways. A dog sniff in hallway led police officer to D's room. She denied permission to enter, but while the door was open, officers saw another woman asleep on a bed. When D was unable to wake her up, an officer entered the room fearing for her safety and woke her up. The officers then applied for a search warrant, and upon executing it, found drugs, a digital scale, needles and other paraphernalia.

Under Article 1, Section 11 of Ind. Const., police must have reasonable suspicion of illegal activity before police may conduct a canine sniff-search at the front door of a D's private residence. Hoop v. State, 909 N.E.2d 463 (Ind. Ct. App 2009). But even if dog sniff-search of hotel hallway violated D's rights under Article 1, Section 11 in this case, police officers acted in good faith when they executed search warrant for her hotel room. Id.; See also Ind. Code § 35-37-4-5. There is no evidence that the officers had knowledge, or should be charged with knowledge, that the sniff-search in the hallway may have been unconstitutional. Accordingly, there is no "wrongful police conduct" to deter, and suppression of evidence under the exclusionary rule would not be appropriate in light of the facts and circumstances of this case. Held, judgment affirmed; Baker, J., concurring in result, believes that sniff sweep at hotel, at the manager's request, was reasonable under Indiana Constitution, and the good faith reliance discussion by the majority set forth in Hoop does not control the outcome here.

TITLE: Davis v. U.S.
INDEX NO.: Z.9.c.
CITE: (06-16-11), 131 S. Ct. 2419 (U.S. 2011)
SUBJECT: Illegally seized evidence not excluded when search was authorized by then-existing precedent
HOLDING: When police reasonably rely on then-valid precedent to conduct a search, contraband will not be suppressed if Supreme Court later rules that the search was unconstitutional. Because the main purpose of the exclusionary rule is to deter police misconduct, suppressing evidence seized pursuant to then-existing precedent would not serve this purpose.

Police stopped the car in which Davis was a passenger. Davis was eventually arrested for giving a false name. While Davis was handcuffed in the back of the police car, an officer searched his jacket, which was still inside the car, and found a gun. Because Davis has a prior felony conviction, the gun possession violated a federal statute.

Before the Eleventh Circuit decided Davis' appeal, Supreme Court handed down Arizona v. Gant, 129 S. Ct. 1710 (2009). Gant held that searches like Davis' case were illegal because there was no reason for officer to think a search of the car would find evidence related to original arrest, here giving a false name to the police.

Though the search was unconstitutional under Gant, Davis admitted the search complied with then-binding precedent, "doom[ing]" Davis' claim, said the Court. The Court agreed with Davis that Gant applied retroactively to his case but said that retroactive application of Gant did not mean the appropriate remedy was suppression of the evidence. Exclusion is appropriate only where it would serve purpose of deterring police misconduct. Because the police acted in good faith by relying on then-existing precedent, there was no misconduct, so the evidence should not be suppressed.

[**Note:** For Indiana, the impact of Davis might not be significant because for years Indiana courts have held that police cannot perform a search incident to arrest unless they had safety concerns. See, e.g., Moore v. State, 796 N.E.2d 764 (Ind. Ct. App. 2003), *trans. denied*; Baniaga v. State, 891 N.E.2d 615 (Ind. Ct. App. 2008); Chest v. State, 922 N.E.2d 621 (Ind. Ct. App. 2010); and Parham v. State, 875 N.E.2d 377 (Ind. Ct. App. 2007), *trans. denied*. Thus, Gant, the new law at issue in Davis, is not new in Indiana. Thus, Indiana officers who performed a search without a safety concern should not be given a windfall before Gant was handed down.] ALITO, J., joined by ROBERTS, C.J., SCALIA, KENNEDY, THOMAS, and KAGAN, J.J.; SOTOMAYOR, J., filed CONCURRING OPINION. BREYER, J., DISSENTED, joined by GINSBURG, J., arguing that majority has imprudently created a new "good faith exception" to exclusionary rule.

TITLE: Hayworth v. State

INDEX NO.: Z.9.c.

CITE: (1st Dist., 04-20-09), 904 N.E.2d 684 (Ind. Ct. App. 2009)

SUBJECT: Good faith exception - misleading information in affidavit/fundamental error

HOLDING: Tr. Ct. erred in admitting evidence seized pursuant to search warrant based on inadequate probable cause, and good faith exception did not apply. An informant who had never given police information in the past alleged that she had been to D's house within past 72 hours, wanted to turn in an "active meth" lab, and that D was selling the finished product. Totality of circumstances did not corroborate informant's statements because police did not corroborate any illegal activity by D and only confirmed information that was readily available to the general public, such as her address.

Moreover, although probable cause affidavit states that informant observed criminal activity firsthand, police officer's testimony at suppression hearing defeats this inference. Officer's admissions at suppression hearing (i.e., that informant had not told him that she had seen D manufacture or use methamphetamine) amount to deliberate, reckless, or grossly negligent conduct. Police officers have a duty and obligation of full and fair disclosure of all material facts when applying for a warrant. Jaggers v. State, 687 N.E.2d 180 (Ind. 1997). Officer's conduct in this case was sufficiently deliberate that exclusion of evidence will meaningfully deter the misconduct and it is sufficiently culpable that such deterrence is worth the price paid by our justice system. See Herring v. United States, 129 S. Ct. 695 (2009). Thus, State has failed to prove that good faith exception applies, and evidence seized pursuant to warrant must be excluded. Held, convictions reversed and remanded.

RELATED CASES: State v. Vance, 119 N.E.3d 626 (Ind. Ct. App. 2019) (good faith exception could not resurrect search warrant because the omissions created a misleading impression for issuing the warrant; see full review at Z.2.b.1).

TITLE: Herring v. United States

INDEX NO.: Z.9.c.

CITE: (U.S.) (01/14/09), 129 S. Ct. 695

SUBJECT: Mistakes made by police personnel

HOLDING: In a 5-4 decision, the Supreme Court held that when police mistakes leading to an unlawful search are the result of isolated negligence attenuated from the search rather than systemic error or reckless disregard of constitutional requirements, the exclusionary rule does not apply. The exclusionary rule only applies where the benefits of deterrence outweigh the costs. To trigger the exclusionary rule, police conduct must be sufficiently deliberate that exclusion can meaningfully deter it, and sufficiently culpable that such deterrence is worth the price paid by the justice system. Thus, the exclusionary rule serves to deter only reckless, or grossly negligent conduct, or in some circumstances recurring or systemic negligence.

Here, a police officer was told by a warrant clerk that there was an arrest warrant for D. Based on this information, the officer arrested D and searched his car. Within fifteen minutes of the arrest, the warrant clerk learned that the warrant had been recalled five months earlier, but the recall was not entered into the system. There was no electronic connection between the warrant database of the Sheriff's Department and that of the County Circuit Clerk's office. The warrant had not been manually updated. Regardless, the police officers did nothing improper. In light of the Supreme Court's repeated holdings that the deterrent effect of suppression must be substantial and outweigh any harm to the justice system, when police mistakes are the result of negligence such as that described here, rather than systemic error or reckless disregard of constitutional requirements, any marginal deterrence does not pay its way. The criminal should not "go free because the constable has blundered." But not all record keeping errors by the police are immune from the exclusionary rule. If the police have been shown to be reckless in maintaining a warrant system, or to have knowingly made false entries to lay the groundwork for future false arrests, exclusion would certainly be justified. Held, judgment of the Eleventh Circuit affirming the district court's denial of D's motion to suppress affirmed; Ginsburg, J., dissenting, with whom Stevens, J., Souter, J., and Breyer, J., join on basis that negligent record keeping errors by law enforcement threaten individual liberty, are susceptible to deterrence by the exclusionary rule, and cannot be remedied effectively through other means; the exclusionary rule is needed to make the Fourth Amendment something real; the exclusionary rule protects the core concerns of the Fourth Amendment, *i.e.*, protecting citizens from unreasonable searches and upholding the integrity of the courts; in the instant case, the exclusionary rule would have provided an incentive to improve the process of updating warrants; Breyer, J., dissenting with whom Souter, J., joins to clarify that the exclusionary rule does not apply to judicial errors but only to police errors.

NOTE: Argue that the Indiana Constitution requires exclusion of evidence obtained as a product of police error, whether negligent, reckless, or intentional. Relying on Article I, Sections 11 and 14 of the Indiana Constitution, the Indiana Supreme Court adopted the exclusionary rule long before the Fourth Amendment exclusionary rule was applied to the States in Mapp v. Ohio, 367 U.S.643, 81 S. Ct. 1684, 6 L.Ed.2d 1081 (1961). Membres v. State, 889 N.E.2d 265, 274 (Ind. 2008) (*citing to Callender v. State*, 193 Ind. 91, 96-97, 138 N.E. 817, 818-19 (1923)). Since Callender, the Supreme Court has recognized at least three purposes of the exclusionary rule. Membres, 889 N.E.2d at 273 (deter police); Id. at 273, 277 (protect the privacy of all citizens); Id. at 275, 277 (protect the integrity of the judicial system). Continuing to apply the exclusionary rule to constitutional violations based on police negligence will

deter future police negligence, protect the privacy of all citizens whether innocent or guilty of a crime, and protect the integrity of the judicial system. “[Indiana] nevertheless exclude[s] [illegally seized evidence] because we consider it necessary to protect the privacy of all citizens from excessive intrusion by law enforcement. In other words, we accept the obstacle to the truth-seeking function in order to preserve a higher value.” Id. at 273.

RELATED CASES: Rice, 916 N.E.2d 296 (Ind. Ct. App. 2009) (Indiana refused to apply Herring to an Indiana constitutional analysis).

TITLE: Heuring v. State

INDEX NO.: Z.9.c.

CITE: (02/20/2020), 140 N.E.3d 270 (Ind. S. Ct.)

SUBJECT: Search warrant affidavits based on missing GPS tracking device were so lacking in indicia of probable cause that good-faith exception to exclusionary rule did not apply

HOLDING: Search warrants for Defendant's home and father's barn were invalid because the affidavits did not supply probable cause that a missing GPS device police had planted on Defendant's vehicle was stolen. The affidavits were so lacking in probable cause that the good-faith exception to the exclusionary rule did not apply thus evidence seized from both the initial search and subsequent search must be suppressed as "fruit of the poisonous tree." Law enforcement obtained a warrant to place a GPS tracking device on Defendant's car. When the device stopped transmitting information and the officers could not determine why, they obtained a warrant to search Defendant's home and his father's barn for evidence of the device's theft. During those searches, officers discovered drug evidence and obtained additional warrants on that basis. The Indiana Supreme Court held that the initial search warrants were invalid because the affidavits did not supply probable cause that the GPS device was stolen. Specifically, the affidavits lacked information that any control over the device was knowingly unauthorized or that there was intent to deprive the sheriff's department of the tracker's value or use. The affidavits were so lacking in indicia of probable cause that the good-faith exception to the exclusionary rule does not apply. In so holding, the Court noted the exclusionary rule is also meant to deter "reckless" conduct by police and that the search here was based on nothing more than a hunch that a crime had been committed and was reckless.

TITLE: Illinois v. Krull

INDEX NO.: Z.9.c.

CITE: 480 U.S. 340, 107 S. Ct. 1160, 94 L.Ed.2d 364 (1987)

SUBJECT: Good Faith Exception - reliance upon unconstitutional statute

HOLDING: Prime purpose of exclusionary rule (E.R.) "is to deter future unlawful police conduct & thereby effectuate the guarantees of the 4th Amend. against unreasonable searches & seizures." U.S. v. Calandra, (1974), 414 U.S. 338, 347, 94 S. Ct. 613, 38 L.Ed.2d 561. E.R. is a judicially created remedy, not personal constitutional right. Id. E.R. should not be applied where police officer's reliance on defective search warrant issued by neutral magistrate was objectively reasonable. U.S. v. Leon, (1984), 468 U.S. 897, 104 S. Ct. 3405, 82 L.Ed.2d 7677. Application of E.R. has been restricted to situations where its remedial purpose is effectively advanced. Here, officers relied upon statute later found unconstitutional, which authorized warrantless administrative searches. Application of E.R. here would have little deterrent effect. Unless statute is clearly unconstitutional, officer cannot be expected to question judgment of legislature. Officer has duty to enforce statute as written. Additionally, E.R. was designed to deter police misconduct. Legislators are not the focus of E.R. State legislators are required to take oath to support Federal Constitution & courts presume legislators act in constitutional manner. Court finds no reason to believe that imposing E.R. here will deter legislators from enacting unconstitutional statutes. Substantial social cost of excluding evidence outweighs any possible benefit of deterrence. Held, when officer acts in objectively reasonable reliance upon statute later found unconstitutional, E.R. does not apply unless legislature wholly abandoned its responsibility to enact constitutional laws or if reasonable officer should have known statute was unconstitutional. Marshall DISSENTS. O'Connor, joined by Brennan, Marshall & Stevens, DISSENTS.

TITLE: Jagers v. State

INDEX NO.: Z.9.c.

CITE: (11-3-97), Ind., 687 N.E.2d 180

SUBJECT: Good faith exception - magistrate misled/gross lack of probable cause

HOLDING: Good faith exception to exclusionary rule does not apply if: (1) magistrate is misled by information in affidavit that affiant knew was false or would have known was false except for his reckless disregard for truth; or (2) warrant was based on affidavit so lacking in indicia of probable cause as to render official belief in its existence entirely unreasonable. U.S. v. Leon, 468 U.S. 897 (1984). Here, anonymous informant told police that D was growing marijuana in his house & on two other plots & had been selling about pound of marijuana per week for several years. Although police had sufficient time & opportunity to corroborate such allegations, police made no effort to corroborate critical facts but rather corroborated facts which shed no light on whether D's house contained evidence of crime. In addition, officer who personally visited marijuana plots just few hours earlier testified that plots were near D's residence. However, plots were at least two to six miles away from home. Even if such mischaracterization did not mislead magistrate to degree that prevents invocation of good faith exception, information on which warrant was based was so lacking in indicia of probable cause that no well-trained officer would reasonably have relied on warrant. Tr. Ct. erred when it denied D's motion to suppress & admitted evidence seized as result of search. Held, transfer granted, conviction reversed.

RELATED CASES: Cartwright, 26 N.E.3d 663 (Ind. Ct. App. 2015) (regardless of detective's omission of fact C.I. was incarcerated when providing hearsay information, good faith exception did not apply because affidavit was so lacking in indicia of probable cause as to render an official belief in the existence of the warrant unreasonable; see full review at Z.2.b.1); Brown, App., 905 N.E.2d 439 (good faith exception rests upon the affidavit or sworn testimony presented before the warrant has been issued; State cannot backfill with previously undisclosed hearsay evidence to show good faith in the execution of a defective warrant).

TITLE: Lloyd v. State

INDEX NO.: Z.9.c.

CITE: (1st Dist., 2-28-97), Ind. App., 677 N.E.2d 71

SUBJECT: Search warrant - good faith exception

HOLDING: Magistrate erred in issuing search warrant, where police officer failed to establish that probable cause existed to search D's apartment. However, because officer acted in good faith reliance upon warrant, search was valid. Further, search was reasonable under Indiana Constitution, Article I, Section 11, based upon totality of circumstances. Good faith exception permits admission of evidence seized pursuant to properly issued, but subsequently invalidated search warrant. Ind. Code 35-37-4-5; United States v. Leon, 468 U.S. 897 (1984). However, good faith exception will not apply if: 1) warrant is based on false information knowingly or recklessly supplied; 2) warrant is facially deficient; 3) issuing magistrate is not detached & neutral; or 4) affidavit or sworn testimony upon which probable cause rests is so lacking in indicia of probable cause as to render official belief in existence of warrant unreasonable. Leon; Doss v. State, 649 N.E.2d 1045 (Ind. Ct. App. 1995). Here, police officer attempted two undercover marijuana purchases from same woman within one & one-half weeks of each other. During first attempted buy, officer observed woman enter D's apartment for purpose of obtaining marijuana. Although first attempt was unsuccessful, officer subsequently purchased marijuana from woman, who then explained that she could obtain more from "her source" in Bloomington. Based upon officer's prior observation, reasonable person could conclude that woman's source was D, especially since woman gave no indication to contrary. Thus, officer's belief was more than hunch, & was objectively reasonable. Held, denial of motion to suppress affirmed; Najam, J., dissenting.

RELATED CASES: Wendt, App., 876 N.E.2d 788 (the good faith exception is consistent with Art. I, § 11 of Ind. Const.); Best, App., 821 N.E.2d 419 (although search warrant was invalid because informant's information lacked reliability & information corroborated by police could be ascertained by anyone driving by property, evidence was admissible under "good faith" exception).

TITLE: McGrew v. State
INDEX NO.: Z.9.c.
CITE: (5th Dist., 11-27-96), Ind. App., 673 N.E.2d 787, summarily affirmed, 682 N.E.2d 1289
SUBJECT: Validity of search warrant - evidence obtained in good faith search admissible
HOLDING: Evidence obtained from good faith search pursuant to warrant is admissible even if warrant is later determined to be invalid unless: 1) judge was misled by information knowingly or recklessly supplied by affiant, 2) warrant is facially deficient or 3) affidavit is so lacking in indicia of probable cause as to render entirely unreasonable executing officer's belief in its existence. United States v. Leon, (1984) 104 S. Ct. 3405; Cutter, App., 646 N.E.2d 704. Here, victim reported in interview with prosecution investigator that D told her at time of crime that he had a sexual device in his home that he would like to use on her. Investigator filed probable cause affidavit identifying sexual device as item to be seized, & Tr. Ct. issued search warrant. D argued that failure to provide dates of pertinent interviews with victim in probable cause affidavit misled judge. Ct. found that D failed to make required showing that investigator offered testimony with reckless disregard to truth & that knowledge of misrepresentation would have affected determination of probable cause. Therefore, search was conducted in good faith. Held, conviction reversed & remanded on other grounds.

TITLE: Minnesota v.Olson

INDEX NO.: Z.9.c.

CITE: 495 U.S. 91, 110 S. Ct. 1684, 109 L.Ed.2d 85 (1990)

SUBJECT: Exigent circumstances justifying warrantless arrest in home

HOLDING: Warrantless intrusion of home may be justified by hot pursuit of fleeing felon, imminent destruction of evidence, need to prevent suspect's escape, or risk of danger to police/other persons inside/outside house. In absence of hot pursuit there must be probable cause to believe one or more of other factors justifying entry were present & in assessing risk of danger, gravity of crime, & likelihood that suspect is armed should be considered. Here, police suspected D was driver of getaway car used in robbery-murder. After suspected murderer was apprehended, police surrounded home where they believed D was staying. Police telephoned home & told occupant D should come out. Police heard male voice say, "tell them I left." Police then entered residence without warrant or consent & arrested D. Court refuses to disagree with state court's "fact specific application of the proper legal standard," [noted above]. Although grave crime involved, D was not known to be murderer but suspected of being getaway driver. Police had already recovered murder weapon, no suggestion that others in house were in danger, police had house surrounded & D was "going nowhere." Held, warrantless arrest of D in home without exigent circumstances violated 4th Amend. Rehnquist & Blackmun dissenting without opinion; Stevens, CONCURRING; Kennedy, CONCURRING.

TITLE: Shotts v. State

INDEX NO.: Z.9.c.

CITE: (04-15-10), 925 N.E.2d 719 (Ind. 2010)

SUBJECT: Search incident to arrest - reliance on out of state warrant

HOLDING: Indiana arrest in reliance on information from Alabama law enforcement officers and the NCIC did not violate either the Fourth Amendment or the Indiana Constitution. The high cost associated with suppression is appropriate only where police acts are sufficiently culpable and suppression can meaningfully deter those acts. Herring v. United States, 129 S. Ct. 695, 702 (2009). Here, an Alabama police officer called an Indiana police department to request service of an Alabama arrest warrant for murder on D, who was living in Indiana. Three different Indiana police officers ran NCIC checks and verified the existence of the Alabama warrant for D. When arresting D, the officers found a gun. Although the Alabama warrant merely alleged that D had committed a crime and did not provide any facts from which a neutral magistrate could have drawn his own conclusion as to the existence of probable cause, nothing the Indiana officers did was culpable at all, much less rising to the level of culpable behavior the exclusionary rule seeks to deter. These officers were in no position to determine the constitutionality of the Alabama warrant without knowledge of Alabama warrant procedures. Tr. Ct. correctly found that the Indiana officers acted in good-faith reliance on a warrant they reasonably presumed to be valid. Under the Indiana Constitution, Court need not determine the effect of Herring because the officers' reliance on the Alabama warrant and the NCIC check was reasonable. If any flaw existed in the Alabama warrant, it was the product of an agency whether Alabama law enforcement or Alabama judiciary over which Indiana police have no control. Held, transfer granted, Court of Appeals' opinion at 907 N.E.2d 134 vacated, judgment affirmed; Sullivan, J., concurring on basis that the lengthy discussion of Herring was unnecessary being that the court found the arrest constitutional under the Indiana and U.S. Constitutions.

TITLE: Snover v. State

INDEX NO.: Z.9.c.

CITE: (3rd Dist., 11-30-05), Ind. App., 837 N.E.2d 1042

SUBJECT: Probable cause not established for search, but "good faith" found

HOLDING: Although probable cause did not exist for a search warrant, search was upheld under the "good faith" exception to exclusionary rule. Police stopped an individual & found drugs in his vehicle. The individual said he had just purchased the drugs from D & more could be found at D's residence. Analyzing Ind. Code 35-33-5-2(b), Ct. noted that reliability of a source for hearsay evidence in an affidavit under subsection (b)(1) can be established by "declarations against penal interest." Ct. found the statement here was not against penal interest because the drugs had already been found in the car prior to the individual's statements. The other information provided also did not provide reliability, where individual gave D's proper address (which is not indicative of having inside information) & the individual claimed D had additional drugs in his bedroom which was not corroborated by police. Police confirmed that D had previously been arrested for possession of marijuana, but a previous arrest without a conviction is not proof of prior possession. The only remaining evidence was a four-month-old report from an unnamed CI indicating D sold meth from his residence, which may not support a finding of probable cause due to its staleness but can be considered as part of the totality of circumstances creating probable cause. However, the statement only notes that the CI provided information in the past which was determined to be credible & reliable & such a conclusory statement without further evidence is insufficient to establish reliability. Because the affidavit did not demonstrate the credibility of either the arrested individual or the CI, probable cause did not exist to support the search warrant.

However, Ct. found that while probable cause did not exist, the affidavit was not so facially deficient that the executing officers could not reasonably presume it to be valid. Held, judgment affirmed; Kirsch, C.J. concurring, would find that probable cause existed for the search warrant because although the drugs had already been found in the individual's vehicle, his statement left no doubt as to possession & thus implicated penal interest. Further, even if they did not, the individual's statements taken together with other corroborating evidence were sufficient for a reasonably prudent person to conclude that a search of D's residence would produce evidence of a crime.

[Ed. **note:** Ct. mixed analysis of Indiana's good faith statute, Ind. Code 35-37-4-5, & U.S. S. Ct. Fourth Amendment analysis. The July 2005 issue of the *Indiana Defender* included a lengthy article noting problems with such analysis as well as a discussion of why the good faith exception to the exclusionary rule should be rejected under the Indiana Constitution].

TITLE: State v. Hisey

INDEX NO.: Z.9.c.

CITE: 723 N.W.2d 99 (Neb. Ct. App. 2006)

SUBJECT: Police cannot rely on DMV errors for good faith

HOLDING: The Nebraska Court of Appeals held when police make a stop or arrest on the basis of errors in records maintained by the Nebraska Department of Motor Vehicles, any evidence the officers obtain is subject to the Fourth Amendment exclusionary rule. Sloppy recordkeeping by DMV employees can be ascribed to law enforcement officials for purposes of the good-faith exception to the exclusionary rule. In Arizona v. Evans, 514 U.S. 1 (1995), the U.S. Supreme Court held that a determination as to whether the good-faith exception applies to searches or seizures based on inaccurate information turns on whether the official source of the information would be deterred by the application of the exclusionary rule. That Court approved the admission of evidence seized during the execution of an arrest warrant that had been quashed but that had not been removed from the police department's computer due to an error by court employees. The present case involved an arrest based on the DMV's erroneous response to an inquiry by an officer as to whether D's driver's license had been impounded. The Court noted that "neither a court employee nor a police official was responsible for the mistake; rather the mistake occurred in the records of the DMV." The question for the Court was "whether DMV employees, unlike the court employees in [*Evans*] may be fairly characterized as 'adjuncts to the law enforcement team.'" Other jurisdictions have split on the question. Compare People v. Hamilton, 126 Cal. Rptr. 2d 273 (Cal. Ct. App. 2002); Shadler v. State, 761 So.2d 279 (Fla. 2000); State v. Pitcher, 878 A.2d 8 (N.J. Super. Ct., App. Div. 2005). Court here followed Shadler and examined the relationship between the statutory duties of the DMV and those of law enforcement agencies. The court noted state law makes it the duty of law enforcement officers to enforce the regulations of the DMV and gives law enforcement officials the authority, as agents of the DMV, to revoke the driver's licenses of motorists who refuse to take or who fail sobriety tests. Court overturned D's conviction finding the purpose of the exclusionary rule is to deter police and adjuncts of law enforcement from conduct that will result in a denial of rights to people and the threat of exclusion will encourage DMV employees to exercise greater caution in their duties.

TITLE: State v. Johnson
INDEX NO.: Z.9.c.
CITE: (4th Dist., 7-11-96), Ind. App., 669 N.E.2d 411
SUBJECT: Search warrant - insufficient probable cause; good faith exception
HOLDING: Tr. Ct. erroneously suppressed evidence seized pursuant to warrant, because good faith exception to exclusionary rule applied. Judge issued telephonic search warrant based upon affidavit primarily supported by information provided to officer by informant. Informant had provided reliable information on four or five previous occasions, & informed officer that D was selling cocaine. Informant also gave officer information regarding numerous phone calls to D's rooms at local inn. Officer spoke with hotel manager, who confirmed D's presence at inn & receipt of over 40 phone calls within 48 hours before telephonic affidavit for warrant was sought.

Good faith exception outlined in Ind. Code 35-37-4-5 permits admission of evidence seized pursuant to search warrant issued in good faith, where warrant "...is free from obvious defects...and...reasonably believed by the law enforcement officer to be valid." Applying language in this statute, Ct. held that although officer's "intelligence" was hearsay, there was no evidence that officer knowingly or recklessly supplied false information to support his application for warrant. Ct. also found that search warrant contained sufficient indicia of probable cause to render official belief in warrant reasonable under Ind. Code 35-33-5-2(b)(2), which requires affidavit based on hearsay to contain information that establishes that totality of circumstances corroborates hearsay. Doss v. State, 649 N.E.2d 1045 (Ind. Ct. App 1995). Here, totality of circumstances corroborated informant's information, & officer's belief in validity of warrant was reasonable. Held, reversed & remanded for trial; Darden, J, dissenting.

Note: Because D waived his right to file appellate brief, Ct. applied less stringent prima facie error standard of review in this case.

RELATED CASES: Frasier, App., 794 N.E.2d 449 (even assuming officer's affidavit was insufficient to establish probable cause, Ct. held that evidence which D sought to suppress was admissible under "good faith" exception to exclusionary rule).

TITLE: State v. Richardson
INDEX NO.: Z.9.c.
CITE: (06-03-10), 927 N.E.2d 379 (Ind. 2010)
SUBJECT: Seat belt stops - no reason to ask questions unrelated to stop
HOLDING: Tr. Ct. properly granted D's motion to suppress cocaine found on him during a seatbelt stop. A vehicle, the contents of a vehicle, the driver of a vehicle, or a passenger in a vehicle may not be inspected, searched, or detained solely because of a violation of the seatbelt law. Ind. Code 9-19-10-3.1. Although the Indiana Constitution permits some investigatory behavior during a traffic stop, State v. Washington, 898 N.E.2d 1200 (Ind. 2008), the seat belt act does not unless circumstances arise after the stop that independently provide the officer with reasonable suspicion of other crimes.

Here, as an officer approached D who was stopped in his truck for not wearing his seat belt, the officer recognized him from a prior traffic stop during which she had encountered no problems. During the stop, D was cooperative and admitted that he was not wearing his seat belt. The officer asked D what was the "very large, unusual bulge" in his pocket, to which he responded a handgun. The officer retrieved the gun, and D provided her with a permit which was tattered and the last digit of the year of expiration was illegible. The officer performed a criminal check on D, which resulted in ambiguous information as to whether he had a felony. The officer arrested D for "having a firearm with a prior felony conviction within the last fifteen years." As another officer patted D down, he felt a large object in D's underwear. D began to struggle, attempted to flee and eventually kicked the officer in the chest. The large object was cocaine. The fact that the officer observed an "unusual bulge," standing alone, did not provide the independent basis of reasonable suspicion as required under the seat belt act, especially in light of D's immediate compliance and the officer's prior peaceful exchanges with D. Thus, Tr. Ct. correctly found that the officer's questioning about the "unusual bulge" contravened the seat belt act. And even if the questioning about the bulge was proper, the production of a valid gun permit should have resulted in the termination of any further questioning. However, the case must be remanded for Tr. Ct. to consider whether there is sufficient evidence supporting the State's theory that D's actions of forcibly resisting arrest and battery upon a law enforcement officer were severable offenses independent of the seat belt search that warrant prosecution. Held, transfer granted, Court of Appeals' opinion at 906 N.E.2d 203 vacated, Tr. Ct.'s findings concerning the suppression of the cocaine affirmed and case remanded for further findings concerning whether D's conduct created separate probable cause to arrest him for forcibly resisting arrest and battery upon a law enforcement officer.

TITLE: State v. Tompkins
INDEX NO.: Z.9.c.
CITE: 723 N.W.2d 344 (Neb. 2006)
SUBJECT: Reviewing court erred in *sua sponte* raising good faith
HOLDING: Nebraska Supreme Court held that the reviewing appellate court erred in addressing the admissibility of illegally seized evidence under the good-faith exception to the exclusionary rule when the State failed to raise that issue. The Court noted the problem is that the State's failure to raise the issue deprives the D of a sufficient opportunity to challenge the applicability of the exception and try to convince the court that suppression is appropriate. It added that even though a D has the burden of showing that there was no probable cause to support the issuance of a search warrant, the State has the burden to show that the good-faith exception applies. When an appellate court reached the good-faith exception on its own motion, the D is forced to argue not only that probable cause was lacking but also that the officers did not act in good faith. Appellate court's ruling reversed and remanded with instructions to reverse the judgment of the district court.

TITLE: U.S. v. Laughton

INDEX NO.: Z.9.c.

CITE: 409 F.3d 744 (6th Cir. 2005)

SUBJECT: Good Faith - Knowledge of Facts Not in Warrant

HOLDING: Facts known to police officer but not in otherwise inadequate warrant cannot supply basis for good faith exception. Warrant here referred to controlled buys by CI but did not state that those controlled buys had taken place at suspect's home or even involved suspect. Tr. Ct. upheld search under good faith exception based on affiant's knowledge of nexus between drug buys and suspect's home. 6th Circuit reversed, holding that determination of good-faith reliance on warrant must be bound by four corners of affidavit. Question is whether officer reasonably believed warrant was properly issued, not whether probable cause existed. Cf. U.S. v. Martin, 297 F.3d 1308 (11th Cir. 2002).

TITLE: United States v. Luong

INDEX NO.: Z.9.c.

CITE: 470 F.3d 898 (9th Cir. 2006)

SUBJECT: 'Bare bones' warrant not saved by good faith

HOLDING: The Ninth Circuit U.S. Court of Appeals held that to determine whether evidence seized pursuant to a deficient "bare bones" search warrant is admissible under the good-faith exception to the Fourth Amendment's exclusionary rule, a reviewing court may not consider facts that the affiant revealed to the issuing magistrate but failed to include in the warrant affidavit. Other circuits have approved the consideration of facts extrinsic to a warrant affidavit when applying the good-faith exception. The good-faith exception as set out in United States v. Leon, 468 U.S. 897 (1984), permits the admission of evidence that was seized pursuant to a warrant that is later determined to be deficient. Leon, however, identified four sets of circumstances in which the good-faith exception may not be applied, including when the affidavit supporting the warrant is "so lacking in indicia of probable cause as to render official belief in its existence entirely unreasonable" -- sometimes referred to as "bare bones" affidavits.

Courts are divided on the question of whether orally provided information to a magistrate should be considered to determine whether the good-faith exception would allow evidence from a deficient warrant to be used by the government. *Citations omitted*. The Ninth Circuit followed the general rule that a reviewing court may not look beyond the four corners of a warrant affidavit when determining whether the warrant satisfies the Fourth Amendment's probable cause requirement. "Where the affidavit itself lacks all indicia of probable cause, it would unduly undermine the foregoing rule to permit extrinsic indicia of probable cause to be presented through an unsworn, unrecorded oral colloquy." The Court also noted that the Fourth Amendment expressly requires probable cause to be established by sworn facts. "If unsworn, unrecorded oral colloquies, which may not be used to establish probable cause, are admissible to establish good faith, the constitutional and prudential standards for showing probable cause will be undermined. In effect, the good faith exception would swallow the Fourth Amendment rule." Judge Consuelo M. Callahan dissented, relying on the views expressed by other federal jurisdictions, and noting the Ninth Circuit has previously approved consideration of the time pressure that an affiant was under when determining the reasonableness of officers' reliance on a barebones warrant affidavit.

See also United States v. McPhearson, 469 F.3d 518 (6th Cir. decided November 27, 2006) where majority held that "bare bones" affidavit noting only that a person was arrested on a warrant in front of his house and crack cocaine was found in his pocket during a search incident to arrest was so lacking in indicia of probable cause to believe there would be more drugs found in his home as to preclude application of the good-faith exception.

TITLE: Williams v. State

INDEX NO.: Z.9.c.

CITE: (1st Dist. 9/22/88), Ind. App., 528 N.E.2d 496

SUBJECT: Good faith exception

HOLDING: Tr. Ct. did not err in denying D's motion to suppress items seized pursuant to search warrant. Police obtained warrant to search D's home for property taken during a drug store burglary. Probable cause affidavit contained stale information & did not indicate how informant knew that listed items would be in D's home. State argues that although PC affidavit was deficient, good faith exception applies. US v. Leon, (1984), 104 S. Ct. 3424; Blalock, 483 N.E.2d 439. Testimony at suppression hearing made clear that deficiencies did not result from lack of information, but from error in writing it down. D argues good faith exception should not apply because affidavit contained false statement as to basis for determination of informant's reliability. Specifically, affidavit stated informant had provided numerous tips leading to arrests when they had led to only 2 arrests in 1 case. However, this was not misleading exaggeration. Informant also gave erroneous date of burglary, but totality of circumstances showed him to be reliable. Finally, D argues good faith exception should not apply because affiant officer gave information not within personal knowledge. However, probable cause may be based on collective knowledge of law enforcement organization as whole. [Citations omitted.] That knowledge can be imputed to signing officer. Held, seized items were admissible under good faith exception. Shields, J., dissenting.

RELATED CASES: Caudle, App., 754 N.E.2d 31 (evidence seized during search based on stale probable cause was properly admitted under good faith exception because warrant was executed within the ten-day period pursuant to Ind. Code 35-33-5-7); Cutter, App., 646 N.E.2d 704 (even if search warrant was defective, search was valid because officers who executed it acted in good faith reliance upon warrant); Misenheimer, 374 N.E.2d 523 (Officer's good-faith reliance on alleged victim's statement which implicated D and was neither known to be false nor recklessly presented as true was not grounds for suppression of evidence).

Z. SEARCH AND SEIZURE

Z.9. Exclusionary Rule

Z.9.c.1. False information (Franks v. Delaware)

TITLE: Franks v. Delaware

INDEX NO.: Z.9.c.1.

CITE: 438 U.S. 154, 98 S. Ct. 2674, 57 L.Ed.2d 667 (1978)

SUBJECT: Exclusionary rule - Good faith exception; False information

HOLDING: Where D makes substantial preliminary showing that false statement knowingly & intentionally, or with reckless disregard for truth, was included by affiant in warrant affidavit, & if allegedly false statement is necessary to finding of probable cause, Fourth Amendment requires that hearing be held at D's request. Here, Tr. Ct. erred in refusing to examine adequacy of D's proffer of misrepresentation in warrant affidavit. To mandate evidentiary hearing, challenger's attack must be supported by more than mere desire to cross-examine. Allegation of deliberate falsehood or of reckless disregard must point out specifically with supporting reasons portion of warrant affidavit that is claimed to be false. It also must be accompanied by offer of proof, including affidavits or sworn or otherwise reliable statements of witnesses, or satisfactory explanation of their absence. If these requirements as to allegations & offer of proof are met, & if, when material that is subject of alleged falsity or reckless disregard is set to one side, there remains sufficient content in warrant affidavit to support finding of probable cause, no hearing is required, but if remaining content is insufficient, D is entitled under Fourth Amendment to hearing. If, after hearing, D establishes by preponderance of evidence that false statement was included in affidavit by affiant knowingly & intentionally, or with reckless disregard for truth, & false statement was necessary to finding of probable cause, then search warrant must be voided & fruits of search excluded from tr. to same extent as probable cause was lacking on face of affidavit. Held, judgment reversed & remanded.

RELATED CASES: Wendt, App., 876 N.E.2d 788 (where officer provided correct, but incomplete information concerning reliability of informant, the officer was not acting with reckless disregard & good faith exception applied); Simpson, 944 F. Supp. 1396 (because police provided judge with information that they should have known was wrong, warrant & search of D's apartment were invalid; additionally, because police were not candid with judge, & because their failure to provide relevant & accurate information was at least in reckless disregard of truth, good faith exception does not apply & fruits of search were suppressed).

TITLE: United States v. Simpson

INDEX NO.: Z.9.c.1.

CITE: 944 F Supp 1396 (S.D. Ind. 1996)

SUBJECT: Good faith exception - False information

HOLDING: Police must be candid with judge issuing warrant and tell judge about facts they know are material to determining probable cause and scope of probable cause. Here, police told judge who issued warrant only about one \$20 controlled buy of cocaine at front door of building that police described to judge as 'single-family residence.' Police chose not to tell judge about their prior visit to the building and about information they obtained on that prior visit indicating that building contained several separate residences. Police also did not tell judge about information they had obtained on that visit that might have allowed judge to conclude that, despite separate residences, entire building was actually being used as single unit under dominion and control of target of police's investigation. Because police provided judge with information that they should have known was wrong and that was critical to determining scope of search warrant, warrant and search of D's apartment were invalid. In addition, because police were not candid with judge, and because police's failure to provide relevant, accurate information was at least in reckless disregard of truth, good faith exception to exclusionary rule did not apply here. Held, fruits of search suppressed and D's motion to suppress granted.

Z. SEARCH AND SEIZURE

Z.9. Exclusionary Rule

Z.9.c.2. Judge not impartial/ detached

TITLE: Lo-Ji Sales, Inc. v. New York
INDEX NO.: Z.9.c.2.
CITE: 442 U.S. 319, 99 S. Ct. 2319, 60 L.Ed.2d 920 (1979)
SUBJECT: Exclusionary rule - Good faith exception; Judge not impartial / detached
HOLDING: Town Justice's presence & participation in search did not ensure that no items would be seized absent probable cause to believe that they were obscene; nor did his presence provide immediate adversarial hearing on issue. Justice conducted generalized search & was not acting as neutral & detached judicial officer. Held, judgment reversed & remanded.

Z. SEARCH AND SEIZURE

Z.9. Exclusionary Rule

Z.9.c.3. Gross lack of probable cause (Brown v. Illinois)

TITLE: Figert & Green v. State

INDEX NO.: Z.9.c.3.

CITE: (Ind.), 10-23-97, 686 N.E.2d 827

SUBJECT: Good faith exception - search of separate residence

HOLDING: If officer conducting search relied in good faith upon properly issued but subsequently invalidated warrant, evidence obtained in search is admissible except when affidavit upon which warrant was based is so lacking in indicia of probable cause as to render belief in its existence unreasonable. U.S. v. Leon, 468 U.S. 897 (1984). Here, officer obtained warrant to search three trailers which were situated in U-shape, although there was only evidence that people who dealt drugs resided in two of three trailers. Warrant lacked probable cause as to third trailer. Although probable cause existed as to first two trailers & totality of circumstances established some suspicion of joint drug-dealing enterprise between all three trailers, affidavit did not allege any facts linking third trailer to surrounding criminal activity but only contained opinion of officer that there existed probable cause to believe that additional drugs & paraphernalia would be found within three trailers. Because warrant was issued based solely on officer's opinion, officer's reliance cannot be deemed objectively reasonable under Leon. If probable cause could be so easily imputed from one dwelling to another through overbroad application of good faith exception, nothing would prevent searches of residences merely because of fortuity of their proximity to illegal conduct. Held, Ct. App.'s decision at 683 N.E.2d 1314 vacated & remanded with instructions to grant D's motion to suppress.

TITLE: Jackson v. State

INDEX NO.: Z.9.c.3.

CITE: (6-30-09), 908 N.E.2d 1140 (Ind. 2009)

SUBJECT: Good faith exception - officer's testimony sufficient to save warrant

HOLDING: The search of D's home was valid under the good faith exception to the warrant requirement. The exclusionary rule does not require the suppression of evidence obtained in reliance on a defective search warrant if the police relied on the warrant in objective good faith. But the good faith exception is not available where the warrant was based on an affidavit so lacking in indicia of probable cause as to render official belief in its existence entirely unreasonable. U.S. v. Leon, 468 U.S. 897 (1984). Here, at a hearing for a search warrant, an officer testified that he had received several complaints from the public about heavy traffic from D's home. Also, a confidential informant claimed D was selling drugs from his residence. The informant had made several buys for the drug task force on which charges had not yet been filed. The Tr. Ct. issued a search warrant, and the police found marijuana and a gun in the home. Assuming without deciding that probable cause did not exist to support issuing a warrant to search D's home, the officer's testimony was not so bare bones and lacking in indicia of probable cause as to make reliance upon the resulting warrant objectively unreasonable. The officer set forth the nature of his relationship with the informant through prior controlled buys and bolstered the informant's tip by testifying to complaints about heavy traffic from the home. Acknowledging the officer's testimony is abbreviated and public complaints have their limitations, the totality of the circumstances illustrate enough evidence before the issuing court that would allow the court to make the call of probable cause. Held, transfer granted, judgment of Tr. Ct. affirmed and Court of Appeals' opinion at 889 N.E.2d 830 vacated and reversed.

TITLE: Rice v. State
INDEX NO.: Z.9.c.3.
CITE: (1st Dist., 11-13-09) (Ind. App. 2009) 916 N.E.2d 296
SUBJECT: Good faith doctrine - reliance on warrant unreasonable
HOLDING: Tr. Ct. abused its discretion by denying D's motion to suppress pursuant to the good faith doctrine. Indiana has adopted the Leon good faith exception under the state constitution. Hopkins v. State, 582 N.E.2d 345, 351 (Ind. 1991). However, this Court refused under the state constitution to apply Herring v. United States, 129 S. Ct. 685 (2009), which expanded the good faith doctrine. Thus, according to Leon, regardless of a warrant, suppression is still an appropriate remedy if the affidavit supporting the warrant was so lacking in indicia of probable cause as to render official belief in its existence entirely unreasonable. The court is to consider the actions of not only the officers who eventually executed a warrant, but also the officers who originally obtained it. Here, an officer searched a home for stolen evidence pursuant to a warrant. The officer did not find the stolen evidence for which he was searching but did see a motorcycle helmet in the garage and photographed it. Later, he learned the helmet was stolen. The owner of the home told him the home was rented to D and another, and anything in the garage belonged to them. Based on this information, an arrest warrant was issued, which was served by a second officer. During a search incident to arrest, marijuana and methamphetamine was found in D's purse.

Nothing suggests that the first officer's affidavit was deliberately misleading or false; however, it did fail to demonstrate a connection between D and the crime of which she was accused. As a presumably well-trained officer involved in the investigation from the outset, the officer should have known the affidavit lacked a logical connection between D and the stolen motorcycle helmet and was insufficient to support a probable cause determination. The affidavit was so lacking in indicia of probable cause to render official belief in its existence entirely unreasonable. Thus, the police conduct falls outside Indiana's good faith exception to the exclusionary rule.

The Court noted that it is mindful of the Supreme Court's statement in Jackson v. State, 908 N.E.2d 1140, 1144 (Ind. 2009), that there is literally nothing more the policeman can do in seeking to comply with the law after they have obtained a warrant. However, if they were to apply the good faith exception in this case and hold it was objectively reasonable for the officer to rely on a warrant supported by an affidavit wholly lacking probable cause, officers would have no incentive to discover and attest to facts amounting to probable cause in future affidavits, the D's right to seek review of the probable cause determination would be empty and the exclusionary rule would have no meaning. Held, judgment reversed.

TITLE: Stabenow v. State

INDEX NO.: Z.9.c.3.

CITE: (2d Dist. 7/14/86), Ind. App., 495 N.E.2d 197

SUBJECT: Good faith exception

HOLDING: Tr. Ct. erred in denying D's motion to suppress cocaine obtained from search of his automobile trunk. Affidavit supporting search warrant for D's car stated D had been arrested at airport for 2 counts of violation of controlled substance. It further stated D had been seen on previous occasions leaving airport in this car. Probable cause determination has 2 parts: (1) whether particular items sought to be seized are sufficiently connected with criminal activity & (2) whether items are to be found in particular place. Layman, App., 407 N.E.2d 259. Here, affidavit does not show connection between car & criminal activity & does not indicate that evidence of controlled substance violation would be found in car. IN has adopted good faith exception to exclusionary rule. Blalock 483 N.E.2d 439. Here, however, affidavit was so facially lacking indicia of probable cause that law enforcement officer could not claim reasonable reliance on it. See US v. Leon (1984), 468 U.S. 897, 104 S. Ct. 3405, 82 L.Ed.2d 677. Proper remedy was suppression of evidence obtained in search.

RELATED CASES: Hensley, App., 778 N.E.2d 484 (affidavit on which search warrant was based was so facially lacking in indicia of probable cause that no reasonable officer could have relied on this search warrant in good faith; see full review at Z.2.b.1); Woods, App., 514 N.E.2d 1277 (S & S 40, 114, 191; allegation that D was in possession of blue scrub top which appeared to have certain ink marking indicating it was used by hospitals, not given to general public, could not support objectively reasonable belief that search was legal).

Z. SEARCH AND SEIZURE

Z.9. Exclusionary Rule

Z.9.e. Motion to suppress

TITLE: State v. Hanley

INDEX NO.: Z.9.d.

CITE: (1st Dist., 2-4-04), Ind. App., 802 N.E.2d 956

SUBJECT: State's failure to respond to reasonableness of search & seizure under Indiana Constitution – waiver

HOLDING: State waived any argument regarding Article 1, Section 11 of Indiana Constitution by failing to argue evidence from resulting from search & seizure of D was admissible under Indiana Constitution. Before Tr. Ct., D argued evidence should be suppressed under both federal & state constitution. Language of Tr. Ct.'s suppression order indicated that it found evidence was inadmissible under Indiana Constitution. However, in its appellant's brief, State argued that Tr. Ct. erred in granting D's motion to suppress under only Fourth Amendment. In State's brief, there was no reference to Indiana Constitution, much less the separate legal analysis that is required to argue admissibility under our state constitution. State v. Friedel, 714 N.E.2d 1231 (Ind. Ct. App 1999). Thus, even if Ct. were to agree with State that evidence was admissible under federal constitution, State failed to carry its burden of proving Tr. Ct. erred by holding evidence was inadmissible under Indiana Constitution. Held, grant of motion to suppress affirmed.

TITLE: United States v. Patane

INDEX NO.: Z.9.d.

CITE: 542 U.S. 630 (2004)

SUBJECT: Miranda violations, suppression of physical evidence

HOLDING: Failure to give Miranda warnings (Miranda v. Arizona, 384 U.S. 436 (1966)) before interrogating a suspect in custody does not require suppression of any physical evidence obtained as a result of the suspect's unwarned but voluntary statements. However, physical evidence obtained as a result of a D's coerced, involuntary statements is subject to suppression. The 5th Amendment provides that "no person ... shall be compelled in any criminal case to be a witness against himself." This plurality opinion said that persons "subjected to coercive police interrogations have an automatic protection from the use of their involuntary statements (or evidence derived from their statements) in any subsequent criminal trial," (emphasis in original) quoting the plurality opinion from Chavez v. Martinez, 538 U.S. 760, 769 (2003).

Z. SEARCH AND SEIZURE

Z.9. Exclusionary Rule

Z.9.d.1 Exclusionary Rule - Motion to Suppress – In General

TITLE: Rich v. State
INDEX NO.: Z.9.d.1.
CITE: (4th Dist., 04-26-07), Ind. App., 864 N.E.2d 1130
SUBJECT: Motion to suppress - timeliness
HOLDING: In public intoxication trial, Tr. Ct. erred when it determined D's challenge to police officer's testimony was untimely. Officer was dispatched to scene where off-duty detective had stopped D. When officer arrived, he noticed D had poor balance, an odor of alcohol on his breath, blood-shot & watery eyes, & slurred speech. At trial, after officer began testifying, D moved to suppress further testimony on basis that detective's initial stop of D had been without reasonable suspicion D was engaged in criminal activity. Tr. Ct. held D waived his suppression argument by failing to present it before officer testified. To assert error in admission of evidence, a party must make a timely objection stating the specific ground of objection. Ind. Evid. Rule 103(a)(1). An objection is generally timely if it is made before the answer is given. Fleener v. State, 656 N.E.2d 1140 (Ind. 1995). Rejecting State's waiver argument, Ct. App. noted there is no precedent to the effect a motion to suppress is untimely just because a witness has begun testifying.

Thus, Court suppressed remainder of officer's testimony. Detective was only person who could explain the facts & circumstances that led to his stop of D, but State did not request detective's presence at trial. Without this testimony, Court had no basis for holding that detective had reasonable suspicion criminal activity was afoot when he stopped D. Held, conviction reversed.

Z. SEARCH AND SEIZURE

Z.9. Exclusionary Rule

Z.9.d.3. Standing

TITLE: Barker v. State

INDEX NO.: Z.9.d.3.

CITE: (3/19/2018), 2018 Ind. App. LEXIS 103 (Ind. Ct. App 2018)

SUBJECT: D had no standing to object to warrantless search of deceased girlfriend's apartment

HOLDING: In murder and feticide prosecution, warrantless search of D's girlfriend's apartment did not violate D's federal or state constitutional rights because he failed to demonstrate that he could contest the search of the apartment as a frequent guest. Where, as here, D does not claim an interest in items seized but rather only the premises searched, the standing analysis under the Indiana and U.S. Constitutions are the same. Allen v. State, 893 N.E.2d 1092 (Ind. Ct. App 2008). Here, D officially lived at a Chicago address and only girlfriend-victim's name was listed on the apartment lease, which limited visitors to stays of no more than fourteen days. Police and landlord agents found victim's apartment ransacked and in "complete disarray."

But even assuming D could demonstrate a reasonable expectation of privacy in the apartment, the officers' search was reasonable under both the Fourth Amendment and Article 1, Section 11 of the Indiana Constitution. Evidence of D being seen at the complex on the day in question, the call for a welfare check on a missing occupant and the blood stains found on rolled-up carpet inside apartment created exigent circumstances justifying officers' warrantless entry and search. Even if the collection of evidence following the initial walkthrough was improper, any error in admission of evidence was harmless in light of substantial independent evidence of guilt.

Similarly, under the three-part test in Litchfield v. State, 824 N.E.2d 356, 361 (Ind. 2005), Court found the search was reasonable under Article 1, Section 11 considering the high degree of suspicion and strong law enforcement needs, coupled with the low degree of intrusion. Thus, the search was reasonable under totality of circumstances. Held, convictions affirmed.

TITLE: Blalock v. State
INDEX NO.: Z.9.d.3.
CITE: (10-3-85), Ind., 483 N.E.2d 439
SUBJECT: Exclusionary rule - motion to suppress; Standing under Fourth Amendment
HOLDING: To show Fourth Amendment violation for search, it must be established that D had actual or subjective expectation of privacy in place to be searched. Further, claimed expectation of privacy must be one that society recognizes as reasonable. Held, denial of motion to suppress affirmed.

RELATED CASES: Vanderkolk, 32 N.E.3d 775 (Ind. 2015) (Samson is applicable to probationers and community corrections participants; see full review, this section); Friedel, App., 714 N.E.2d 1231 (passenger in car has standing to challenge search of her purse found in car); Osborne, App, 805 N.E.2d 435; McKnight, App., 612 N.E.2d 586 (every person in motor vehicle has right to contest stop of vehicle in which he or she traveling as either driver or passenger); Brames, 406 N.E.2d 252 (D had standing to object to search because he was resident of location, even though D's parents, who owned the location, consented).

TITLE: Brendlin v. California

INDEX NO.: Z.9.d.3.

CITE: 551 U.S. 249 (2007)

SUBJECT: Passenger seized under 4th Amendment and may challenge stop

HOLDING: Court in unanimous opinion held that when police make a traffic stop, a passenger in the car, like the driver, is seized for Fourth Amendment purposes and so may challenge the stop's constitutionality. Passenger in case was seized because no reasonable person in his position when the car was stopped would have believed himself free to "terminate the encounter" between police and himself. Florida v. Bostick, 501 U.S. 429, 436 (1991). Any reasonable passenger would understand the officers to be exercising control to the point that no one in the car was free to depart without police permission. A traffic stop necessarily curtails a passenger's travel just as much as it halts the driver, diverting both from the stream of traffic to the side of the road, and the police activity that normally amounts to intrusion on "privacy and personal security" does not normally distinguish between passenger and driver.

TITLE: Byrd v. United States
INDEX NO.: Z.9.d.3.
CITE: (5/14/2018), 138 S. Ct. 1518 (2018)
SUBJECT: Person who borrows rental car has expectation of privacy in car so long as possession is lawful
HOLDING: In a unanimous opinion, the Court held that a person who borrows a car from someone who has rented the car has an expectation of privacy in the car, even though the person's name is not on the rental car contract, so long as the person's possession of the car is lawful.

Latasha Reed rented a car in New Jersey while D waited outside the rental facility. The agreement warned that permitting an unauthorized driver to drive the car would violate the agreement. Reed listed no additional drivers on the form, but she gave the keys to D upon leaving the building. After stopping D for a traffic infraction, Pennsylvania State Troopers learned that the car was rented, that D was not listed as an authorized driver, and that D had prior drug and weapons convictions. D also said he had a marijuana cigarette in the car. The troopers searched the car, discovering body armor and 49 bricks of heroin in the trunk. Both the District Court and the Third Circuit found D lacked an expectation of privacy in the car because he was not listed on the rental agreement.

Here, D had lawful possession of the car and with lawful possession comes the right to exclude. “‘One of the main rights attaching to property is the right to exclude others,’ and, in the main, ‘one who owns or lawfully possesses or controls property will in all likelihood have a legitimate expectation of privacy by virtue of the right to exclude.’ Rakas v. Illinois, 439 U. S. 128, 144, n.2 (1978).”

D's expectation of privacy is similar to the apartment guest in Jones v. United States, 362 U. S. 257 (1960). “The Court sees no reason why the expectation of privacy that comes from lawful possession and control and the attendant right to exclude would differ depending on whether the car in question is rented or privately owned by someone other than the person in current possession of it, much as it did not seem to matter whether the friend of the D in Jones owned or leased the apartment he permitted the D to use in his absence. Both would have the expectation of privacy that comes with the right to exclude.”

Further the rental contract is irrelevant for two reasons. First, it did not say the contract would be void if someone else drove the car. And second, the terms of rental car contracts are about allocation of risk under the contract, not the car rental company's efforts to block delegation of use to someone not on the contract.

The Court remanded the case to consider whether the government could prevail on two other grounds: whether D still had no expectation of privacy because he used Reed to mislead the rental company, knowing that he wouldn't be able to rent the car himself because of his prior criminal record, and, second, whether the police had probable cause to search the car.

NOTE: Byrd may help those arguing that an expectation of privacy exists in personal email, even though some district courts have held that terms of service can eliminate 4th Amendment rights that otherwise exist in email. Held, cert. granted, opinion at 679 Fed. Appx. 146 vacated, and remanded. Kennedy, J., for the unanimous Court; Thomas J., concurring, joined by Gorsuch, J. Alito, J., concurring.

TITLE: Campos v. State
INDEX NO.: Z.9.d.3.
CITE: (04-30-08), Ind., 885 N.E.2d 590
SUBJECT: Coerced consent requires suppression of cocaine but not voluntary statements
HOLDING: Tr. Ct. erred, in part, by denying D's motion to suppress. Where the D offers sufficient evidence indicating that he has permission of the owner to use a vehicle, the D plainly has a reasonable expectation of privacy in the vehicle and standing to challenge the search. U.S. v. Rubio-Rivera, 917 F.2d 1271, 1275 (10th Cir. 1990). Here, the police stopped a vehicle in which D was a passenger for speeding. After issuing a warning, the officer asked the driver if he could search the car. The driver asked if it was "necessary," to which the officer responded "yes." The driver then consented. The officer then approached D, whose brother owned the car, and asked for consent. D told the officer to ask the driver, to which the officer responded that he did ask the driver and the driver consented. D then also consented. During the search, D and driver both were placed in the officer's cruiser during which they made incriminating statements that were secretly recorded. Both D and the driver told the officer that D had permission from his brother to use the car, and State presented no evidence to the contrary. Thus, the passenger, who had permission to use the car, had standing to challenge the search of the car under the Fourth Amendment and Article I, Section 11.

TITLE: Cannon v. State

INDEX NO.: Z.9.d.3.

CITE: (2nd Dist., 10-14-75), Ind. App., 335 N.E.2d 229

SUBJECT: Exclusionary Rule - Motion to Suppress - Standing

HOLDING: Because D's possession of drugs formed basis of conviction, D had standing to challenge legality of seizure of drugs even though premises from which drugs were seized was not owned or held by D. Standing to challenge legality of seizure may exist not only by reason of possessory interest in premises in which seizure takes place, but also by reason of seized items themselves if possession of seized items is basis of, or essential element of, offense. Payne, App., 343 N.E.2d 325. Held, judgment affirmed. Buchanan and White, JJ., concurring.

RELATED CASES: Livermore, App, 777 N.E.2d 1154 (D failed to carry his burden of establishing he had reasonable expectation of privacy in girlfriend's house); Lee, App., 419 N.E.2d 823 (D presented no evidence he had key to trailer or kept personal items other than stolen items at trailer; D presented, at best, subjective expectation of privacy and Fourth Amendment does not protect such subjective expectations.)

TITLE: Ceroni v. State

INDEX NO.: Z.9.d.3.

CITE: (3d Dist. 9/12/90), Ind. App. 559 N.E.2d 372

SUBJECT: Suppression motion - standing; motel room

HOLDING: Where D was allowed to stay in motel room by individual who had rented it, D had standing to challenge search of room. D was arrested after police entered motel room, saw marijuana on table, & searched drawers & satchel, finding large quantity of cocaine. D moved to suppress, which was denied, & objected to admission of evidence at trial, which was *overruled*. He raises admission as error on appeal. First inquiry is whether D had personal & legitimate expectation of privacy in place searched. State argues that since motel room was not rented in D's name, but D was allowed to stay there by friend, he had no legitimate expectation of privacy in it. Hotel room is "home" for 4th Amend. purposes. Mowrer, App., 447 N.E.2d 1129. Fact that D did not rent room himself does not mean he had no expectation of privacy. Such expectation is justified if owner or renter consents to aggrieved person's presence. Jones v. US (1960), 362 U.S. 257, 80 S. Ct. 725, 4 L.Ed.2d 697. Thus, D had standing to challenge search.

NOTE: See also Minnesota v. Olson (1990), 110 S. Ct. 1684, 109 L.Ed.2d 85.

RELATED CASES: Byrd, (5/14/2018), (U.S. Supreme Court 2018) (person who borrows car from someone who has rented the car has an expectation of privacy in the car, even though the person's name is not on the rental car contract, so long as the person's possession of the car is lawful; see full review, this section); Fox, 983 N.E.2d 1165 (Ind. Ct. App 2013) (unregistered guest lacked standing to challenge warrantless search of hotel room, where he was merely invitee of hotel manager rather than an overnight guest); Willis, 780 N.E.2d 423 (App.) (Although State challenged whether D had reasonable expectation of privacy in hotel room, it did not challenge his standing to Indiana Constitutional claim & Ct. could not raise issue *sua sponte*); Armour, App., 762 N.E.2d 208 (D did not have legitimate expectation of privacy in hotel room because he was not registered guest, nor was there any evidence in record to suggest that registered guest had given him permission to use room); Norwood, 670 N.E.2d 32 (App.) (although D left property in room on prior occasions & was previously allowed to extend rental period, society would not recognize D's expectation of privacy as reasonable after rental period expired & D no longer had access to room).

TITLE: Cox v. State
INDEX NO.: Z.9.d.3.
CITE: (1st Dist., 7-30-79), Ind. App. 392 N.E.2d 496
SUBJECT: Motion to Suppress - Standing
HOLDING: D charged with forgery lacked standing to challenge validity of method by which police obtained check and deposit slip from bank. D argued Bank Secrecy Act required that "existing legal process" controlled access to bank records. No warrant was required for police to obtain check and deposit slip from bank, in connection with investigation which led to D being charged with forgery. Held, judgment affirmed.

TITLE: Isley v. State
INDEX NO.: Z.9.d.3.
CITE: (1/30/23), Ind. Ct. App., 202 N.E.3d 1124
SUBJECT: Even though consent was obtained from Defendant at hospital while she was waiting for treatment no violation of Indiana's implied consent law or violation of State or Federal constitution.

HOLDING: Defendant was involved in a two-car collision that killed the driver of the other car. Police questioned Defendant at the scene, and she admitted to drinking alcohol. She was transported to the hospital, where she appeared lucid. She answered questions although strapped to a gurney and in a neck brace. She was asked by police to sign a consent form to release her medical records "for these guys", without elaborating that these guys were referring to the prosecutor's office. A nurse incorrectly told Defendant the consent form granted permission to draw Defendant's blood. Defendant signed the form. The nurse then asked Defendant for her oral permission to draw blood and Defendant consented. Police read the form to Defendant that she had just signed and then asked for her oral agreement to draw blood. Defendant gave her oral consent and the bloods draw showed a blood alcohol content of .144%. Defendant was charged with operating a vehicle causing death with an ACE of .08% or more, a level 4 felony and operating while intoxicated as a Class A, Class B and two Class C misdemeanors. Defendant moved to suppress the blood draw results, which the trial court denied. On interlocutory appeal, Defendant argued the blood draw violated her rights under the federal and state constitutions and Indiana's implied consent law. The Court of Appeals found Defendant consented to the blood draw multiple times in writing and orally and that the facts did not support that Defendant was confused, pressured, or failed to understand what she was consenting to, therefore there was no violation under the 4th Amendment. Under an Article one, section 11 analysis, the Court of Appeals held that under the Litchfield factors, the degree of police concern and extent of law enforcement needs were high, while the degree of intrusion was low because Defendant was already at the hospital which mitigated the intrusiveness of the blood draw. Thus, under the totality of the circumstances, the blood draw and release of Defendant's medical records was reasonable and not in violation of the Indiana constitution.

Defendant next argued that the blood draw violated the implied consent law because Defendant was not informed of the civil penalties for refusing a test. The Court of Appeals found IC 9-30-7-5 is triggered in accident cases involving serious injury or death and has no requirement to be informed of civil penalties. Finally, the Court of Appeals wrote a lengthy footnote discussing whether the Litchfield analysis is appropriate where the issue of an exception to the warrant requirement is consent. The Court analyzed the case under Litchfield because both parties on appeal had done so. In a concurring opinion, Judge May stated there is no reason to apply a Litchfield analysis because Defendant did not challenge the reasonableness of the scope of the execution of her consent to a draw blood, finding consent is itself sufficient as an exception to the warrant requirement.

TITLE: Livingston v. State

INDEX NO.: Z.9.d.3.

CITE: (8/15/89), Ind., 542 N.E.2d 192

SUBJECT: Motion to suppress - standing

HOLDING: D lacked standing to challenge search of room in friend's home where D sometimes slept. At suppression hearing, owner testified that room where drugs were found was where D slept, & further testified that D stayed at house sometimes but did not live there regularly. D argues that he faced dilemma of having to admit possessory interest in room where drugs were found in order to establish standing to challenge the search. To prevent this, he urges Ind. S. Ct. to adopt rule set out in Jones v. US (1960), 362 U.S. 257, 80 S. Ct. 725, 4 L.Ed.2d 697, extending standing to anyone legitimately on searched premises. However, in Simmons v. US (1968), 390 U.S. 377, 88 S. Ct. 967, 19 L.Ed.2d 1247, U.S.S. Ct. held that testimony at suppression hearing is not admissible as evidence of D's guilt at trial, eliminating dilemma. In Rakas v. IL (1978), 439 U.S. 128, 99 S. Ct. 421, 58 L.Ed.2d 387, Ct. held that to challenge search, D must have legitimate expectation of privacy in subject of search, & in Salvucci v. US (1980), 448 U.S. 83, 100 S. Ct. 2547, 65 L.Ed.2d 619, Ct. extended this rule to cases involving possession crimes. Ind. S. Ct. has followed these new rules. See, e.g., Robles 510 N.E.2d 660. D bears burden of showing legitimate expectation of privacy, Tobias 479 N.E.2d 508, & focus is on D's control over premises searched. Stout 479 N.E.2d 563. Here, owner testified that D merely slept in room sometimes, & did not live-in home on regular basis. On evening in question, owner let D in back door, indicating that D did not have free access to home. Even if D had some control over room where drugs were found, it was defined by subordinate to & dependent upon will of owner. See Murrell 421 N.E.2d 638. Held, conviction affirmed.

RELATED CASES: Arcuri, App., 775 N.E.2d 1095 (D lacked standing to challenge search area of residence because he had no reasonable expectation of privacy in common area of residence); Strangeway, App., 720 N.E.2d 724 (driver of vehicle did not have standing to contest officer's request for passenger's identification); Shelton, App., 679 N.E.2d 499 (Ds lacked standing to object to officers' entry onto private property to place decoy thereon); Clifford, 457 N.E.2d 536 (factors considered include key, exclusive control, spending significant time, considered other than guest); State v. Machlach, App., 505 N.E.2d 873 (D had legitimate expectation of privacy in suitcase he took in taxi on way to airport; 2d D had no standing); Snuffer, App., 461 N.E.2d 150 (D had no standing to challenge search of stolen vehicle); Harless, App., 577 N.E.2d 245 (when D had stayed overnight at girlfriend's home on many occasions, including evening preceding day of search, he had standing to challenge warrantless search of home).

TITLE: Minnesota v. Carter
INDEX NO.: Z.9.d.3.
CITE: 525 U.S. 83 (1998)
SUBJECT: Reasonable Expectation of Privacy -- Standing; Persons Briefly in Home of Another for Business Purpose
HOLDING: Individuals who were in apartment of third-party packaging cocaine, who had no previous connection with lessee, and who were there for relatively short period of time, were not entitled to 4th Amend. protection against officer's observation of their activity through gap in closed blinds. Court has abandoned old rubric of "standing" in favor of inquiry into reasonable expectation of privacy. Rakas v. Illinois, 99 S. Ct. 421 (1978). Court here looks at parameters of third-party expectation of privacy. While overnight guests may have reasonable expectation of privacy, Minnesota v. Olsen, 110 S. Ct. 1684 (1990), those who are merely present with consent of householder may not. Jones v. U.S., 80 S. Ct. 725 (1960). Expectation of privacy on commercial premises is generally less than similar expectation in residential premises. New York v. Burger, 107 S. Ct. 2636 (1987). Respondents were more than merely consensually present, but in light of the relatively short period of time they were on premises and their lack of previous connection with lessee, they did not have the sort of expectation of privacy that an overnight guest would have. Further, although apartment was residence, respondents were present for "commercial" purpose of packaging cocaine and had no significant connection to apartment. Majority holds respondents lacked sufficient privacy interest to warrant 4th Amend. protection. Scalia & Thomas, JJ., CONCUR, writing that 4th Amend. protects people only in their own homes (or temporary homes, in case of overnight guests). Kennedy, J., CONCURS, writing that because respondents have established no meaningful connection to lessee, lessee's apartment, or lessee's expectation of privacy, they are not entitled to 4th Amend. protection. Breyer, J., CONCURS, writing that respondents ARE entitled to 4th Amend. protection, but that officer's observation through gap in closed blinds was not search. Ginsburg, Stevens, & Souter, JJ., DISSENT, writing that respondents are entitled to 4th Amend. protection which was violated by officer's observation.

RELATED CASES: Byrd, (5/14/2018), (U.S. Supreme Court 2018) (person who borrows car from someone who has rented the car has an expectation of privacy in the car, even though the person's name is not on the rental car contract, so long as the person's possession of the car is lawful; see full review, this section); Bradley, 4 N.E.3d 831 (Ind. Ct. App 2014) (D lacked standing/expectation of privacy to challenge probable cause to search neighbor's apartment, even though the marijuana police found in neighbor's apartment helped police find D and obtain warrant to search his apartment).

TITLE: Minnesota v. Olson
INDEX NO.: Z.9.d.3.
CITE: 495 U.S. 91, 110 S. Ct. 1684, 109 L.Ed.2d 85 (1990)
SUBJECT: Standing as overnight guest
HOLDING: Overnight houseguest status is sufficient status to confer standing for warrantless arrest. "Capacity to claim the protection of the 4th Amend. depends ... upon whether the person who claims the protection of the Amend. has a legitimate expectation of privacy in the invaded place." Rakas v. Illinois (1978), 439 U.S. 128, 143, 99 S. Ct. 421, 430, 58 L.Ed.2d 387. Subjective expectation of privacy legitimate if society recognizes it as reasonable. Id. Society recognizes houseguest has legitimate expectation of privacy in host's home. Staying overnight in another's home is "longstanding social custom that serves functions recognized as valuable by society." People stay in other's homes when they travel to strange city for business/pleasure. When visiting parents/children or more distant relatives when they are between jobs or homes or when house-sitting for friends. From guest's perspective, he/she seeks shelter in another's home because it provides privacy, "[A]lthough we may spend all day in public places, when we cannot sleep in our own home, we seek out another private place to sleep, whether it be a hotel room, or the home of a friend." Fact that host has ultimate control of house not inconsistent with guest's legitimate expectation of privacy. Held, D had legitimate expectation of privacy which society recognizes as reasonable, & thus, had standing to assert 4th Amend. claim. Rehnquist & Blackmun, DISSENTING without opinion; Stevens, CONCURRING; Kennedy, CONCURRING.

RELATED CASES: Byrd, (5/14/2018), ____ N.W.2d ____ (U.S. Supreme Court 2018) (person who borrows car from someone who has rented the car has an expectation of privacy in the car, even though the person's name is not on the rental car contract, so long as the person's possession of the car is lawful; see full review, this section)

TITLE: Parker v. State

INDEX NO.: Z.9.d.3.

CITE: 182 S.W.3d 923 (Tex. Crim. App. 2006)

SUBJECT: Standing - Rental Car Driver Not on Lease Agreement

HOLDING: D who was driving his girlfriend's rental car, although he was not listed on the lease agreement, had a reasonable expectation of privacy such that he has standing to challenge a search of the car. In determining whether D had an expectation of privacy that society would find reasonable, the Texas Court of Criminal Appeals looks to the circumstances surrounding the use of the vehicle, as well as the nature of the relationship between the driver and the lessee. D's girlfriend regularly loaned him her car, but she was driving a rental car while hers was in the shop.

TITLE: Peterson v. State

INDEX NO.: Z.9.d.3.

CITE: (12-13-96), Ind., 674 N.E.2d 528

SUBJECT: Challenging search & seizure under Indiana Constitution

HOLDING: To challenge evidence as result of unreasonable search or seizure under Indiana Constitution, Article I, Section 11, D must establish ownership, control, possession, or interest in either premises searched, or property seized. Here, evidence did not support conclusion that D had standing to challenge entry into his former bedroom & closet at mother's apartment. Although D had standing to challenge seizure of sawed-off shotgun found in closet, evidence supported Tr. Ct.'s finding that shotgun was properly seized as contraband in plain view. Under Section 11, police observation of item in open view is not search. Lindsey, 246 Ind. 431, 204 N.E.2d 357 (1965). Held, no error in admitting shotgun into evidence.

RELATED CASES: Conn, 89 N.E.3d 1093 (Ind. Ct. App 2017) (State waived its argument that D lacked standing to bring his state constitutional challenge because it failed to challenge his standing under Ind. Constitution at trial); Allen, App., 893 N.E.2d 1092 (where D does not claim interest in items seized but rather only premises searched, the standing analysis under the Indiana and U.S. Constitutions are the same); Best, App., 821 N.E.2d 419 (D lacked 4th amendment protection because he was present on property for business transaction, but he did have standing under Art. 1, Sec. 11 because he possessed interest in items seized); Mays, App., 719 N.E.2d 1263 (police did not violate D's rights under Art. 1, §11 of Ind. Const. because D did not establish protected interest in doorframe of atrium where cocaine was found).

TITLE: Sidener v. State
INDEX NO.: Z.9.d.3.
CITE: (5/26/2016), 55 N.E.3d 380 (Ind. Ct. App 2016)
SUBJECT: Passenger tracked by GPS did not have expectation of privacy and could not challenge search

HOLDING: Under both Fourth Amendment and Ind. Constitution, passenger who had no reasonable expectation of privacy in vehicle in which he was riding could not challenge the constitutionality of installation and subsequent tracking of GPS device on that vehicle. D argued that police officers exceeded the scope of search warrant by continuing to monitor vehicle outside of Vanderburgh County. However, D was merely a passenger, not the vehicle's owner, nor did he exercise control over the vehicle. Court rejected argument that the Ind. Constitution gave D more protection because it also covers the possessory interests in any property seized. D's attempt to distinguish the initial placement of the GPS device (which he characterizes as a search) from the subsequent tracking ("seizure") "is artificial and makes little sense" in light of United States v. Jones, 132 S. Ct. 945 (2012).

Even assuming that information regarding vehicle's whereabouts could be construed as "property" that had been "seized," D failed to show an interest in it. In fact, the officers did not even know that D was a passenger until they stopped the vehicle. Accordingly, D has not shown that his personal interests were affected by the GPS monitoring of vehicle, thus he cannot challenge the search under the U.S. or Ind. constitution. Held, judgment affirmed.

TITLE: State v. Machlah

INDEX NO.: Z.9.d.3.

CITE: (4/9/87), Ind. App., 505 N.E.2d 873

SUBJECT: Standing to challenge search -- suitcase in trunk of cab

HOLDING: There is no "automatic standing" to contest legality of search and seizure for D charged with crime of possession. Salvucci, 448 U.S. 83. Criminal D must show that his own constitutional rights have been infringed. Vicarious assertion of another's 4th Amendment rights is insufficient. Initial inquiry is whether D had personal and legitimate expectation of privacy in area searched or article seized. Rakas, 439 U.S. 128. Assuming D has subjective expectation of privacy, this expectation must also be objectively reasonable. Ownership and possession, while not dispositive of expectation of privacy, are relevant factors. Salvucci, 448 U.S. 83. Here, two Ds were riding in cab from airport when pulled over by police for suspicion of transporting illegal drugs from Florida to Indianapolis. Both claimed that his constitutional rights were violated by warrantless search of suitcase in trunk of cab. Ct. held that D who picked up bag at airport had exclusive actual possession and control; this D also retained constructive possession after he placed it in trunk of cab. There was no evidence that other D had legitimate expectation of privacy in suitcase as he was never observed with it, nor ever observed to have it under his control or ownership. Held, grant of motion to suppress evidence of D who had possession of suitcase affirmed; grant of motion to suppress evidence of D who did not have possession of suitcase reversed.

RELATED CASES: Lucas & Winkle, App., 859 N.E.2d 1244 (Ds have standing to challenge search of locked metal box found inside stolen van Ds were traveling in); Posey, 663 F.2d 37 (7th Cir.) (even though D had no property interest in car searched or guns seized, D did have standing to challenge search and seizure because D's wife owned car and D was, with her permission, exercising exclusive control over car at time of search).

TITLE: United States v. Miller
INDEX NO.: Z.9.d.3.
CITE: 425 U.S. 435, 96 S. Ct. 1619, 48 L.Ed.2d 71 (1976)
SUBJECT: Exclusionary rule - Motion to suppress - Standing
HOLDING: D possessed no Fourth Amendment interest in bank records. Subpoenaed records were bank's business records, not D's private papers. There is no legitimate expectation of privacy in contents of original checks & deposit slips because checks are not confidential communications but negotiable instruments to be used in commercial transactions. All documents obtained contain only information voluntarily conveyed to banks & exposed to banks' employees in ordinary course of business. Fourth Amendment does not prohibit obtaining of information revealed to third party & conveyed by him to Government authorities. Thus, issuance of subpoena to third party did not violate D's rights, even if criminal prosecution is contemplated at time subpoena issued. Held, judgment reversed & remanded. Brennan & Marshall, JJ., dissented.

TITLE: U.S. v. Padilla
INDEX NO.: Z.9.d.3.
CITE: 508 U.S. 77, 113 S. Ct. 1936, 123 L.Ed.2d 635 (1993)
SUBJECT: Co-conspirator standing
HOLDING: Membership in criminal conspiracy has no bearing on whether members have standing to challenge stop and search of automobile driven by co-conspirator in furtherance of conspiracy. Co-conspirators' joint control and supervision over drug smuggling operation is irrelevant to question of standing. Here, car owned by D was stopped while being driven by low-level "mule," who quickly consented to search of trunk which turned up 500 pounds of cocaine. D's argument that he had standing to suppress cocaine based on membership in conspiracy was accepted by 9th Cir. Ct. App., but rejected by U.S.S. Ct. Expectations of privacy and property interests govern analysis of 4th Amend. claims. While participants in conspiracy may have such expectations or interests, conspiracy itself neither adds to nor detracts from them. S. Ct. remanded for determination whether D had such privacy expectations or property interests.

TITLE: Wilson v. State

INDEX NO.: Z.9.d.3.

CITE: 173 N.E.3d 1063 (Ind. Ct. App. 2021) 8/24/2021

SUBJECT: Defendant lacked requisite privacy interest in vehicle and did not have standing to challenge its search

HOLDING: During a traffic stop, Defendant provided the officer with a driver's license and a car rental agreement for the vehicle that matched the name on the license. However, officers determined the license was not his and Defendant was arrested for false informing. Officers contacted the car rental company and the representative granted permission to search the vehicle, which uncovered a variety of illegal drugs. The trial court denied Defendant's motion to suppress, and he pursued an interlocutory appeal. The Court of Appeals noted that Byrd v. United States, 138 S.Ct. 1518 (2018), "merely stands for the proposition that a defendant's status as the unauthorized driver of a rental car does not defeat his claim to standing" but that such a defendant must still show that he was someone in otherwise lawful possession and control. Here, Defendant did not present any evidence at the suppression hearing that he was an authorized driver on the rental agreement or that he had the renter's permission to use the car, only that there was nothing indicating he didn't have permission or that it was stolen. Relying on Campos v. State, 885 N.E.2d 590 (2008), the Court concluded Defendant did not meet his burden to show he lawfully possessed the vehicle when it was searched and therefore lacked the requisite privacy interest in the vehicle that would confer standing to challenge the search. Held, denial of motion to suppress affirmed.

Z. SEARCH AND SEIZURE

Z.9. Exclusionary Rule

Z.9.f. Use of illegally seized evidence at trial

TITLE: Brown v. State
INDEX NO.: Z.9.e.
CITE: (5/6/2016), 52 N.E.3d 945 (Ind. Ct. App 2016)
SUBJECT: Defense lawyer's "questionable conduct" in unrelated case did not require suppression of evidence
HOLDING: Ind. Professional Conduct Rule 1.6(a) prohibits a lawyer from revealing information relating to the representation of a client unless client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation, or disclosure is permitted by Rule 1.6(b). Here, an attorney representing D in an unrelated case violated rules of professional conduct in turning over laptop and fingerprint evidence in this case she had obtained with information from D during representation in the other case. She also testified over objection against D at trial.

Although Court has "significant concerns and deep reservations" about attorney's misconduct, D cited no authority for the proposition that an ethical violation should result in the exclusion of evidence in a criminal trial unless it violates the attorney-client privilege statute, Ind. Code § 34-46-3-1(a). Regardless, any error in admitting this evidence was harmless given co-D's testimony, video surveillance shortly after the crime and D's attempt to evade capture. Held, judgment affirmed and remanded in part on other grounds.

TITLE: New York v. Harris
INDEX NO.: Z.9.e.
CITE: 495 U.S. 14, 110 S. Ct. 1640, 109 L.Ed.2d 13 (1990)
SUBJECT: Statement made following warrantless home arrest
HOLDING: Where D is unlawfully arrested in his home without warrant but with probable cause, exclusionary rule does not bar use at trial of D's statement made outside home. No "per se" or "but for" rule that makes inadmissible any evidence which somehow came to light through a claim of causation that began with an illegal arrest. U.S. v. Ciccolini (1978) 435 U.S. 268. Rather, penalty imposed upon state for violation of law must bear some relation to purposes which law is to serve. Id. Rule which prohibits arrest in home without warrant designed to protect physical integrity of home, because physical entry of home is chief evil against which 4th Amend. directed. See Payton v. New York (1980), 445 U.S. 573, 100 S. Ct. 1371, 63 L.Ed.2d 639. Nothing in Payton suggests that arrest in home without warrant but with probable cause somehow renders unlawful continued custody of suspect once D is removed from house. Case is distinguishable from those holding indirect fruits of illegal search or arrest must be suppressed when they bear sufficiently close relationship to underlying illegality. See, generally, Brown v. Illinois (1975), 422 U.S. 590, 95 S. Ct. 2254, 45 L.Ed.2d 416 [other citations omitted]. In those cases, police lacked probable cause. Attenuation analysis only appropriate where, as threshold matter, courts determine challenged evidence is in some sense product of illegal governmental activity. U.S. v. Crews (1980), 445 U.S. 463, 100 S. Ct. 1244, 63 L.Ed.2d 537. Held, evidence of post-arrest statement after Miranda warnings admissible even though warrantless home arrest was illegal. Marshall, joined by Brennan, Blackmun, & Stevens, DISSENTING.

RELATED CASES: Utah v. Strieff, 136 S. Ct. 2056 (U.S. 2016); Joseph, 975 N.E.2d 420 (Ind. Ct. App 2012) (where officers entered D's home, handcuffed him, and searched his home without a warrant or probable cause, the fact that the police Mirandized D prior to interrogating him at the station did not remove the taint of the illegal entry and the statements should have been suppressed).

TITLE: Utah v. Strieff

INDEX NO.: Z.9.e.

CITE: (6/20/2016), 136 S. Ct. 2056 (U.S. 2016)

SUBJECT: Evidence from illegal stop admissible under attenuation doctrine

HOLDING: Drugs seized from D were admissible, even though there was no legal basis to stop him, because there was a pre-existing warrant to arrest D, which broke the causal chain between the illegal stop and the discovery of drugs. For several weeks Officer Fackrell surveilled a residence for suspected drug activity. One day he saw D leave the residence, and, with no reasonable suspicion, stopped him, acquired his identification, and radioed a dispatcher, who told the officer that D had an outstanding warrant for a traffic violation. Officer Fackrell arrested D, searched him, and found methamphetamine and drug paraphernalia. Even though the initial stop was illegal, the drugs were admissible under the attenuation doctrine and its three-part test under Brown v. Illinois, 422 U.S. 590 (1975). First, the “temporal proximity” test favored suppression because Officer Fackrell found the drugs only minutes after he stopped D. However, the second factor, the presence of intervening factors, favored the State because the existence of a valid warrant, predating the investigation and unconnected to the stop, created a sufficient attenuation between the illegal arrest and the discovery of drugs. In other words, the discovery of the warrant severed the causal chain between the illegal stop and the discovery of the drugs. The third factor, “the purpose and flagrancy of the official misconduct,” also favored the State. At most, Officer Fackrell was negligent; he did not purposefully or flagrantly violate D’s Fourth Amendment rights. After the unlawful stop, Officer Fackrell’s conduct was lawful, and there was no indication the stop was part of systemic or recurrent police misconduct.

Justice Sotomayor dissented, arguing the attenuation doctrine did not apply because Officer Fackrell did not inadvertently learn about the warrant but discovered it by exploiting the opportunity presented to him by illegally arresting D. She also contended the majority’s decision gives license to police officers to use suspicionless stops to run warrant checks, with people of color bearing the lion’s share of such misconduct. Held, cert, granted, opinion of the Utah Supreme Court reversed, and judgment affirmed. Thomas, J., joined by Roberts, C.J., Kennedy, Breyer, and Alito, JJ; Sotomayor, J., dissenting, joined in part by Ginsburg, J.; Kagan, J., dissenting, joined by Ginsburg, J.

Z. SEARCH AND SEIZURE

Z.9. Exclusionary Rule

Z.9.g. Use of illegally seized evidence at other proceedings

TITLE: Grubb v. State
INDEX NO.: Z.9.f.
CITE: (5th Dist.; 8-21-00), Ind. App., 734 N.E.2d 589
SUBJECT: Probation revocations - admissibility of statements obtained in violation of Miranda
HOLDING: Tr. Ct. properly admitted probationer's unMirandized videotaped confession at his probation revocation hearing. Because exclusionary rule is only applicable where deterrence benefits outweigh substantial costs associated with rule, U.S. S. Ct. has repeatedly declined to extend exclusionary rule to proceedings other than criminal trials. Pennsylvania Bd. of Probation & Parole v. Scott, 524 U.S. 357, 118 S. Ct. 2014 (1998). Here, although police may have obtained probationer's taped confession to two child molests in violation of Miranda, Tr. Ct. allowed State to use confessions to revoke his probation in another matter. Because costs associated with excluding probationer's statement are high while deterrence effect on police misconduct of excluding statement is minimal given fact that statement cannot be admitted against probationer at criminal trial on molestation charges, Miranda warnings were not prerequisite for confession to be admitted into evidence at probation revocation hearing. Held, judgment affirmed.

TITLE: Naked City v. State

INDEX NO.: Z.9.f.

CITE: (3d Dist. 1/26/84), Ind. App., 460 N.E.2d 151

SUBJECT: Use of illegally seized evidence at sentencing

HOLDING: Tr. Ct. did not err in admitting videotape during sentencing hearing; D waived argument that tape was seized illegally by pleading guilty. Tollett v. Henderson (1973), 411 U.S. 258, 93 S. Ct. 1602, 36 L.Ed.2d 235; Mitchell v. Hopper (S.D. Ga. 1982), 538 F. Supp. 77 (rule applies to introduction of such evidence at sentencing). Held, no error.

RELATED CASES: But see Haring v. Prosise (1983), U.S., 103 S. Ct. 2368, 76 L.Ed.2d 595 (guilty plea does not constitute admission or waiver of constitutionality of search), which distinguishes Tollett & concludes waiver was not basis for decision in that case. [Card at Q.5].

TITLE: Pennsylvania Board of Probation & Parole v. Scott
INDEX NO.: Z.9.f.
CITE: 524 U.S. 357 (1998)
SUBJECT: Exclusionary Rule Does Not Reach Parole Revocation Hearing
HOLDING: Exclusionary rule does not prohibit use in state parole revocation proceeding of evidence seized in violation of parolee's 4th amendment rights. Exclusionary rule is judicially created means of deterring illegal searches and seizures. As such, it does not proscribe introduction of illegally seized evidence in all proceedings or against all persons. Rather, it applies only in contexts in which its deterrence objectives are best served. Further, because it is not constitutionally mandated, it applies only where its deterrence benefits outweigh substantial societal costs of precluding consideration of relevant evidence. Social cost of allowing parole violators to remain at large outweighs minimal additional deterrence to illegal searches to be gained from extending exclusionary rule to parole revocation hearings. Stevens, Souter, Ginsburg, and Breyer, JJ., DISSENT, arguing that parole revocation hearings function much like criminal trials, and often fully take place of independent criminal prosecution.

TITLE: Plue v. State

INDEX NO.: Z.9.f.

CITE: (2nd Dist.; 12-28-99), Ind. App., 721 N.E.2d 308

SUBJECT: Use of illegally seized evidence in probation revocation

HOLDING: Cts. have found it unnecessary to fully apply exclusionary rule when dealing with probation revocation. Rather, it appears that evidence seized illegally will be excluded only if it was seized as part of continuing plan of police harassment or in particularly offensive manner. Dulin, 169 Ind. App. 211, 219, 346 N.E.2d 746, 751 (1976). Here, assuming that evidence was seized illegally, D did not claim that he was harassed by police or that evidence in this case was seized in particularly offensive manner. Thus, Tr. Ct. did not err in admitting seized evidence & D's statement in probation revocation hearing. Held, judgment affirmed.

RELATED CASES: Polk, App., 739 N.E.2d 666 (Ct. disagreed with Plue & reversed denial of motion to suppress in probation revocation).

Z. SEARCH AND SEIZURE

Z.9. Exclusionary Rule

Z.9.h. Appeal/Collateral Attack

TITLE: Ornelas v. U.S.

INDEX NO.: Z.9.g.

CITE: 517 U.S. 690, 116 S. Ct. 1657; 134 L.Ed.2d 911 (1996)

SUBJECT: Search & Seizure -- Appellate Review

HOLDING: Appellate Cts. should conduct de novo review of Tr. Ct.'s determinations of reasonable suspicion to make stops and probable cause to make warrantless searches, after reviewing findings of historical fact for clear error and giving due weight to inferences. While it is impossible to define precisely what reasonable suspicion or probable cause mean, it is clear that inquiry for determining either has two parts. The first part is a determination of the historical facts -- the events leading up to stop or search. The second part is a mixed question of law and fact -- determining whether historical facts found satisfy legal standard of reasonable suspicion or probable cause. Ct. has never, when reviewing probable cause or reasonable suspicion determinations, expressly deferred to Tr. Ct.'s determination. Policy of sweeping deference would lead to inconsistent rulings, whereas independent appellate review is necessary to enable the appellate Cts. to maintain control of and clarify legal principles involved. Such unified precedent will come closer to providing law enforcement officers clearly defined set of rules from which to operate and make their own correct determinations. Therefore, as general matter, appellate Cts. should conduct de novo review of determinations of reasonable suspicion and probable cause. In doing so, they should review findings of historical facts regarding events leading up to stop or search only for clear error. They should further give due deference to inferences drawn from those facts by resident judges and local law enforcement officers. Scalia, J., DISSENTS.

Z. SEARCH AND SEIZURE

Z.10. Electronic Surveillance

TITLE: Clapper v. Amnesty International

INDEX NO.: Z.10.

CITE: (2/26/2013), 133 S. Ct. 1138 (United States Supreme Court 2013)

SUBJECT: Plaintiffs lacked standing to challenge constitutionality of Foreign Intelligence Surveillance Act

HOLDING: Plaintiffs lacked standing to challenge the amended version of Foreign Intelligence Surveillance Act of 1978 ("FISA"). Plaintiffs are lawyers and various organizations who communicate internationally with persons they believe are likely targets of surveillance. The District Court ruled the plaintiffs lacked standing, but the Second Circuit reversed, because the plaintiffs showed an "objectively reasonable likelihood" that their communications will be intercepted and that they are suffering present injuries from costly measures to protect the confidentiality of their communications. The Supreme Court said the Second Circuit applied the wrong standard to determine actual or imminent injury. Instead, "threatened injury must be 'certainly impending' to constitute injury in fact." Whitmore v. Arkansas, 495 U.S. 149, 158 (1990). Plaintiffs fail to meet this standard as their claims of injury are speculative. Also, FISA surveillance is subject to statutory requirements, judicial authorization, congressional supervision, and compliance with the Fourth Amendment.

The four dissenting Justices stated the Constitution requires plaintiffs to show only a "reasonable probability" or a "high probability" of actual injury. Held, cert. granted, Second Circuit reversed and opinion vacated; District Court affirmed. Alito, J., joined by Roberts, C.J., and Kennedy, Scalia, and Thomas, J.J., Breyer, J., dissenting, joined by Ginsburg, Sotomayor, and Kagan, J.J.

TITLE: Dahda v. United States

INDEX NO.: Z.10.

CITE: (5/14/2018), 138 S. Ct. 1491 (2018)

SUBJECT: Federal wiretap orders were not facially insufficient

HOLDING: A federal district court wiretap order was not facially insufficient even though it authorized electronic intercepts in another jurisdiction. A judge normally may issue a wiretap order permitting interception of communications only “within the territorial jurisdiction of the court in which the judge is sitting.” 18 U. S. C. §2518(3). Here, a Kansas district court judge authorized nine wiretap orders as part of a government investigation of a suspected drug distribution ring in Kansas. The government intercepted communications from a listening post within Kansas. But since each order also authorized interception outside of Kansas, the government intercepted additional communications from a listening post in Missouri. D was indicted for participating in an illegal drug distribution conspiracy. He moved to suppress the evidence derived from all wiretaps under subparagraph (ii) of the wiretap statute’s suppression provision because, he claimed, the language authorizing interception beyond the District Court’s territorial jurisdiction rendered each order “insufficient on its face.” §2518(10)(a)(ii).

Because the orders were not lacking any information the statute required and would have been sufficient absent the challenged language, the orders were not facially insufficient. Thus, the sentence authorizing interception outside Kansas is surplus. The challenged sentence is not connected to any other relevant part of the orders. Absent the challenged language, every wiretap that produced evidence introduced at D’s trial was properly authorized under the statute. While the orders do not specifically list the territorial area where they could lawfully take effect, they clearly set forth the authorizing judge’s territorial jurisdiction—the District of Kansas. Held, cert. granted, 853 F.3d 1101 (first judgment) and 852 F.3d 1282 (second judgment) affirmed. Breyer, J., for the unanimous court except for Gorsuch, J., who did not participate.

TITLE: Lombardo v. State

INDEX NO.: Z.10.

CITE: (11-3-00), Ind., 738 N.E.2d 653

SUBJECT: Unlawful interception - scope of Indiana's Wiretap Act

HOLDING: In case of first impression, Ct. construed scope & constitutionality of Indiana's Wiretap Act. Person who knowingly or intentionally intercepts communication in violation of Ind. Code 35-33.5 commits unlawful interception, a Class C felony. Ind. Code 35-33.5-5-5. "Interception" means intentional recording of or acquisition of contents of telephonic or telegraphic communication by person other than sender or receiver of that communication, without consent of sender or receiver, by means of any instrument, device, or equipment...Ind. Code 35-33.5-1-5. Ct. acknowledged that Act is internally inconsistent in that highest degree of culpability - "intentional" - is used to define "interception," while lesser degree of culpability - "knowingly or intentionally" - is included in defining statutory offense of unlawful interception. However, Ct. found that Indiana Wiretap Act is sufficiently clear & definite to warn person of ordinary intelligence that act of intentionally wiring hidden tape recorder to document private telephone conversations between spouse & third parties, without their knowledge or permission, is prohibited under Act. In future cases, State will be required to prove intentional conduct in charging & prosecuting individuals under Ind. Code 35-33.5-5-5. Ct. also construed Ind. Code 35-33.5-1-5 to hold that interception under Wiretap Act can be accomplished by means of any instrument, device, or equipment, not just two devices listed in Ind. Code 35-33.5-1-5. Finally, Ct. concluded that legislature did not intend to directly incorporate Federal Wiretap Act statutory or case law into Indiana's Act but instead meant to exempt from its provisions federal law enforcement surveillance activities within Indiana's borders. Held, Tr. Ct.'s judgment declaring Wiretap Act unconstitutional reversed & remanded for further proceedings.

NOTE: Ct. did not express opinion as to whether wiretapping at issue in this case occurred in marital home or whether there is marital home exception implicit in Indiana Wiretap Act.

TITLE: Packer v. State

INDEX NO.: Z.10.

CITE: (3rd Dist., 11-19-03), Ind. App., 800 N.E.2d 574

SUBJECT: Admission of tapes of D's telephone conversations from jail - no error

HOLDING: In murder prosecution, Tr. Ct. did not abuse its discretion in admitting tapes of pretrial conversations D had with his girlfriend during telephone calls from jail. D argued that tapes were obtained without warrant in violation of both Federal & State Wiretap Acts. Although Federal Wiretap Act prohibits interception & introduction into evidence of telephone communications unless a Ct. order is obtained authorizing the interception of telephone conversations, the "ordinary course of business" exception allows taping of telephone conversations from a jail. 18 U.S.C. 2511(2)(c). Here, D's telephone conversations were recorded during ordinary course of business at jail, thus State demonstrated an exception to allow admissibility of wiretap evidence.

Ct. also held that tapes were properly admitted under Indiana Wiretap Act because tape recordings do not qualify as "interceptions" under Ind. Code 35-33.5-1-5. Under this statute, the recording of a telephonic communication is not an "interception" if it is done with consent of sender or receiver of communication. Jail inmate handbook specifically stated that all phone calls from inmates were subject to being recorded & monitored. Having received & acknowledged understanding of handbook, D consented to recording of his telephone conversations while he was incarcerated. D could have but failed to request permission for an unrecorded telephone conversation to prevent interception of his calls. Instead, he chose to use telephone system with recording & monitoring system. In doing so, D gave his consent to recording & monitoring of his phone conversations from jail. Even assuming Tr. Ct. erred by admitting tapes, error was harmless in light of substantial independent evidence of D's guilt. Held, judgment affirmed.

RELATED CASES: Steinberg, 941 N.E. 2d 515 (Ind. Ct. App 2011) (it was unnecessary for State to introduce into evidence jail policy on recording phone conversations when it had already introduced evidence that, at beginning of each phone call, the operator announced "this call may be recorded"); Baer, 866 N.E.2d 752 (no error in overruling D's objection claiming that recorded calls lacked foundation of consent as discussed in Packer; there was nothing unfairly prejudicial on excerpts of calls that were played to jury).

TITLE: Sparks v. State
INDEX NO.: Z.10.
CITE: (4/18/2018), 100 N.E. 3d 715 (Ind. Ct. App 2018)
SUBJECT: Listening to recorded statement does not violate federal Wiretap Act
HOLDING: Because the federal Wiretap Act covers only “contemporaneous” interception of electronic and oral communications, the acquisition of a recorded statement on D’s Facebook account did not violate the Wiretap Act.

D lived with Lindsey Badanek for several years before she asked him to move out in March of 2016. On April 20, 2016, Badanek returned home from her job. She noticed that her employer-issued I-Pad was missing; she suspected D took it. Later that evening, she logged into D’s Facebook account, where she found a recording of D implicating himself in the disappearance of the I-Pad. Police obtained a warrant and found the I-Pad. D was convicted of Level 4 felony burglary and Class A misdemeanor theft.

Listening to D’s Facebook recording did not violate the Wiretap Act. See 18 U.S.C. § 2511(1)(a). The Act does not explicitly require that the acquisition of a communication occur contemporaneously with its transmission. 2 Wayne R. Lafave et. al., Criminal Procedure, § 4.6(b) (4th ed. 2017). Nonetheless, federal courts have uniformly concluded that the Act covers only “contemporaneous” interceptions of communications, which are understood as the acquisition of communications in transit - rather than the acquisition of communications in storage. See, e.g., Epstein v. Epstein, 843 F.3d 1147, 1149-50 (7th Cir. 2016).

Here, Badanek discovered a recording on D’s Facebook account, i.e., a recording of a conversation that had already taken place. Badanek did not intercept a communication in transit; rather, she accessed a communication in storage. Accordingly, there is no violation of the Wiretap Act. Held, judgment affirmed.

TITLE: State v. Haldeman

INDEX NO.: Z.10.

CITE: (01-15-10), 919 N.E.2d 539 (Ind. 2010)

SUBJECT: Wiretaps - pre-implementation appellate review requirement

HOLDING: Repealing of Ind. Code ' 35-33.5-1-1, which required State to seek ex parte de novo review from Court of Appeals before implementing wiretap warrants, did not invalidate Criminal Rule 25 and the process it established to seek and obtain such appellate review, even though Criminal Rule 25 was promulgated at the behest of the now repealed statute. The power to rescind a rule governing practice and procedure in Indiana courts lies with the Indiana Supreme Court, not the legislature, and the Court did not, in fact, rescind or modify Cr 25 in response to the legislature's decision to repeal Ind. Code 35-33.5-1-1. Criminal Rule 25, in part, requires that a prosecutor file a petition for review of the warrant for wiretap with the court of appeals within ten days of the issuance of the warrant. By not seeking preliminary appellate review of the wiretap, the State violated Criminal Rule 25. However, Tr. Ct. should not have granted Ds' motions to suppress, as neither motion claimed the State's failure to follow Criminal Rule 25 affected their substantial rights or that the warrants were deficient in any other way. The error was harmless. See Trial Rule 61. Held, transfer granted, denial of motion to suppress affirmed.

Z. SEARCH AND SEIZURE

Z.10. Electronic Surveillance

Z.10.a. Telephones

TITLE: Henson v. State

INDEX NO.: Z.10.a.

CITE: (5th Dist., 6-23-03), Ind. App., 790 N.E.2d 524

SUBJECT: Admission of illegally intercepted telephone conversation - harmless error

HOLDING: Although government played no part in illegally intercepting telephone call, Tr. Ct. abused its discretion in denying D's motion to suppress evidence of illegally intercepted telephone conversation. Title III of Omnibus Crime Control & Safe Streets Act shields an individual's private communications from disclosure, regardless of whether a private party or government intercepts the communication. State argued that Ct. should follow reasoning in United States v. Murdock, 63 F.3d 1391 (6th Cir. 1995), & adopt a "clean hands" exception where police were not involved in illegal interception, as suppression of evidence would have no deterrent effect on future police conduct. However, Congress' dominant concern when enacting Title III was not deterrence of unlawful police conduct, but rather, protection of privacy of communication. Also, language of statute clearly requires exclusion of any illegally intercepted communications from admission into evidence in Ct. proceedings. Finally, suppression of evidence of illegally intercepted telephone call & any evidence derived therefrom is also consistent with constitutional protections established in Article One, Section Eleven of Indiana Constitution. Error in this case was harmless because State presented substantial independent evidence of D's guilt. Held, judgment affirmed.

TITLE: Sparks v. State
INDEX NO.: Z.10.
CITE: (4/18/2018), ____ N.E.3d ____ (Ind. Ct. App 2018)
SUBJECT: Listening to recorded statement does not violate federal Wiretap Act
HOLDING: Because the federal Wiretap Act covers only “contemporaneous” interception of electronic and oral communications, the acquisition of a recorded statement on D’s Facebook account did not violate the Wiretap Act.

D lived with Lindsey Badanek for several years before she asked him to move out in March of 2016. On April 20, 2016, Badanek returned home from her job. She noticed that her employer-issued I-Pad was missing; she suspected D took it. Later that evening, she logged into D’s Facebook account, where she found a recording of D implicating himself in the disappearance of the I-Pad. Police obtained a warrant and found the I-Pad. D was convicted of Level 4 felony burglary and Class A misdemeanor theft.

Listening to D’s Facebook recording did not violate the Wiretap Act. See 18 U.S.C. § 2511(1)(a). The Act does not explicitly require that the acquisition of a communication occur contemporaneously with its transmission. 2 Wayne R. LaFare et al., *Criminal Procedure*, § 4.6(b) (4th ed. 2017). Nonetheless, federal courts have uniformly concluded that the Act covers only “contemporaneous” interceptions of communications, which are understood as the acquisition of communications in transit—rather than the acquisition of communications in storage. See, e.g., Epstein v. Epstein, 843 F.3d 1147, 1149-50 (7th Cir. 2016).

Here, Badanek discovered a recording on D’s Facebook account, i.e., a recording of a conversation that had already taken place. Badanek did not intercept a communication in transit; rather, she accessed a communication in storage. Accordingly, there is no violation of the Wiretap Act. Held, judgment affirmed.

TITLE: United States v. Karo

INDEX NO.: Z.10.c.2.

CITE: 468 U.S. 705, 104 S. Ct. 3296, 82 L.Ed.2d 530 (1984)

SUBJECT: Electronic surveillance - Other devices; Beepers

HOLDING: Government is not completely free to determine by means of electric device, without warrant & without probable cause or reasonable suspicion, whether particular article or person is in individual's home at particular time. Government is not free to do so without warrant even if there is requisite justification in facts for believing that crime has been or is being committed & that monitoring beeper wherever it goes is likely to produce evidence of criminal activity. However, where such monitoring revealed nothing about contents of locker that Ds had rented, there was no "search" of that locker, which was identified only when agents traversing public parts of facility found that smell of ether was coming from specific locker. Search warrant affidavit, after striking of facts about monitoring of beeper while it was in residence, contained sufficient untainted information to furnish probable cause for subsequent issuance of search warrant. Held, judgment reversed; O'Connor & Rehnquist, JJ., concurring; Stevens, Brennan, & Marshall, JJ., dissenting.

RELATED CASES: Lagrone, 985 N.E.2d 66 (Ind. Ct. App 2013) (police monitoring of GPS device to track package en route to D's home was not unlawful, but information obtained from parcel wire after package was opened inside D's home without a warrant violated D's Fourth Amendment rights; see full review at Z.10.c.3); U.S. v. Knotts, 460 U.S. 276 (monitoring signal of beeper placed in container of chemicals that were being transported to owner's cabin did not invade any legitimate expectation of privacy on cabin owner's part, & therefore, there was neither "search" nor "seizure" within contemplation of Fourth Amendment).

TITLE: United States v. Novak

INDEX NO.: Z.10.a.

CITE: 531 F.3d 99 (D. Mass. 2006)

SUBJECT: Fourth Amendment, attorney's call from jailed client

HOLDING: The U.S. District Court for the District of Massachusetts held law enforcement violated the Fourth Amendment rights of an attorney when they monitored, without a warrant, telephone calls placed to the attorney from a client who was in jail and who had been warned that the call was subject to police monitoring. "Although courts have generally concluded that neither an inmate (including a pretrial detainee) nor a person who knowingly receives a call from the inmate has a reasonable expectation of privacy in telephone calls between them. . . none of these cases involved calls between inmates and their attorneys." D is a criminal defense attorney charged with money laundering and obstruction of justice. The jail's program of recording telephone calls from inmates was supposed to exclude calls placed to numbers in an attorney directory, but a "glitch" in the system resulted in the recording of the client's first five unsuccessful attempts to speak with D as well as a sixth call in which the two discussed legal matters. After listening to the calls, an officer contacted federal authorities who persuaded the client to participate in a sting of D, with subsequent taped conversations leading to the charges of laundering drug money. The Court held that the existence of an attorney-client privilege for this type of communication demonstrates the reasonableness of the D's expectation that the conversation would remain private. "Although the privilege exists to protect the client, not the attorney, its existence encourages both parties' expectation of privacy in communications between them." *Citation omitted.* The Court noted that generally inmate calls can be monitored due to an institution's need to maintain order and safety outweighing inmates reduced privacy rights, but attorney-client communications tilts "heavily" toward the inmate's privacy interest.

Z. SEARCH AND SEIZURE

Z.10. Electronic Surveillance

Z.10.a.1. Wiretap

TITLE: Berger v. New York

INDEX NO.: Z.10.a.1.

CITE: 388 U.S. 41, 87 S. Ct. 1873 (1967)

SUBJECT: Electronic surveillance - Wiretaps

HOLDING: Need for particularity & evidence of reliability required when judicial authorization of search is sought is especially great in eavesdropping cases. Showing exigent circumstances more important in obtaining eavesdropping warrant than when conventional search & seizure procedures used. Fourth Amendment does not make precincts of home or office sanctuaries where law can never reach. However, Fourth Amendment does prescribe constitutional standard that must be met before official invasion is permissible. Here, statute authorized any judge to issue ex parte order for eavesdropping upon oath or affirmation of district attorney or attorney general or police officer above rank of sergeant that there is reasonable ground to believe evidence of crime may be obtained. Statute contained no particularity requirement as to what specific crime committed or place to be searched or conversations sought & required no exigent circumstances to be shown. Ct. struck down statute as overly broad, as it resulted in unconstitutional trespassory intrusion into protected area. Held, judgment reversed. Black, Harlan, & White, JJ., dissenting.

Z. SEARCH AND SEIZURE

Z.10. Electronic Surveillance

Z.10.a.2. Pen registers

TITLE: In re Indiana Bell Telephone Co., Inc. v. State

INDEX NO.: Z.10.a.2.

CITE: (4-7-80), Ind., 402 N.E.2d 962

SUBJECT: Electronic surveillance - Telephones - Pen registers

HOLDING: Superior Ct. has inherent authority, upon showing of probable cause, to issue search warrant requiring telephone company to provide prosecutor with such facilities and technical assistance necessary to carry on Ct.-supervised surveillance. Search warrant must specifically state phone or phones which will be searched and be limited to reasonable duration. Held, judgment affirmed. Hunter and Prentice, JJ., dissented.

RELATED CASES: In re: Order for Indiana Bell, Ind., 409 N.E.2d 1089 (No legitimate expectation of privacy regarding numbers dialed on telephone. Privacy interest attaches to content of telephone conversation and not fact that conversation took place.)

Z. SEARCH AND SEIZURE

Z.10. Electronic Surveillance

Z.10.b. Body transmitters

TITLE: Lawhorn v. State

INDEX NO.: Z.10.b.

CITE: (8/29/83), Ind., 452 N.E.2d 915

SUBJECT: Electronic surveillance - body transmitter; tape of controlled drug buy

HOLDING: Tr. Ct. did not err in refusing to suppress taped conversation between D & informant. US v. White (1971), 401 U.S. 745, 91 S. Ct. 1122, 28 L.Ed.2d 453 (because informant could testify to these conversations, tapes of same conversations are admissible). See US v. Hodge (CA7 1979), 594 F.2d 1163 (D's 4th Amend rights are not violated when D's conversations with government informant are electronically monitored by government agent with consent of informant); McCarty, App., 338 N.E.2d 738. Held, no error.

RELATED CASES: Snellgrove, 569 N.E.2d 337.

Z. SEARCH AND SEIZURE

Z.10. Electronic Surveillance

Z.10.c. Other devices

Z.10.c.2. Beepers

No Cases

Z. SEARCH AND SEIZURE

Z.10. Electronic Surveillance

Z.10.c.3. Other

TITLE: Carpenter v. United States

INDEX NO.: Z.10.c.3

CITE: (6/22/2018), 138 S. Ct. 2206 (2018)

SUBJECT: Warrant required to access cell phone location data

HOLDING: The acquisition of D's cell phone location data was a Fourth Amendment search.

After the FBI identified cell phone numbers of several robbery suspects, prosecutors obtained the suspects' cell phone records under the Stored Communications Act. Wireless carriers produced location data for D's phone, and the Government was able to obtain 12,898 location points that catalogued D's movements over 127 days - an average of 101 data points per day. D was charged with robbery. He moved to suppress the data, arguing that seizure of the records without a warrant violated the Fourth Amendment. The District Court denied the motion, and prosecutors used the records at trial to show that D's phone was near the robbery locations at the time those robberies occurred. D was convicted. The Sixth Circuit affirmed, holding that D lacked a reasonable expectation of privacy in the location information because he had shared that information with his wireless carriers.

Individuals have a reasonable expectation of privacy in their physical movements. Allowing government access to cell-site records - which "hold for many Americans the 'privacies of life,'" Riley v. California, 134 S. Ct. 2473 (2014) - violates that expectation. In fact, cell-site records present even greater privacy concerns than the GPS monitoring considered in United States v. Jones, 132 S. Ct. 945 (2012); cell-site records give the Government near perfect surveillance and allow it to retrace a person's whereabouts, subject only to the five-year retention policies of most wireless carriers.

The third-party doctrine does not apply here. That doctrine partly stems from the idea that an individual has a reduced expectation of privacy in information knowingly shared with another. So, for instance, the Court has held that a person has no expectation of privacy in their bank records - United States v. Miller, 425 U.S. 435 (1976) - or in the phone numbers they have dialed - Smith v. Maryland, 442 U.S. 735 (1979). But cell-site location data is radically different; it is an exhaustive chronicle of location information casually collected by wireless carriers.

Here, the government did not get a warrant before acquiring D's cell-site records; instead, it acquired the records pursuant to a court order under the Stored Communications Act, which required the Government to show "reasonable grounds" that the records were "relevant and material" to an investigation. 18 U. S. C. §2703(d). This standard falls far short of the probable cause requirement for a warrant. Thus, an order issued under §2703(d) is not a permissible mechanism to access historical cell-site records.

This ruling is narrow. It does not question conventional surveillance techniques and tools, such as security cameras, and it does not address other business records that might incidentally reveal location information. It also does not foreclose that exigent circumstances may sometimes allow a warrantless search. Held, cert granted, 819 F. 3d 880, reversed, and remanded. ROBERTS, C. J., delivered the opinion of the Court, in which GINSBURG, BREYER, SOTOMAYOR, and KAGAN, JJ., joined. KENNEDY, J., filed a dissenting opinion, in which THOMAS and ALITO, JJ., joined. THOMAS, J., filed a dissenting opinion. ALITO, J., filed a dissenting opinion, in which THOMAS, J., joined. GORSUCH, J., filed a dissenting opinion.

TITLE: Kylo v. U.S.
INDEX NO.: Z.10.c.3.
CITE: 533 U.S. 27, 121 S. Ct. 2038; 150 L. Ed. 2d 94 (2001)
SUBJECT: Thermal imaging, search warrant, heat detection, expectation of privacy
HOLDING: Where the Government uses a device that is not in general public use, to explore details of the home that would previously have been unknowable without physical intrusion, the surveillance is a search and is presumptively unreasonable without a warrant. Police suspected that D was growing marijuana in his garage. Using a thermal imaging device, they detected a warm area of his garage wall that was consistent with the use of grow lights and obtained a federal search warrant with this, and some other, information. The search turned up 100+ marijuana plants. Although the Government argued that the thermal imaging device only detected waste heat that was emitted from the house, the majority compared this to the microphone in Katz v. U.S., 389 U.S. 347 (1967), which only detected sound that came out of the sides of the phone booth. Evidence suppressed.

TITLE: State v. Lagrone
INDEX NO.: Z.10.c.3.
CITE: (3/26/2013), 985 N.E.2d 66 (Ind. Ct. App 2013)
SUBJECT: Warrantless use of parcel wire inside D's home violated Fourth Amendment
HOLDING: Police violated Fourth Amendment protections against unreasonable search and seizure when they used a parcel wire to monitor a package of marijuana once D had carried it into his home. Due to that violation, warrantless entry into D's home was not justified under exigent circumstances exception to Fourth Amendment because under Kentucky v. King, 131 S. Ct. 1849 (2011), such entry to prevent destruction of evidence is allowed only where the police did not create the exigency by engaging in conduct that violates the Fourth Amendment.

The installation of the GPS device and the parcel wire into the package D picked up from a hotel did not violate the Fourth Amendment because any privacy interest D had in the package was lost when United Parcel Service (UPS) opened the package on its premises. Illinois v. Andreas, 463 U.S. 765 (1983). Nor did police monitoring of the GPS device to track the package en route to D's home violate the Fourth Amendment, because officers also tracked D on the highway visually. But the monitoring of the parcel wire to determine when the package was opened constituted a search of D's home. United States v. Karo, 468 U.S. 705 (1984). And information obtained from the parcel wire after package was inside D's home, i.e., that the package had been opened, could not have been observed from outside the home. As such, the receipt of that information via the parcel wire without a warrant violated D's Fourth Amendment rights. And under King the police cannot use the exigent circumstances exception to justify a forced warrantless entry into the home, based on the electronic signal from the parcel wire located inside the home, without having first obtained a warrant. Held, grant of D's motion to suppress affirmed.

TITLE: State v. Thomas

INDEX NO.: Z.10.c.3.

CITE: (1st Dist., 10-26-94), Ind. App., 642 N.E.2d 240

SUBJECT: Warrantless video surveillance violates reasonable expectation of privacy

HOLDING: Tr. Ct. did not err in granting D's motion to suppress evidence obtained as result of State's covert, warrantless video surveillance. Ind. Department of Natural Resources (DNR) & D entered into lease & concession agreement to allow D to operate camp store located on land at state park. D agreed to pay DNR percentage of gross sales of business & State retained some authority over operations & management of camp store. After park official visited store & noticed questionable sales methods, conservation officers obtained key to camp store from DNR property manager, & after business hours installed & aimed video cameras over cash register. Videotapes allegedly showed that store had received significantly more revenue than D reported to State. D was charged with two counts of theft. Tr. Ct. granted D's motion to suppress videotaped evidence & subsequent incriminating statements of D & his employees, implicitly concluding that State had violated D's reasonable expectation of privacy & that illegal warrantless search had occurred. "Search" invoking constitutional analysis occurs when expectation of privacy is infringed, United States v. Jacobsen, 104 S. Ct. 1652. To determine reasonableness of person's expectation of privacy, Ct. must inquire whether one has exhibited actual, subjective expectation of privacy & whether that expectation is one which society would recognize as reasonable, Katz v. United States, 88 S. Ct. 507. Here, record supports determination that D had subjective expectation of privacy in camp store, as shown by rights of possession given in lease & fact that D locked doors each night to keep others out of store. Although scope of search was limited to observation of transactions conducted during business hours in public place, Ct. rejected State's argument that no warrant was required & that video surveillance of open, visible & public area did not violate D's reasonable expectations of privacy. Ct. agreed with federal decisions holding video surveillance is exceedingly intrusive & subject to gross abuse, regardless of type of premises searched. While D did not have absolute expectation of privacy in entire concession area, Ct. found State's reliance on open view doctrine misplaced, as video surveillance from camp store's attic & ceiling was grossly intrusive. D had right of possession to premises superior to that of general public & DNR's right to audit & inspect concession did not imply corresponding right to install hidden video equipment & conduct video surveillance from intrusive vantage point. D had reasonable expectation of privacy against being videotaped from overhead during four-day period, & expectation was subject to acts observable by public from public vantage point & to lawful supervision of DNR under license agreement. Held, grant of motion to suppress affirmed, Robertson, J., dissenting.

RELATED CASES: Jones, 132 S. Ct. 945 (U.S. 2012) (reasonable expectation of privacy test supplements but does not replace common law approach of trespass on property; placing a GPS on a suspect's car was a search).

TITLE: U.S. v. Jones
INDEX NO.: Z.10.c.3.
CITE: (01-23-12), 132 S. Ct. 945 (U.S. 2012)
SUBJECT: Attaching GPS to suspect's car constituted a search
HOLDING: Attaching a GPS device to a vehicle and then using the device to monitor the vehicle's movements constitutes a search under the Fourth Amendment. Accordingly, D's conviction for drug trafficking was reversed because some of the evidence used to convict him was obtained through a GPS tracking device that police placed on his car. Attaching the GPS device and using it to monitor the car's whereabouts is a "search" under the Fourth Amendment.

Until the latter half of the 20th century, the Court's Fourth Amendment jurisprudence was tied to the common law trespass. More recent cases have deviated from that approach and applied the reasonable-expectation-of-privacy analysis from Justice Harlan's concurrence in Katz v. United States, 389 U.S. 347, 360-61(1967) (Harlan, J., concurring). The reasonable-expectation-of-privacy test added to the old common law approach but did not replace it. The D's Fourth Amendment rights did not rise or fall on this test because Katz did not repudiate the understanding that the 4th Amendment embodies a particular concern for government trespass upon the areas it enumerates.

The five concurring justices did not address whether the search was reasonable because the government did not raise the issue below.

Commentators disagree on whether attaching a GPS to a car requires a warrant and whether it requires probable cause or mere reasonable suspicion. Scalia, J., Sotomayor, J., Concurring, Alito Concurring, joined by Justices Ginsburg, Breyer, and Kagan. Cert. granted, D.C. Circuit reversed, judgment affirmed.

RELATED CASES: Wertz, 41 N.E.3d 276 (Ind. Ct. App 2015) (the gathering of detailed historical location data from a personal GPS device is the functional equivalent of the long-term GPS monitoring in Jones, despite fact the citizen's location was exposed to the public); U.S. v. Taylor, 776 F.3d 513 (7th Cir. 2015) (suppression motion properly denied where police used the GPS monitor in objectively reasonable reliance on binding appellate precedent in effect before Jones was decided); Jackson, 996 N.E.2d 378 (Ind. Ct. App. 2013) (where police conducted illegal, warrantless search by attaching GPS device to D's car, taint of the illegal search was purged by evidence obtained through other means).

Z. SEARCH AND SEIZURE

Z.11. Disposition of Seized Property

TITLE: Anderson v. State
INDEX NO.: Z.11
CITE: (4th Dist. 9/19/84), Ind., 468 N.E.2d 569
SUBJECT: Disposition of seized property - due process rights; summary judgment
HOLDING: Denial of D's sworn claim for return of seized property & motion for summary judgment violated D's due process rights (State v. Robbins (1890), 124 Ind. 308) & was contrary to law (TR 56(C); Otte v. Tessman, 426 N.E.2d 660). Ind. Code 35-1-6-5.1 [now Ind. Code 35-33-5-5] requires return of lawfully possessed property to rightful owner & a reasonable effort to ascertain ownership. Here, D sought return of car, assorted tools, women's boots & jewelry, sleeping bag, blanket & sweatshirt. Prosecutor filed unsworn answer, asserting D was not rightful owner. D was entitled to notice of at least 10 days & a hearing on his motion for summary judgment. Held, reversed & remanded.

TITLE: Barany v. State

INDEX NO.: Z.11

CITE: (5/4/2016), 54 N.E.3d 386 (Ind. Ct. App 2016)

SUBJECT: Denial of motion for return of murder weapon affirmed

HOLDING: Tr. Ct. did not err when it denied D's request to return firearm he used in commission of murder. D argued Tr. Ct. should have returned the gun to his mother, whom he claimed was the owner of the gun. But request for release of gun was properly denied under Ind. Code § 35-47-3-2(b), which provides that a firearm does not need to be returned to rightful owners who have been convicted of a crime involving the misuse of firearms. Although there is no indication D's mother was convicted, Court nevertheless upheld Tr. Ct.'s conclusion that it is not in the best interest of Indiana residents to allow the gun to exist, because it is against public policy to allow the D to profit in any way from the weapon he used in the murder. Held, judgment affirmed.

TITLE: Carson v. State

INDEX NO.: Z.11

CITE: (1st Dist. 11/23/83), Ind. App., 456 N.E.2d 444

SUBJECT: Disposition of seized property - gambling devices

HOLDING: Tr. Ct. did not err in refusing to return gambling device to Ds, against whom no criminal charges were filed. Here, Ct. determines Kentucky Derby Machine is a professional gambling machine under Ind. Code 35-45-5-1 & Ind. Code 35-45-5-3(6). Because machine cannot be lawfully possessed, it may be destroyed pursuant to Ind. Code 35-33-5-5. Effective 9/1/83, Ind. Code 35-33-5-5.1 allowed return of gambling device if seized by law enforcement, held for more than a year & no criminal charges have been filed for which property is necessary as evidence. Latter statute was not in effect when D sought return of property. Held, no error.

TITLE: Moore v. State

INDEX NO.: Z.11.

CITE: (1st Dist. 3/3/87), Ind. App., 504 N.E.2d 586

SUBJECT: Disposition of seized property - procedure; proof

HOLDING: Tr. Ct. did not err in denying D's motion for return of property filed 9 months after his criminal trial. Here, \$820 was seized from D. On same day, alleged victim filed affidavit attesting \$820 was his. Prosecuting attorney released cash to him. Ct. finds release was proper. D's proper remedy at this time is to file civil suit against victim who claimed money, contesting ownership of cash. [Citations omitted.] Furthermore, D cannot demand return of property seized, but neither used as evidence nor a subject of prosecution, without alleging ownership or right of possession of claimed property. Ct. finds D failed to make such allegations. Held, no error in denial of motion for return of property.

TITLE: Merlington v. State

INDEX NO.: Z.11.

CITE: (5th Dist., 12-22-05), Ind. App., 839 N.E.2d 260

SUBJECT: Seized money wrongly used for Ct. costs

HOLDING: Tr. Ct. erred in not returning \$641 found on D's person, which was used to pay Ct. costs & fines following his conviction for possession of methamphetamine with intent to deliver. State on appeal conceded the Tr. Ct. had no statutory authority to keep the money. Ind. Code 35-33-5-5 controls the return of property seized by law enforcement, which states that following final disposition "property which may be lawfully possessed shall be returned to its rightful owner, if known." As noted in Gore v. State, 456 N.E.2d 1030 (Ind. Ct. App.1983), "the legislature has not stated that money, which is apparently derived from the sale of drugs, is property which may not be lawfully possessed, especially where . . . the D is convicted only of possession." While D was convicted of possession with intent to deliver, nothing in the record showed that the cash was fruit of illegal activity. While the Tr. Ct. fined D \$5,000 plus costs, a Tr. Ct. has two options to collect fines & costs: (1) a civil action brought by a county attorney, & (2) additional imprisonment for non-indigent Ds (each day of imprisonment equals \$20 toward unpaid fines & costs). See Ind. Code 35-38-1-18(b); Ind. Code 33-37-2-3. Ind. Code 35-38-1-18(a)(4) allows a D to request commitment to the county jail in lieu of a fine, but the total confinement may not exceed the maximum sentence for a crime. The provision is not set forth in subsection (b)(2) but in McRoy v. State, 798 N.E.2d 521 (Ind. Ct. App.2003), the two provisions were read in conjunction determining that regardless of indigency an individual could not serve more than the maximum term for failing to pay costs & fines. D here could be ordered to serve more time if found non-indigent as the Indiana S. Ct. previously reduced his enhanced sentence to the presumptive sentence of 30 years for a Class A felony. See Merlington v. State, 814 N.E.2d 269 (Ind. 2004). Ct. also distinguished this situation from one where a Ct. is retaining a bail bond pursuant to Ind. Code 35-33-8-3.2(a)(2), which it would have the authority to do. Held, judgment reversed & remanded.

TITLE: Roy v. State

INDEX NO.: Z.11

CITE: (7/21/2017), 81 N.E.3d 641 (Ind. Ct. App. 2017)

SUBJECT: Denial of petition to return gun reversed

HOLDING: The Tr. Ct.'s denial of D's petition to return a gun to his mother was clearly erroneous because D established by preponderance of evidence that the gun was hers, and had not been stolen as the State had alleged. See Tracy v. State, 755 N.E.2d 1232, 1236 (Ind. Ct. App 1995), *trans. denied*; Barany v. State, 54 N.E.3d 386, 387 (Ind. Ct. App 2016), *trans. denied*. D pled guilty to criminal trespass and carrying a handgun without a license. He filed a petition to return the handgun to his mother, whom he alleged is the rightful owner. Firearms shall be returned to the rightful owner at once following the final disposition of a case. Ind. Code § 35-47-3-2(b). Here, the State claimed the gun does not belong to the mother but had been stolen in 1991 from Fort Bliss in El Paso, Texas. However, the State presented no evidence to substantiate its claim. Conversely, D presented unequivocal testimony that the gun does belong to his mother. See Williams v. State, 952 N.E.2d 317, 320 (Ind. Ct. App. 2011) (reversing denial of motion for petition to return handgun; undisputed evidence established D's attorney had valid ownership interest in handgun). Held, judgment reversed.

TITLE: Seel v. State

INDEX NO.: Z.11

CITE: (2nd Dist.; 11-28-00), Ind. App., 739 N.E.2d 170

SUBJECT: Disposition of seized property - possessing handgun without license is not illegal

HOLDING: State improperly refused to return D's firearms that were illegally seized as part of his arrest for Possession of Marijuana. Following final disposition of cause at trial level or any other final disposition, [seized] property which may be lawfully possessed shall be returned to its rightful owner, if known. Ind. Code 35-33-5-5(C)(1). Person needs license to carry handgun in vehicle or on or about his person or in place other than his dwelling, property, or fixed place of business. Ind. Code 35-47-2-1. Here, while arresting D for marijuana possession, police seized four handguns & assault-rifle found inside vehicle located in storage facility rented by D & his mother. D did not have license to possess guns. Ultimately, criminal case & forfeiture were dismissed because guns were illegally seized. However, Tr. Ct. granted State's motion to destroy guns because D could not "legally" possess them without license. Because Ind. Code 35-47-2-1 speaks specifically of carrying rather than possessing handgun, fact that weapons were found in D's vehicle in rented storage facility is, as matter of law, insufficient to support inference that D at one time carried or will carry weapons on his person or in vehicle. Moreover, because State failed to present any evidence that D was drug abuser according to Ind. Code 35-47-1-4, D is not barred from possessing handguns under 18 U.S.C. § § 921-22, which makes it illegal for State to return firearms to persons who are reasonably known to be unlawful users of controlled substance. Thus, at close of D's forfeiture proceeding, he was entitled to return of his guns that he lawfully possessed. Held, order destroying guns reversed.

TITLE: State v. Combs
INDEX NO.: Z.11
CITE: (4th Dist., 02-19-10), 921 N.E.2d 846 (Ind. Ct. App. 2010)
SUBJECT: Release of D's vehicle & towing/storage fees order affirmed
HOLDING: Court affirmed order that directed State Police to pay fees for towing and storing of Combs' vehicles and ordered McClead's Towing and Storage ("McClead's") to release Combs' vehicles to Combs. Court also found that State and State Police were proper parties and documents were properly served on them.

In August 2007, the State executed a search warrant at Combs' residence and seized eight vehicles as proceeds of illegal drug trafficking. The State charged Combs with drug related offenses. In December 2007, State Police had Combs' vehicles towed to McClead's.

Combs pled guilty to drug related offenses and agreed to forfeit one vehicle. On July 14, 2008, the parties stipulated that the remaining seven vehicles and their titles should be returned to Combs. A Madison County deputy prosecutor appeared at the stipulation on behalf of State and State Police.

On September 8, 2008, Combs filed a motion for specific performance of the stipulations. Combs' attorney served the motion on Madison County Deputy Prosecutor Evan Broderick and two Indiana State Troopers. On December 9, 2008, the Tr. Ct. granted Combs' motion, directing the State to "make arrangements for the immediate return of [Combs'] vehicles as set forth in the pleadings." The order was sent to the prosecutor's office. The State did not appeal the December 9 order.

On February 12, 2009, Combs filed motion for rule to show cause for State's failure to comply with December 9, 2008 order. When the motion was heard on April 28, 2008, towing and storage fees exceeded \$84,000. On May 13, 2009, Tr. Ct. granted Combs' motion, ordered McClead's to immediately release vehicles to Combs and ordered the State Police to pay all towing and storage fees up to the maximum statutory amount of \$1500 pursuant to Ind. Code § 32-33-10-5. The final bill was to be negotiated between the State Police and McClead's. State appealed this May 13, 2009 order, but its substantive arguments addressed merits of Tr. Ct.'s December 9, 2008 order, which granted Combs' motion for specific performance.

The State was obliged to pay McClead's the towing and storage costs for Combs' seven vehicles at McClead's because State Police was solely responsible for towing vehicles. The plea agreement, the parties' stipulations, and several Tr. Ct. orders required McClead's to release the vehicles to Combs. Also, the State could not use the appeal of the May 13, 2009 order to collaterally attack Tr. Ct.'s December 9, 2008 order, which granted Combs' request for specific performance. Finally, Madison County Prosecutor had authority under Ind. Code § 34-24-1-3 to bring forfeiture actions on behalf of State and State Police. Because Madison County Prosecutor appeared for State and State Police and filed forfeiture action on their behalf, they were proper parties in forfeiture action. Thus, documents served on Madison County Prosecutor were properly served on State and State Police. Held, judgment affirmed.

TITLE: Tracy v. State

INDEX NO.: Z.11

CITE: (2nd Dist., 9-27-95), Ind. App., 655 N.E.2d 1232

SUBJECT: Return of property not required where not "seized"

HOLDING: Because D's money was received in course of criminal investigation & not "seized" within meaning of Ind. Code 35-33-5-5, procedural mandates of statute did not apply & D was not entitled to return of money. As part of pre-planned consensual arrangement, D & accomplice met with undercover detective in motel room. With "substantial forethought & planning," D intended to exchange \$26,000 for 26 pounds of marijuana. After transaction, D & accomplice left with marijuana & were arrested as they walked down hall away from motel room. Additional money was recovered from D on arrest. Money was eventually distributed between DEA & county drug task force, although State never initiated proceedings to forfeit money. D argued that pursuant to Ind. Code 35-33-5-5, State law enforcement agencies were required to procure Ct. order to dispose of money. Statute provides that "...property seized by any law enforcement agency as a result of an arrest, search warrant, or warrantless search, shall be securely held by the law enforcement agency under the order of the Ct. trying the cause" until final disposition. Ct. held that consensual exchange in this case was not a "seizure" as contemplated by statute, which requires return of specific property seized as result of arrest, search warrant, or warrantless search. Ct. declined to follow Conn, App., 496 N.E.2d 604, & Hicks, App., 635 N.E.2d 1151, to extent decisions adopted broad interpretation of Ind. Code 35-33-5-5 to apply to property seized in course of criminal investigations. In addressing excess money seized as result of arrest, Ct. held that despite State's failure to hold money until final disposition, D failed to prove that he was either in exclusive possession of seized funds at time of arrest, or that he was rightful owner of funds. Held, judgment affirmed, Friedlander, J., concurring in part & dissenting in part.

TITLE: Warren v. State

INDEX NO.: Z.11

CITE: (3/11/2019), 120 N.E.3d 285 (Ind. Ct. App. 2019)

SUBJECT: Erroneous blanket order denying return of videos containing sexually explicit material

HOLDING: After final disposition of criminal case, Ind. Code § 35-33-5-5 requires return of seized property not used in prosecution to rightful owner "which may be lawfully possessed." Here, hundreds of items were seized from D's home when he was charged with child molesting and other offenses, including photographs and video recordings. After conviction, D petitioned for return of the seized property not used in the prosecution. The Tr. Ct. directed the State to release all property to D or his agent except for videos and other images containing sexual or pornographic materials due to "questionable consensual circumstances" of the material and because D's sex offender status prohibited him from lawfully possessing the property. But since D had designated others to take possession of the items he could not possess, his sex offender status was an invalid basis for denying the release.

The Tr. Ct. also erred in issuing a blanket order that did not specifically identify the materials D can and cannot lawfully possess. The State "cannot take a person's property, not use the property in a prosecution, and then refuse to return the property because doing so is burdensome." Tr. Ct. may fashion a remedy to allow cataloguing of the materials, and D has the burden to prove by a preponderance of the evidence that the materials can be lawfully possessed, do not violate obscenity statutes, and that participants in the depicted sexual activity were aware of or consented to the recordings. These items may be released by D to a third party if he cannot possess them while incarcerated.

Z. SEARCH AND SEIZURE

Z.12. Pretext searches

TITLE: Commonwealth v. Lora

INDEX NO.: Z.12.

CITE: 451 Mass. 428, 886 N.E.2d 688 (Mass. 2008)

SUBJECT: Suppression appropriate where traffic stop motivated by racial profiling

HOLDING: Massachusetts Supreme Court held suppression of evidence is an available remedy for an otherwise lawful traffic stop that was motivated by racial profiling in violation of the state constitution's equal protection guarantee. Court, however, made clear that it was setting a rigorous standard for the type of statistical evidence required to demonstrate a prima facie case of racial profiling and shift the burden to the prosecution to provide an explanation for the apparent disparities. Selective-prosecution claims are usually made in motions to dismiss charges, and in U.S. v. Armstrong, 517 U.S. 456 (1996) the U.S. Supreme Court declined to express an opinion as to the proper remedy in a criminal case for Ds subjected to racial profiling. Court concluded "the application of the exclusionary rule to evidence obtained in violation of the constitutional right to the equal protection of the laws is entirely consistent with the policy underlying the exclusionary rule, is properly gauged to deter intentional unconstitutional behavior, and furthers the protections guaranteed by the Massachusetts Declaration of Rights." Court emphasized that, although statistics can be used to make out a case of targeting minorities for traffic offenses, the statistical evidence preferred must address the crucial question of whether one class is being treated differently from another class that is "otherwise similarly situated."

TITLE: State v. Tucker

INDEX NO.: Z.12

CITE: (1st. Dist., 3-25-92), Ind. App., 588 N.E.2d 579

SUBJECT: Warrantless pretext search invalid

HOLDING: Seizure of D's tennis shoes from his car could not be upheld under the plain view doctrine, where police did not inadvertently stumble onto shoes. Officers went to car specifically to look for shoes or D's involvement in burglary. Evidentiary nature of tennis shoes was not immediately apparent because soles were not visible. Moreover, seizure of D's shoes from car could not be justified as result of inventory search, because search was conducted as part of investigation by officers. Officers were instructed to look for evidence and to impound car and do inventory search if they found anything. Shoes officers removed from D's car without search warrant were inadmissible under inevitable discovery theory because vehicle was impounded only because officers discovered shoes in it. Held, judgment suppressing shoes affirmed.