Police Prosecutor Update

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SEARCH AND SEIZURE
DYNAMIC ENTRY

On October 18, 2017, the Indiana Supreme Court issued its decision in Watkins v. State, ___ N.E.3d ___ (Ind. 2017), overruling the Court of Appeals decision in Watkins v. State, 67 N.E.3d 1092, (Ind. Ct. App. 2017). A confidential informant told detectives that he had observed more than 10 grams of cocaine, marijuana and a firearm in a residence known to be occupied by a Frederick Jackson. Jackson was known to police narcotics detectives. During surveillance, detectives determined that one resident was Mario Watkins. Watkins had a prior burglary conviction. A search warrant for the residence was obtained. While a SWAT team was being assembled, they were informed that a woman and three men were inside the residence. Also, a person fitting the description of Watkins was seen taking out the trash. Three officers went to the rear of the residence. Nine officers approached the front. At 10:30 a.m., police knocked and announced "Police – search warrant – police – search warrant." Another officer announced over the loud speaker "search warrant" and the address. A second later, they knocked down the door with a battering ram. One SWAT officer had a camera attached to his helmet and was responsible for deploying a flash bang. Prior to deploying the grenade, he took a "quick peek" inside the door to check for people or odors indicating flammable chemicals.

Prior to tossing the flash bang in, an officer yelled, "flash bang, flash bang, flash bang." The officer detonated the device just 6 inches inside the door. Afterward, detectives entered, and one of them picked up a crying baby in a playpen just inside and very close to the door. A car seat and a toddler's activity center were within the line of sight of the front door. The flash bang officer did not see the baby, nor did his camera capture the child. Meanwhile, the officers in back smashed a kitchen window and tossed a flash bang into that room, setting off the smoke detectors. Watkins was in another room and offered no resistance; he stated everything they would find in the house belonged to him. The police also found two men and a woman inside as well as cocaine, marijuana and .40 caliber handgun. The trial court denied his motion to suppress, and Watkins was found guilty of possession of cocaine, possession of a schedule II controlled substance, possession of marijuana, and maintaining a common nuisance. He received two years on work release. On appeal, Watkins argues the search warrant affidavit did not establish probable cause, and that the execution of the search warrant was unreasonable under the Indiana Constitution.

The court analyzed this search warrant execution under Article 1, Section 11 of the Indiana Constitution and applied the three-part Litchfield test. The degree of police suspicion was high because police had a warrant supported by probable cause; a reliable informant told them about guns and drugs in the house; and surveillance officers observed activity consistent with drug dealing. The degree of intrusion – bashing in the door with a battering ram, deploying a flash-bang grenade, and "a small army of officers carrying assault rifles" storming the house – was high. However, the court found it was moderated by the officer who deployed the flash-bang grenade after doing a "quick peek" inside the room before deployment. Finally, the extent of law enforcement needs was high. The house contained guns

and drugs, and Watkins had a criminal history. The court concluded the execution of the warrant was reasonable under Article I, Section 11, but cautioned further: "flash bang grenades should be the exception in search warrant executions. Their extraordinary degree of intrusion will in many cases make a search unconstitutionally unreasonable."

Turning to the propriety of the search warrant, the court found the affidavit of probable cause sufficient to tie the location of the search to evidence of illegal activity. Watkins' conviction was affirmed.

SUFFICIENCY OF THE EVIDENCE
INTIMIDATION

On September 29, 2017, the Indiana Court of Appeals issued its decision in Fleming v. State, __ N.E.3d ___, (Ind. Ct. App. 2017). Fleming's girlfriend woke the victim and his wife by screaming "Help me! Help me!" She was on their front porch, and victim's wife called police. By the time police arrived, Fleming's girlfriend had returned to Fleming's house. Fleming was uncooperative, used foul language and told police to get off his property. As they were leaving, Fleming threatened to do immoral acts with the officers' wives. The victim and his wife returned to bed, and were awakened 15 minutes later by Fleming's girlfriend. Victim's wife this time made sure the girlfriend stayed with her while victim called the police. Fleming called victim's wife a "white haired old bitch." Victim then went to the porch where his wife was. Fleming continued shouting, and at one point yelled that "he was going to come over and kick [victim's] ass." About 5 minutes later the police arrive. Fleming was arrested and charged with intimidation and disorderly conduct. He was convicted of both offenses and appealed his intimidation conviction, alleging the evidence was not sufficient to convict.

To prove intimidation, the state was required to prove that Fleming communicated a threat with the intent that the victim be placed in fear of retaliation for a prior lawful act. As to the threat, the court found that a reasonable fact finder could conclude that the threat to physically harm the victim, made while Fleming was angry, was intended to put him in fear for his safety. Under the facts of this case, it was reasonable for the victim to be in fear. As to the intent to retaliate for a prior lawful act, the court found a clear nexus between the victim's act of going out on his front porch and Fleming's threat. It was reasonable to infer from the evidence that Fleming's actions and threat were prompted by the victim's stepping out onto his porch. The conviction was affirmed.

SUFFICIENCY OF THE EVIDENCE
RESISTING LAW ENFORCEMENT

On September 28, 2017, the Indiana Court of Appeals issued its decision in West v. State, __ N.E.3d ___, (Ind. Ct. App. 2017). A no-knock search warrant was issued for West's home; West's son was a suspect in the investigation leading up to the warrant. Police officers in tactical gear and armed with shotguns or semiautomatic rifles executed the warrant at 6:10 am. At that time, West's 11-year-old son was showering for school, and her two-year-old grandson was asleep with her fiancé just off the kitchen where West as preparing breakfast. Just before the police entry, West's 13-year-old daughter heard something outside, opened the front door, saw the armed individuals outside, quickly closed the door, and ran for West. At that point, police rammed the front door and shouted, "Police! We have a warrant!" During the next chaotic 20 seconds, police shouted commands for the occupants to come out. West was standing in the hallway between the kitchen and the living room, looked at the officers and

turned back toward the kitchen to reach her sleeping grandson. One of the officers observed her going to the darkened bedroom and fired a foam baton at West, knocking her to the ground. West was charged with and ultimately convicted by a jury of resisting law enforcement by fleeing. She appealed, challenging the sufficiency of the evidence.

Flight in the context of resisting law enforcement means a knowing attempt to escape law enforcement. The court found that West's subjective intent when walking away from officers was relevant to a determination of her guilt. The court found that a reasonable jury could find that West was aware that police had just entered her home and were ordering everyone out. However, it found no evidence that West intended to flee, escape, "or even unnecessarily prolong her exit from the home." Also, the court found that commands to exit the premises were orders to stop. The court reversed West's conviction.

SEARCH AND SEIZURE
TRAFFIC STOP

On September 7, 2017, the Indiana Court of Appeals issued its decision in Dowdy v. State, __ N.E.3d ___, (Ind. Ct. App. 2017). A motor patrol officer was running license plates on October 21, 2015. He ran the plate on the car Dowdy was in, and the registration returned expired on the officer's computer. The return included 3 or 4 pages of information and showed registration issued on October 21, 2014, expired on October 21, 2015. The officer initiated a traffic stop and spoke to the occupants of the car. He asked Dowdy for identification, and Dowdy complied. The officer discovered warrants for Dowdy's arrest and, searching him incident to arrest, discovered pills in Dowdy's pocket, leading to a level 6 felony charge. Dowdy filed a motion to suppress, which the court denied. Dowdy then filed an interlocutory appeal.

Dowdy argued that the registration was not expired because it was valid until midnight, October 21, and that his rights under the Fourth Amendment and Article I, Section 11 were violated. Dowdy was unable to find an interpretation in the statute or case law that definitively answered when registration expired. The court found that because the registration came back expired from the BMV, even if that conclusion were in error, the traffic stop was based upon a good faith, reasonable belief that a statutory infraction had occurred. Therefore, the stop did not violate Dowdy's right under the Fourth Amendment. Dowdy also argued that the officer exceeded his authority in asking Dowdy for his identification. The court found that while I.C. 34-28-5-3.5 did not obligate Dowdy to identify himself, the officer did not violate Dowdy's rights by asking if he, "wouldn't mind giving [him] his identification."

The court then applied the 3-part Litchfield test. As to the degree of police suspicion, the BMV reported the registration to be expired, and operating a vehicle with expired registration is an infraction. As to the degree of intrusion, it was not high as the officer asked for, but did not require identification. With respect for law enforcement needs, the police ability to search for outstanding warrants is important to ensure public safety. Only after discovering the warrants did the officer search Dowdy's person. Concluding the stop and search were reasonable under the Indiana constitution, the court affirmed the denial of the motion to suppress.

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