



POLICE / PROSECUTOR UPDATE

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A recent court of appeals case reviewed the law governing **controlled drug buys** and also stressed the importance of accuracy when a police officer is the affiant filing a **probable cause affidavit for a search warrant** or when the officer is testifying at a probable cause hearing for the warrant.

In the case, police stopped and detained an individual as part of an ongoing investigation after the person left a residence where drug dealing and manufacturing was suspected to be occurring. Police discovered a substantial quantity of drugs and firearms in the person's vehicle. Police told the person that he would not be placed under arrest and taken to jail at that time if he agreed to work as a confidential informant. The person agreed and mentioned the defendant as a manufacturer and dealer of methamphetamine.

The police arranged for the CI to make a controlled buy of meth at the defendant's residence. He and his vehicle were searched before he went to the residence, and he was given \$100 and a transmitting device. The CI did not immediately seek to purchase drugs when he arrived at defendant's home because he (who until recently had lived with the defendant) spent much time repairing his car, which had overheated on the way to the residence. He also engaged in conversation both related and unrelated to drugs with the defendant. Although it was impossible to tell from the recording whether the defendant agreed to sell the drugs, the CI left the residence and met with police at a prearranged location. The CI and his vehicle were again searched, and he gave what turned out to be a quantity of methamphetamine and \$50 to police. The police then sought and received a search warrant based on these events. A motion to suppress was filed by the defendant and denied by the trial court.

Initially, it is important to note that the court of appeals pointed out that when a search warrant is challenged, "doubtful cases are to be resolved in favor of upholding the warrant." So it is important to get a warrant if practicable.

The requirements of a controlled buy are as follows: "A controlled buy consists of searching the person who is to act as the buyer, removing all

personal effects, giving him money with which to make the purchase, and then sending him into the residence in question. Upon his return he is again searched for contraband. Except for what actually transpires within the residence, the entire transaction takes place under the direct observation of the police. They ascertain that the buyer goes directly to the residence and returns directly, and they closely watch all entrances to the residence throughout the transaction."

Although the court of appeals did eventually uphold the controlled buy, it noted several difficulties with the testimony of the detective at the probable cause hearing for the warrant. First, there was no indication that all entrances to the residence were closely monitored throughout the transaction. Second, there was no indication that the CI went "directly" to the residence - instead, he spent much time working on his car before entering the residence. Third, the detective's testimony was misleading. He seemed to indicate that an agreement by the defendant to sell drugs could be heard on the tape recording when, in fact, no such agreement could be heard. He also indicated that he personally observed the CI enter the residence when, in fact, he testified at the suppression hearing that he did not personally observe that occur but that other law enforcement officers did.

Finally, the following caution from the court should be remembered: "Although it is true that probable cause may be based upon information known to the law enforcement organization as a whole, it clearly is the best practice for one filing a probable cause affidavit or testifying at a probable cause hearing to indicate what information was within the affiant's or witness' personal knowledge and what information was gathered from other law enforcement officials. *There should be no shading of the truth in these sort of proceedings.*"

Iddings v. State, 772 N.E.2d 1006 (Ind. Ct. App. 2002).