



# POLICE / PROSECUTOR UPDATE

Issue No. 193

December 2007

We will look at a couple of Indiana Court of Appeals cases that allow us to review **search and seizure** law:

In one case, a Deputy Sheriff and Conservation Officer went to the defendant's house to execute an arrest warrant. There was no response when the deputy knocked on the front door. The officers heard a sound from a wooded area behind the residence and thought the defendant might be trying to leave on an all-terrain vehicle. They walked down a mowed path that led to a footpath and through a fencerow. At the end of the footpath, they found two pots with three marijuana plants in them. The officers did not know who owned the property where the plants were found. They also found pots and potting soil in the defendant's yard. The deputy left to get a search warrant on the theory the empty pots probably had been used to grow marijuana and there might be marijuana in the residence.

The deputy obtained the search warrant and returned. The warrant authorized police to enter the defendant's home and search for *marijuana*, *hashish*, "instruments used to manufacture, introduce into the body or deal *marijuana*," money records, notes, documents, or videotapes "relating to the use, dealing, or manufacture of *marijuana*," instruments used in growing or processing *marijuana*, paraphernalia, "and *any other item of contraband which is evidence of a crime*." Among items seized by the officers were methamphetamine and chemical reagents and precursors.

The Fourth Amendment requires search warrants to "particularly describe the place to be searched, and the persons or things to be seized." This requirement makes general searches impossible and prevents the seizure of one thing under a warrant describing another. A warrant that leaves the executing officer with discretion is invalid. The warrant language quoted above created an improper "catchall provision." While such a provision does not invalidate the entire warrant, it does require suppression of evidence seized pursuant to that provision. As to the evidence seized unrelated to marijuana or hashish, the warrant was invalid. Thus, all the meth-related evidence should have been suppressed.

Of course, the warrant did authorize the police to be in the defendant's residence, and items observed in plain view could be seized. However, the Court of Appeals noted that there was no clear evidence that the meth-related items were in fact in plain view. Levenduski v. State, \_\_\_ N.E.2d \_\_\_ (Ind. Ct. App. 2007).

\* \* \* \* \*

Another case discussed the "good faith exception" to the exclusionary rule. The police obtained a warrant to search the defendant's residence for evidence of growing and selling psilocybin mushrooms. The search resulted in the seizure of various items of contraband.

One argument raised was that the good faith exception does not apply in Indiana. Under this exception, seized items are admissible "if the State can show that the officer conducting the search relied in good faith on a properly issued, but subsequently invalidated warrant." However, suppression is appropriate when the judge issuing the warrant is misled by information in a probable cause affidavit that the affiant knew was false or would have known was false except for his disregard of the truth. The Court of Appeals stated that the good faith exception does apply in Indiana.

The Court then had to decide if the officer seeking the warrant misled the judge or acted in reckless disregard of the truth. The Officer seeking the warrant testified that a detective told him that the informant used was credible because the informant had given him reliable information in the past. The detective could not recall exactly what was said but was "sure it was something to the nature of I know [the informant] and he's given me information before on stuff he was involved in." However, the informant testified that he had provided information to the detective before but not in the context of serving as a confidential informant. Thus, the trooper's testimony was based on the detective's correct, but incomplete, assertion regarding the informant. This did not demonstrate reckless disregard of the truth by the trooper regarding the informant's credibility or status as an informant. Wendt v. State, \_\_\_ N.E.2d \_\_\_ (Ind. Ct. App. 2007).

*This is a publication of the Clark County Prosecuting Attorney, covering various topics of interest to law enforcement officers. It is directed solely toward issues of evidence, criminal law and procedure. Please consult your city, town, or county attorney for legal advice relating to civil liability. Please direct any suggestions you may have for future issues to Steve Stewart at 285-6264.*