CASELAW UPDATE 2024

INTRODUCTION

This "Caselaw Update" is being done without a PowerPoint or audio. Rather, I have decided to brief the cases for you which should eliminate note-taking and allow you to study the cases at your own pace. There have not been many "earth shaking" cases decided by our appellate courts over the last year or so. I have tried to pick cases that you will find pertinent in your law enforcement work. I hope you find it useful.

Best of luck to all and be safe!

Jim Olszewski "Jimmy O"

Criminal Law Instructor Emeritus Cell: 219-742-1449

WANKE V. ST., (Ind. Ct. App.) 3/25/24

This case deals with the "medical treatment hearsay exception" which often arises in child abuse cases. For this hearsay exception there must be a foundation established which includes evidence that the child understood the medical purpose of a forensic medical exam.

Facts: The 5 year old victim in this case discovered blood in her underwear and said that "something happened" with her grandfather Wanke, the defendant. The victim was taken to pediatrics to be examined by a sexual assault nurse examiner where she stated that Wanke poked her through her clothes with his fingernail. The examination showed an abrasion to the child's labia majora, consistent with being scratched by an external source. The young victim denied remembering anything at trial, and the State introduced her hearsay statements to the nurse examiner under the "medical treatment" hearsay exception. Wanke was convicted for a Level 1 child molesting and appealed.

ISSUE: Did the trial court err by permitting the nurse examiner to testify to the child's out of court statements under the "medical treatment" hearsay exception.

HOLDING: The Court of Appeals reversed Wanke's conviction based on a lack of juvenile foundation requirements for the hearsay exception. "There must be affirmative evidence in the record that a young child understands the role of a medical professional and the purpose of her visit with the professional in order for us to infer that the child was motivated to speak truthfully to that professional for the purposes of medical diagnosis or treatment."

OBSERVATIONS: At trial there was no evidence that the victim understood the role of the nurse examiner, that she knew what a doctor's office was, or that she understood the importance of telling the truth.

For those of you who handle these cases with child victims keep this case in mind during your investigation.

Also, I can tell you from experience that as a result of the trauma these children have undergone, they sometimes will freeze at trial on the witness stand.

IRWIN V. ST. (Ind. Ct. App.) 2/28/24

Here is another case dealing with an evidentiary issue: "Silent Witness Foundation." Many of you will be dealing with surveillance videos relevant to a particular crime, since we have entered the age of AI this will become more of an issue in your police work.

FACTS: Police targeted Irwin as a drug dealer for some time. When they served a warrant on his apartment, they recovered drugs as well as his landlord's surveillance footage showing a lot of traffic to his home. The surveillance footage was admitted at trial along with other evidence and Irwin was convicted of dealing meth and he appealed with one argument being that the surveillance footage should not have been admitted.

ISSUE: The surveillance video was admitted under the "Silent Witness" exception. Was the foundation for this evidence properly established by the State?

Answer was **YES.**

DISCUSSION: In a nutshell the Court said there are basically three questions: 1) How does the equipment

work? 2) Does it accurately record? 3) Has it been altered?

In this case a detective testified about his familiarity with the type of security system used at the apartment and his conversation with the landlord. It established that the security system was located in a locked room, the landlord was the only person with access to that room, the landlord did not alter the footage, the detective downloaded the security system on the day of the arrest and there was no way the footage could have been manipulated when the detective downloaded it from the security system.

One judge on the appellate court noted that despite the rise of AI-generated false media, once the foundation requirements are met it "becomes a matter of weight as opposed to admissibility of evidence." Defense can always bring in their own expert to attack the weight.

Another judge on the court said the landlord should have been called to testify about the surveillance system. In light of all the new advances out there prosecutors are going to need your help and expertise in making sure you have all the necessary witnesses for this type of evidence

CASSITY V. ST. **(**Ind. Ct. App.) 10/30/23

AN OFFICER MUST WEAR A DISTINCTIVE UNIFORM WHEN MAKING AN INVESTIGATORY STOP.

FACTS: An Elkhart police officer was conducting surveillance of a hotel for drug activity in an unmarked police car. The officer stopped Cassity's vehicle for failure to signal while turning. However, besides driving an unmarked car he wore a "modified police uniform" which included a vest worn over his civilian clothes. The vest had **POLICE** written across the top in big, white letters and a badge on the shoulder area. On his vest he also carried his firearm, a taser, a radio, a notepad, and a pen. He called this a "MODIFIED POLICE UNIFORM."

During the traffic stop the officer noticed the occupants were visibly nervous and shaking and the passenger reached under her thigh. He asked the occupants to exit the car and then saw a baggie of meth sitting on the front passenger seat. The driver glanced behind the center console as he exited. The officer searched that area and found a bag containing meth. At a suppression hearing Cassity argued that the officer's uniform did not satisfy the requirements of IC 9-30-2-2 because he was

not wearing a distinctive uniform and badge. The trial court held that the officer's uniform was sufficiently distinctive. Cassity was then convicted of Level 6 felony possession of meth. He appealed.

ISSUE: Was IC 9-30-2-2 violated and should the evidence have been suppressed.

HOLDING: A "distinctive uniform" is the specific design, color, and patches officially adopted by the governmental authority employing the police officer.

The presence of the accoutrements on the officer's vest did not transform his civilian clothes into a "distinctive uniform." An individual in possession of a taser, a firearm, a pen, a notepad, and a radio worn on a plain vest with the word "POLICE" on it is not dressed in a "distinctive uniform."

The initial traffic stop violated IC 9-30-2-2.

FRITZ V. ST. (Ind.Ct.App.) 11/13/23

PAT DOWN OF UNCONSCIOUS PERSON BEFORE ALLOWING EMTs TO TREAT WAS REAQSONABLE; SUBSEQUENT SEARCH WAS SEARCH INCIDENT TO ARREST.

FACTS: Elkhart police Sergeant Watkins was dispatched to a local grocery store regarding a medical emergency. When he arrived, he saw a disheveled man, Fritz, lying on his back in the store's parking lot. Concerned for his well-being, Watkins asked Fritz what happened. Fritz told him that he "must have fallen." Watkins asked him if he had ingested any drugs and Fritz slowly responded no. Paramedics arrived and they along with Sgt. Watkins helped Fritz to his feet to try and figure out what was going on. Sgt. Watkins decided to perform a pat down for weapons for his and the paramedics safety. He also asked Fritz if he had anything that was going to stick him (since he had recently been stuck with a needle while working another case). During the pat down the officer found two meth pipes but no weapons. At the hospital Watkins performed another search and found meth and marijuana. Fritz was convicted of drug possession.

ISSUE: Was pat down justified since there was no reasonable suspicion that Fritz was armed.

Decision: Court agreed that there was no reasonable suspicion to believe Fritz was armed, but found that the "emergency aid exception" justified the pat down search. The Court said: "The protective pat down search that Sgt. Watkins performed before Fritz was transported to the hospital in the ambulance was limited to a search for weapons and/or items that might harm him or the paramedics as they administered treatment to Fritz. Under such circumstances, Sgt. Watkins had an objectively reasonable basis to believe that Fritz might need medical assistance, and it was not unreasonable for the sergeant to be concerned about their safety when rendering assistance to Fritz. Thus, we do not believe the pat down search of Fritz's person performed by a concerned police officer violates Fritz's 4th Amendment rights."

The Court further found that the seizure of the pipes were pursuant to the "plain feel" exception. Likewise, once the meth pipes were found Watkins had probable cause to arrest Fritz, so the search at the hospital was a

valid search incident to arrest. (hopefully you are remembering all those exceptions we studied in your Academy days!!)

Our Courts have looked at the "Emergency Aid Exception" differently over the years depending on the facts. Be careful when trying to use it.

MOORE V. ST. (Ind. Ct. App.) 5/26/23

THE SMELL OF MARIJUANA OR HEMP AND THE ISSUE OF PROBABLE CAUSE TO SEARCH.

FACTS: An Indy Metro PD officer pulled over Moore to investigate an expired/incorrectly registered license plate. The officer immediately noticed a strong marijuana odor coming from the car as he was talking to Moore (it was the smell of raw not burnt marijuana). Based on that odor, police searched Moore's car and found 3.5 pounds of marijuana. Moore was charged with Level 6 felony dealing in marijuana. He moved to suppress the drugs on the grounds that because low-THC hemp is legal, and because the smell of marijuana is the same as low-THC hemp, there was not probable cause to

search his car based on odor alone. The trial court denied the Motion to Suppress and Moore appealed.

ISSUE: Because legal hemp and illegal marijuana basically smell exactly alike, does a trained officer still have P/C to conduct a search based on the smell of marijuana alone?

HOLDING: After going into a lengthy discussion of what probable cause is (which I'm not going to do here!), the appellate court ultimately held that the detecting of the odor of marijuana by a trained officer still provides P/C for a search, despite the legality of similar-smelling low-THC hemp. The Court stated: ***"Although it was equally possible that the strong odor emanating from the vehicle and detected of the officer was hemp as it was marijuana, these circumstances created a fair probability---that is, 'a substantial chance'---that the vehicle contained contraband. We thus conclude that the detection of the odor of marijuana….provided probable cause for him to search the car."***

The Court applied its holding to both the 4th Amendment **and Article 1, Section 11 of the Indiana Constitution.**

Finally, as I noted in the beginning of this case, the odor detected was not burnt marijuana (or hemp). Although it was not addressed in this opinion, smokeable hemp is still also illegal in Indiana (IC 35-48-4-10.1). So, if the odor detected is burnt marijuana or hemp, either would seem to establish P/C to search. This is the position taken by the Indiana Prosecuting Attorneys Council.

LAKES V. ST. (Ind. Ct. App.) 1/9/24

MARIJUANA CONVICTIONS MUST BE SUPPORTED BY EVIDENCE THAT THE MARIJUANA IS NOT LEGAL HEMP.

Facts: Lakes was found in possession of a large amount of methamphetamine and marijuana. He was charged with both possession with intent to deal the meth and possession. At trial, the State did not attempt to distinguish between marijuana and hemp with quantitative lab analysis to determine the Delta-9 THC levels. He was convicted and appealed.

HOLDING: The Court of Appeals found that Lakes' conviction for marijuana was unsupported by the evidence, as the State was unable to show the marijuana did not fit the description of legal hemp.

Note: "Smokable Hemp" raw plant material from Cannabis with 0.3% Delta-9 THC or less is still illegal to possess outside of licensed growers/handlers (farm to manufacturer).

Keep this case in mind when making your lab submissions.

BANKS V. ST. (Ind.Ct.App.) 3/15/24

SEARCH WARRANT FOR PHONE REQUIRES SPECIFIC NEXUS BETWEEN PHONE AND CRIME; SPECIFICITY OF SCOPE OF WARRANT RELATIVE TO WHAT IS KNOWN AT THE TIME.

FACTS: Banks along with three other men conspired to commit and did commit a robbery in which four people were murdered. Police obtained a warrant to conduct a forensic analysis of Banks' phone. He claimed that there was an insufficient nexus between the crimes and his phone, thus the warrant to conduct a forensic analysis of his phone should be suppressed. In simple terms he was arguing that just because he was a suspect in a serious crime doesn't allow police to get his phone.

ISSUE: Does there have to be a **specific nexus** between a phone and a crime to obtain a warrant for the phone?

DISCUSSION AND HOLDING: The Court of Appeals agreed that just because everyone has a cell phone does not mean that every criminal suspect is subject to a search of their cell phone. There must be some connection between the phone and the crime. Boilerplate language in warrant affidavits cannot establish a sufficient nexus. The Court found a sufficient nexus in this case. The police investigation indicated, as listed in the P/C for the warrant, that at least two of the robbers used their phones to communicate their plans to rob. There was also evidence that some of the robbers posted photos of the group on Facebook. Finally, there was reason to believe that location data from Banks' phone might put him at the scene. The Court found from this that there was a sufficient nexus between the crime and Banks' phone.

Banks also argued the warrant, which allowed the police to search his cell phone for "*all data which is relevant to and/or evidence of the crimes of murder and robbery specific to the above-described investigation,"* was invalid

because it was “an impermissible general warrant.” (We all know that a warrant must **particularly describe the place to be searched, and the persons or things to be seized.)** As to this argument, the Court noted that investigations only have limited information, and warrants must reflect that. Criminals don’t make it easy to find evidence of their crimes. The Court compared a phone to a filing cabinet, and held that so long as a warrant is “as specific as the circumstances allow” and “cabin” the things to be looked for, a warrant does not fail for lack of specificity.

Evidence recovered from the search of his phone was properly admitted by the trial court.

MORALES V. ST. (Ind. Ct. App.) 1/23/24

WHAT IS "THREAT OF FORCE" IN A RAPE CASE?

THREAT TO HARM ONESELF IS A "THREAT OF FORCE"

FACTS: Morales was holding an AR-15 while he threatened suicide if his estranged wife did not perform oral and vaginal sex with him. He was convicted of two counts of rape and confinement. He appealed.

ISSUE: Because his threat was to harm himself, he didn't use threat of force to coerce sexual conduct.

HOLDING: The Court of Appeals disagreed with this argument. They said: "we look to the victim's perception of the circumstances to determine the presence or absence of forceful compulsion…The issue is simply whether the victim perceived the aggressor's force or imminent threat of force as compelling her compliance."

In sum, a defendant's threat of self-harm can constitute force or imminent threat of force in the rape statute.

TAYLOR V. ST. (Ind. Ct. App.) 11/9/23

CONFINEMENT CASE. SUFFICIENT EVIDENCE OF CONFINEMENT WHEN VICTIM TESTIFIED SHE STRUGGLED TO GET UP.

FACTS: The defendant Taylor became irate when his girlfriend did not answer his call. He kicked in her door and they argued. He pushed her onto the bed and restrained her, which caused her physical pain. She struggled to get up and Taylor let her go after a few minutes. In the living room, Taylor pushed her into a table and she fell onto the floor which ripped her shirt. Taylor took her phone when she said that she would call the police, but she managed to grab it and text 911. (I have included this case because I'm sure it reminds you of many of the domestics you've had to deal with over the years).

Taylor was convicted of a Level 5 felony criminal confinement, a Class A misd. Domestic battery, and a Class A misd. Interference with the reporting of a crime. He appealed, focusing on the confinement.

ISSUE: Was there sufficient evidence to support the Level 5 felony criminal confinement conviction?

HOLDING: The Appellate Court incorporated all the evidence of the struggle laid out in the facts above and held that because the victim struggled to free herself and was unable to get up until Taylor released her, there was sufficient evidence to prove beyond a reasonable doubt that Taylor substantially interfered with her liberty. Conviction confirmed.

NOTE: This is a good case to keep in mind when investigating your domestic calls. Get as much detailed evidence from the victim as it relates to what actually happened.

COOK V ST. (Ind. Ct. App.) 10/10/23

ADMISSION OF CONTROLLED BUY RECORDINGS WITHOUT CI's TESTIMONY DID NOT VIOLATE U.S. OR INDIANA CONSTITUTIONS.

FACTS: Anthony Cook twice agreed to sell meth to a CI. These controlled buys were captured on audio and video. At Cook's trial for dealing in meth the CI did not appear. (Cook didn't show up either and was tried *In Absentia*). The Trial Court admitted the recordings of the controlled buys over the defense's objection. Cook was convicted as charged and appealed.

ISSUE: Was the defendant's right to ***confront adverse witnesses*** violated when the recordings were admitted but the CI did not testify at his trial?

HOLDING: No! The Court of Appeals explained that the admission of the controlled buy recordings without the CI's testimony did not violate Cook's right to confrontation under either the U.S. or Indiana Constitutions. "Statements made by a confidential informant recorded in the course of a controlled drug buy are not offered by the State to prove the truth of the

matter asserted and are therefore not hearsay….This is so because such evidence is only ‘context evidence, not legally operative conduct.’” To “dumb it down” a bit, the Court was saying (I think) that Cook’s own words were evidence of his illegal conduct, and the CI’s responses to Cook merely facilitated the buys.

YOUNG V ST. (Ind. Ct. App.) 10/4/24

FINAL CASE! VERY NEW ONE! THE WARRANTLESS SEARCH OF A VEHICLE UNDER THE "AUTOMOBILE EXCEPTION" WHICH INCLUDED LOOKING INSIDE A LOOSE DOOR PANEL DID NOT VIOLATE YOUNG'S RIGHTS.

FACTS: Franklin police were conducting a long-range surveillance of Young because there was an outstanding warrant for his arrest. Officers saw Young sitting in the front seat of a Trailblazer while it was parked on the street outside of his residence. After about an hour of watching him one of the officers parked his patrol car behind the Trailblazer, ordered Young out of the vehicle, and handcuffed Young. The officer searched Young and found half a gram of meth and some marijuana. Other officers arrived including a K-9 and the dog did a free air sniff around the Trailblazer with the dog giving a positive indication near the rear passenger-side door of the vehicle. Officers began searching near the rear passenger-side door and found a "marijuana-branded tray that had residue on it. There were tools and wires scattered throughout the vehicle and the center console

had been disassembled. A "magnetic box" was found near the instrument cluster stuck on the side of it where there was an air vent that was missing. Inside the box were red baggies, marijuana cigarettes, and a pipe. The officers noticed the plastic interior door panel of the driver's door moved away from the door and was "super loose." One little plastic clip was holding the panel in place and when an officer pulled the loose panel away a bag containing 19 grams of meth, small baggies with meth inside them, a scale, a latex band, syringes, and numerous unused plastic baggies fell out. Young was charged with Level 2 felony dealing in meth and Level 6 felony unlawful possession of a syringe. Young moved to suppress the evidence found in the door panel which was denied and he was convicted. He appealed.

ISSUE: Was the evidence found inside the door panel by taking apart the door an "invasive search" that required a warrant.

HOLDING: No. The Court found the search reasonable both under the 4th Amendment and under the Indiana Constitution utilizing the **"Automobile Exception."** The Court stated that "a search pursuant to this exception is

not defined by the nature of the container in which the contraband is secreted but rather by the object of the search and places in which there is probable cause to believe that it may be found." What was the P/C that the police had before they pulled on the door panel:

1) They had found drugs on Young's person
2) A police dog had alerted to the presence of drugs inside Young's vehicle.
3) The officers had found a marijuana-branded rolling tray near the rear passenger-side door, and also found a magnetic box containing narcotics and paraphernalia secreted inside a dismantle air vent near the vehicle's instrument cluster.
4) Prior to police arriving, the vehicle's center console had been disassembled, and wires and tools were scattered over the two front seats of the vehicle.

Clearly a reasonably prudent person could conclude additional drugs could be hidden behind a loose door panel!

Conviction affirmed.