



POLICE / PROSECUTOR UPDATE

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The Indiana Supreme Court recently issued a decision regarding the search of *personal containers* found in a home pursuant to a *consent* to a general search of the home itself. The facts are quite simple. The defendant and her boyfriend lived together in the same house. The boyfriend consented to a police search of the house for drugs. This search ultimately led to the discovery and search of the defendant's purse. The question: Could the boyfriend's consent to the search of the house authorize the search of the defendant's purse.

In resolving this issue, the Court examined the applicability of the *scope* of a consent search to *third-party consent* cases. In this case the Court concluded that the issue was not only whether the purse was within the *scope* of the consent search (it was), but also whether the third party had actual or apparent authority to consent to the search of the purse. Since the boyfriend owned and shared the home with the defendant, he clearly had actual authority to consent to the search of the home. The central question thus became whether the sharing of a home means that common authority exists to consent to search containers belonging to only one occupant.

In deciding the case, the Court found that the type of container is of great importance in reviewing third-party consent cases. Rather than considering a third-party's authority to consent to the general search of the home as "all-encompassing" to the search of every container found inside the home, the court held that the 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.

Issue 96 of the PPU discussed a Court of Appeals case which held that the consent of the male driver to a search of his vehicle would not authorize police to search the only female passenger's purse found in the vehicle. While not specifically agreeing with this decision, the Supreme Court did specifically agree with the following Court of Appeals analysis of third party authority principles: it was unreasonable for the officer to believe that the driver's general consent to the search of his car meant that he had authority to consent to the search of a purse, which by its nature is

not shared by two or more people.

Finally, another recent Court of Appeals case examined this issue as it related to a backpack rather than a purse. A police officer properly stopped a car containing three males. He obtained the driver's consent to search the car. The officer began the search with a backpack located on the back seat (the defendant was the only back-seat passenger) without attempting to ascertain its ownership. The backpack was owned by the defendant and contained a handgun.

In the court's view, because the driver did not actually own or share control of the backpack, the issue was whether the driver's consent to search his vehicle included consent to search the backpack of one of his passengers. The court held that it did not. The officer should have ascertained who owned the backpack before he opened it and searched it.

Specifically, it would have been objectively reasonable for the officer to realize that it *might* belong to one of the passengers rather than the driver. The court's advice to police: Under the apparent authority rule, the police must be required to make reasonable inquiries when they find themselves in "ambiguous circumstances." Sometimes the facts known by the police cry out for further inquiry, and when this is the case it is not reasonable for the police to proceed on the theory that "ignorance is bliss."

The lesson of this issue is to be very careful in consent searches of homes or vehicles before searching containers for which two or more persons normally do not share common use or authority, containers that "normally hold highly personal items." If it is reasonably possible that the person consenting to the search is not the owner of the container or object, then police must make reasonable inquiry as to ownership. Remember, absent probable cause, the containers cannot be searched without the consent of the owner or of one who has authority to consent.

Krise v. State, 746 N.E.2d 957 (Ind. 2001).

Norris v. State, 732 N.E.2d 186 (Ind. App. 2000).

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