



# POLICE / PROSECUTOR UPDATE

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In September, the Court of Appeals decided that if a vehicle has a **truck license plate**, then that vehicle is a truck for purposes of our **seatbelt law**. The specific question before the Court was whether an SUV may be classified as a truck. The Court concluded that it could. As the Court stated, ". . . the definition of 'truck' does not necessarily exclude SUVs, and if an SUV owner has paid the fee for a truck plate, then by law he drives a truck that is specifically excluded from the seatbelt law." Owen v. State, 796 N.E.2d 775 (Ind. App. 2003).

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Another recent Court of Appeals case involved an **unlawful consent search**. Police officers were dispatched to a house rented by the defendant and a woman because of an activated residential alarm (learned to have been set off by the defendant accidentally). One officer went to the front door and a second officer stood near the front window and observed the defendant, the woman, and a child in the living room. The first officer knocked on the door. The defendant jumped up, put his foot against the door and asked who was there. The officer identified them as police officers. From the window, the second officer observed the woman jump up from the sofa, grab a tin from a table, take it to the kitchen, and then return to the living room. The defendant then let the officers into the house.

The woman was asked why she had jumped up from the sofa and taken the tin to the kitchen. She responded that she needed to check on the baby. The officer expressed doubt about this because he had seen the child playing on the living room floor. He then asked if he could search the house for officer safety to make sure no one else was in the house. The defendant and the woman consented and said that the officers could "go ahead and check anything they wanted." The officer went into the kitchen and saw the tin. He opened it and saw 19 small plastic packets of a white, rocky substance (later determined to be almost 20 grams of cocaine). The officer also recovered a stolen gun on the refrigerator. The defendant and woman denied any knowledge of the contents of the tin. They later signed a consent to search form authorizing the search of the house.

Because **warrantless searches inside the home** are presumptively unreasonable, the scope of the authority to search is strictly limited to the consent given, and a consent search is reasonable only if kept within the bounds of the consent. The standard for measuring the scope of a suspect's consent is that of objective reasonableness, in other words, "what would the typical reasonable person have understood by the exchange between the officer and the suspect?" In addition, the scope of a consent search is generally measured by the expressed object to be searched for.

The police officer specifically asked if he could search the house to make sure *no one else* was in the house. It was undisputed that the defendant consented to the search of his house. The state argued that the search of the tin was within the scope of the consent because the defendant and the woman placed no restrictions on the search, did not object when the tin was opened, and later signed consent to search forms.

The Court disagreed, stating the search of the tin exceeded the scope of the consent. The *expressed* object of the search was a person or persons. "Government agents may not obtain consent to search on the representation that they intend to look only for certain specified items and subsequently use that consent as a license to conduct a general exploratory search."

In this case, an objectively reasonable person assessing the exchange between the defendant and the officer would have understood that the defendant consented to a *search for a person*. The consent to search forms were irrelevant because they were executed *after* the tin had been opened. The failure of the defendant to object was also irrelevant as the defendant had no way of knowing what the officer was doing in the kitchen and thus had no reasonable opportunity to object.

One judge (a former prosecutor) wrote separately to state, "Police cannot and are not constitutionally empowered to look for an elephant in an ice cube tray . . . This [looking in the tin] is understandable police inquisitiveness, but impermissible and unconstitutional conduct."

Buckley v. State, \_\_\_ N.E.2d \_\_\_ (Ind. App. 10/24/03).