



POLICE / PROSECUTOR UPDATE

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The Indiana Court of Appeals recently gave us an excellent overview of the law regarding consent to search in Navarro v. State, 855 N.E.2d 671 (Ind. Ct. App. 2006).

A deputy sheriff observed a car pass over the fog line to the right on a highway and then return to its lane of travel. The deputy ran the car's license plate number and determined the car was registered to Adolfo Navarro. The deputy then contacted another deputy who had served in the drug unit to "confirm his suspicion" that he had heard the name Adolfo Navarro "several times as a possible cocaine dealer." The deputy then made a traffic stop for unsafe lane movement.

The driver's license and registration indicated that the person was Navarro, and the license was valid. The deputy returned to the car and detected a weak odor of alcohol, and Navarro appeared rational and showed no other signs of being intoxicated, so the deputy did not sense that he was impaired. He told Navarro he would issue him a warning for unsafe lane movement and asked him if he would object to a search of the car.

While the deputy did not indicate that he suspected Navarro's involvement with drugs, he stated that he was going to look for contraband in the car. He also did not inform Navarro that he could decline to consent. Navarro consented to a search and even voluntarily opened the trunk. The deputy summoned a canine unit. When the second deputy arrived, he also asked for consent to search. Navarro was "very cooperative" and showed "no hesitation" in consenting to the search. The search discovered cocaine. The main issue at trial was the validity of the search. Navarro contested the voluntariness of his consent.

When State relies on consent to justify a warrantless search, it must prove the consent was freely and voluntarily given. A valid consent may not be conclusively presumed from a verbal expression of assent unless the court determines, from the totality of the circumstances, that the verbal assent reflected an understanding, uncoerced, and unequivocal election to grant the officers a license to search.

The "totality of the circumstances" from which the voluntariness of a defendant's consent is to be determined includes, but is not limited to, the following: (1) whether the defendant was advised of his *Miranda* rights prior to the request to search; (2) the defendant's degree of education and intelligence; (3) whether the defendant was advised of his right not to consent; (4) whether the defendant has previous encounters with law enforcement; (5) whether the officer made any express or implied claim of authority to search without consent; (6) whether the officer was engaged in any illegal action prior to the request; (7) whether the defendant was cooperative previously; and (8) whether the officer was deceptive as to his true identity or the purpose of the search.

In this case, the defendant was neither placed under arrest nor physically restrained when the deputy requested consent. Thus, advisement of *Miranda* rights was not required. The fact that the deputy maintained possession of Navarro's license and registration indicated only that the nature of the encounter was investigative and did not render the consent involuntary.

It was clear from the evidence that Navarro consented after the deputy's initial request to search, and there was no indication that he ever voiced any objection to his continuing assent or indicated a desire to leave. If he did, the deputy testified he would have let him leave. Importantly, the deputy did not, expressly or impliedly, claim he had the authority to search without consent.

Navarro was completely cooperative as evidenced by his acting on his own initiative to open the car's trunk for the deputy. While Navarro was not advised of his right to refuse to consent, there is not absolute rule requiring such an advisement. Finally, the court did not find the deputy to be deceitful for failing to specify what category of contraband he was looking for.

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