Criminal Law Notes: Fourth Amendment Developments and their Impact upon the Criminal Process in Indiana

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FOURTH AMENDMENT DEVELOPMENTS AND THEIR IMPACT UPON THE CRIMINAL PROCESS IN INDIANA

By
F. Thomas Schornhorst

During its most recent term the Supreme Court of the United States decided a number of important cases affecting the scope of Fourth Amendment limitations on state and federal police power. The focus, as usual, has been on whether certain evidence seized by police from the accused should be admitted against him as evidence in a criminal trial. While there has emerged no clear-cut principle upon which future decisions and predictions of future decisions can be based (a condition that pervades the history of Fourth Amendment jurisprudence), it does appear that a majority of the Court is gearing up either (1) to overrule Mapp v. Ohio and thereby separate the Exclusionary Rule from the Fourteenth Amendment if not the Fourth Amendment; or (2) by a process of careful case selection to confine narrowly the range of situations in which Fourth Amendment violations will be found and, hence, the rule of exclusion of evidence applied.

So far, it is the second judicial technique that is being employed—perhaps as a goal in itself or as a means of forcing the abolition of the Exclusionary Rule as each decision designed to contain the rule thereby constricts the scope of individual rights under the Fourth Amendment.

The next three installments of Criminal Law Notes will be devoted to a brief analysis of these major Fourth Amendment developments and their impact upon the criminal process in Indiana.

Search Incident to Traffic Arrests—Robinson and Gustafson.

In United States v. Robinson and Gustafson v. Florida, the Court, for the first time, considered the question of the permissible scope of a search of a person arrested for a minor traffic offense.

Both Robinson and Gustafson were lawfully stopped by police while operating motor vehicles and subsequently were arrested for failure to produce valid operator’s permits. In each instance the arresting officer planned to transport the accused to the stationhouse for booking or further investigation and proceeded to conduct a patdown search. In Robinson the officer, standing face-to-face with the suspect, felt an object inside the left breast pocket of his coat which, when removed by the officer, turned out to be a crumpled cigarette package. Feeling objects that did not appear to be cigarettes inside, the officer opened the package and discovered capsules of heroin. Gustafson was searched in similar fashion and a cigarette box was removed from his pocket, immediately opened and was found to contain marijuana.

Both persons subsequently were charged and convicted for unlawful possession of drugs over their objections that the incriminating evidence had been discovered as the result of an unconstitutional search. Robinson’s conviction was reversed by the United States Court of Appeals for the District of Columbia on the ground that the search of his person exceeded the constitutionally permissible scope. The Supreme Court of Florida, reversing an intermediate appellate court decision in favor of Gustafson, upheld the constitutionality of the search.

The basic issue presented by these cases was whether the scope of police power to conduct a warrantless search of a person incident to a lawful arrest is limited by the factors that traditionally have been thought to justify such searches as exceptions to the general Fourth Amendment rule requiring warrants. In other words, may the search of the arrested person extend beyond that necessary to ascertain whether he is carrying weapons that could pose a danger to the officer or to others, or to prevent the destruction of evidence related to the crime or crimes for which the arrest was effected?

The Supreme Court upheld the constitutionality of both searches and in the process rejected arguments that the validity of a particular search be analyzed case by case in light of the dual criteria of safety and the need to preserve evidence.

The authority to search the person incident to a lawful custodial arrest, while based upon the need to disarm and to discover evidence, does not depend on what a court may later decide was the probability in a particular arrest situation that weapons or evidence would in fact be found upon the person of the suspect. A custodial arrest of a suspect based on probable cause is a reasonable intrusion under the Fourth Amendment; that intrusion being lawful, a search incident to the arrest requires no additional justification. It is the fact of the lawful arrest which establishes the authority to search, and we hold that in the case of a lawful custodial arrest a full search of the person is not only an exception to the warrant requirement of the Fourth Amendment, but is also a 'reasonable' search under that Amendment.

In adopting this per se rule, the Court obviated any need to inquire in the specific cases (1) whether the officers had any reason to fear for their safety; (2) whether the warrantless inspection of the inside of the cigarette containers constituted an additional invasion of privacy for which separate justification would have to be shown; or (3) whether there was any evidence of the offense that conceivably could have been destroyed.

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Throughout the majority opinions the terms “full custody arrest” or “custodial arrest” are employed to describe the initial justification for the searches. This is a term of art new to Fourth Amendment decisions and, in light of the facts of each case, must be intended to describe those cases in which the arresting officer subjects a suspect to significantly greater restraint than, say, the momentary interference with freedom of movement involved in the process of issuing a traffic summons. While the majority opinion offers no definition of “custodial arrest” it does quote a District of Columbia police witness’ definition of a “full custody arrest” as “one where an officer would arrest a subject and subsequently transport him to a police facility for booking. . .”9 Hence, neither Robinson nor Gustafson can be read as authorizing searches of persons who may be lawfully stopped by police for traffic or other minor violations, but who are allowed to proceed after the issuance of a summons. This was an issue expressly left undecided by the Court.10

Indiana Applications

While at least one state supreme court has found the minimal constitutional standards articulated in Robinson/Gustafson inadequate under its own state law,11 a majority of the Indiana Supreme Court seems not only to have embraced the holdings in those cases, but to have extended their application beyond the search of the person and in a non-custodial arrest situation at that.

In Frasier v. State12 a deputy sheriff at night stopped an automobile because of a noisy muffler. Shining his flashlight inside the car, the deputy spotted a “tire tool or pry bar” protruding from a sack on the floorboard. Suspecting the sack to contain burglars’ tools, the deputy ordered the two occupants out of the car. He then approached the two men to request identification. One of them drew a pistol. The deputy shot and killed this man and captured the other as he tried to escape. A subsequent search of the car revealed evidence of an armed robbery which had been committed only a short time before. The deputy had no knowledge of the robbery at the time he stopped the car.

In seeking to suppress the evidence of the armed robbery the defendant invited the Court to join him far out on a limb of the “poisoned tree” arguing that the search of the sack was unlawful, and that the gunshot and the post-gunfight search of the car were its illicit fruits. While the Court would seem to have had little difficulty seeing this one off,13 it chose instead to insist that Robinson and Gustafson controlled, and upheld not only the admission of the armed robbery evidence, but the contents of the sack as well.

Writing for the majority, Chief Justice Arterburn observed that since driving with a defective muffler is a misdemeanor, the deputy had a right to arrest the driver for an offense committed in his presence. “Acting within this authority, the Deputy asked for identification. Since he had the right to make an arrest and a search incident thereto, he had the right to make the considerably lesser intrusion of a request for identification. The ensuing assault on the Deputy validates the subsequent search of the car and the seizure of the items therefrom.”14

This is the extent of the majority’s discussion of the impact of Robinson and Gustafson! As pointed out by Justice DeBruler in dissent, the majority opinion glosses over two important factors: (1) the initial arrest was not “custodial;” (2) the initial search was not of the arrested person, but of a sack taken from a car. While the language of the Chief Justice quoted above serves to explain the basis for the admission of the evidence found after the shootout, it hardly justifies the bending of Robinson and Gustafson to sustain the admissibility of the contents of the sack.

Whether an officer is authorized to take a traffic offender into custody depends upon the application of two sections of the Uniform Traffic Act, neither of which was mentioned by the Frasier majority.

IC 1971, 9-4-1-130 requires police officers immediately to bring before a magistrate any person arrested for a traffic misdemeanor when any of the following situations obtain: (1) the person demands such an appearance; (2) the offense involves personal injury or death; (3) the charge is reckless homicide; (4) the charge is driving under the influence of liquor or narcotics; (5) the charge is failure to stop after involvement in an accident causing personal injury or property damage; or (6) the arrestee refuses to give a written promise to appear in court pursuant to summons. While these situations will not necessarily involve a trip to the police station, it would seem that the power exercised over the person necessary to transport him to a magistrate could be considered a “custodial arrest.”

On the other hand, an Indiana resident arrested for a traffic misdemeanor and who does not fall within any of the preceding categories must, according to the Attorney General’s interpretation of IC 1971, 9-4-1-131,15 be released after being issued a summons to appear in court and after signing a promise to appear. A custodial arrest would not have taken place in such a situation.

As to the search of the sack found inside the car, the majority failed to deal with its own previously stated position in Paxton v. State.16 In the context of a search of an automobile incident to a traffic arrest the Court there observed: “[I]t would seem clear that the mere fact of an arrest by itself, would not necessarily justify a warrantless search incidental thereto. . . . [T]he reasonableness of a warrantless search incident to an arrest in terms of both its initiation and scope must be determined from the inherent necessities of the circumstances surrounding the arrest.”17

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NECESSITY TO REORGANIZE FOR GROUP PRACTICE

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applicable to or deferred to in his agreement. Annually during the month of January and not later than January 31 he shall advise the State Bar, on forms provided by it, of any changes in such matters and the number of persons to whom he rendered legal services during the preceding calendar year pursuant to the arrangement. Information supplied hereunder shall be available to the public on request and whether or not such information is also supplied pursuant to Rule 20 hereof.

Notwithstanding the provisions of this section, the group or nonprofit organization may file with the State Bar any report required of the member under this section, but the member shall be responsible for any errors or omissions in any such report.

EXHIBIT B

EXACT COPY OF RULE 20 OF RULES OF PROFESSIONAL CONDUCT OF THE STATE BAR OF CALIFORNIA

RULE 20. The furnishing of legal services by a member of the State Bar pursuant to an arrangement for the provision of such services to the individual member of a group, as herein defined, at the request of such group, is not of itself in violation of Rules 2 or 3 of these Rules of Professional Conduct if the arrangement:

1. permits any member of the group to obtain legal services independently of the arrangement from any attorney of his choice,

2. is so administered and operated as to prevent

(a) such group, its agents or any member thereof from interfering with or controlling the performance of the duties of such member of the State Bar to his client,

(b) such group, its agents or any member thereof from directly or indirectly deriving a profit from or receiving any part of the consideration paid to the member of the State Bar for the rendering of legal services thereunder,

(c) unlicensed persons from practicing thereunder, and

(d) all publicizing and soliciting activities concerning the arrangement except by means of simple, dignified announcements setting forth the purposes and activities of the group or the nature and extent of the legal services or both, without any identification of the member or members of the State Bar rendering or to render such services.

Nothing in this rule shall prohibit a statement in response to individual inquiries as to the identity of the member or members of the State Bar rendering or to render the services giving the name or names, addresses and telephone numbers of such member or members.

As used in this rule a group means a professional association, trade association, labor union or other non-profit organization or combination of persons, incorporated or otherwise, whose primary purposes and activities are other than the rendering of legal services.

A member of the State Bar furnishing legal services pursuant to an arrangement for the provision thereof shall advise the State Bar thereof within 60 days after entering into the same. Thereafter he shall advise the State Bar, on forms provided by it, of the following matters: the name of the group, its address, whether it is incorporated, its primary purposes and activities, the number of its members and a general description of the types of legal services offered pursuant to the arrangement. Annually on January 31, he shall report to the State Bar, on forms provided by it, any changes in such matters, and the number of members of the group to whom legal services were rendered during the calendar year. Each report file pursuant hereto and the information contained therein, except the name and address of the group, the fact that it has an arrangement for the provision of legal services and the names of members of the State Bar providing such services shall be confidential.

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I share Justice DeBruler's concern that Frasier will be read to allow "a full scale search of anyone who violates some traffic regulation, [and] invites wholesale and groundless intrusions upon the personal privacy of thousands of Indiana motorists." The Indiana Supreme Court's unreasoned extension of Robinson and Gustafson appears to validate the worst fears of those of us who feel that the Fourth Amendment is becoming dangerously undermined.

1 347 U.S. 463 (1951).
2 This depends upon whether the Court continues to employ the doctrine of selective incorporation with respect to the application of the specific guarantees of the Bill of Rights to the States through the Due Process Clause of the Fourteenth Amendment or whether the Court moves to re-examine the basic relationships within our federal system with regard to matters of criminal procedure. One the other hand, the Court may return to the pre-Mapp position that the protection of exclusion is not necessarily part of the fundamental guarantee of freedom from unreasonable searches and seizures except in the most egregious circumstances. Cf. Rochin v. California, 342 U.S. 165 (1952).
5 Neither case involved the question of a search of the arrested person's automobile incident to a traffic arrest. The scope of such a search would, at the very least, be governed by Chimel v. California, 395 U.S. 752 (1969), which held that incident to an arrest "[t]here is ample justification . . . for a search of the arrestee's person and the area 'within his immediate control'-construing that phrase to mean the area from which he might gain possession of a weapon or destrucable evidence." See also Paxton v. State, 255 Ind. 264, 263 N.E.2d 636 (1970).
6 Robinson was arrested for driving after a suspension of his permit while Gustafson's arrest was based on his failure to have his operator's permit in his possession.
7 I.e. Robinson this decision was pursuant to a District of Columbia police department directive, and in Gustafson the Florida policeman apparently had discretionary power to take the suspect into custody.
8 414 U.S. at 235.
9 414 U.S. at 221n2.
10 414 U.S. at 236n6.
13 First, the assault on the officer would seem to have provided an independent basis for the search of the car despite the alleged illegality of the search of the sack. Moreover, the State had a plausible argument that the seizure and inspection of the sack was a reasonable self-protective move on the part of the officer.
14 supra note 12 at p. 4.
17 Id. at 639, 640.
18 supra note 12 at p. 3 (dissenting opinion).

LAW SCHOOL GIVEN FUNDS TO TRAIN ADMINISTRATORS FOR COURTS OF INDIANA

A program to train and certify administrative personnel for Indiana courts is being prepared at Indiana University Indianapolis Law School. The program initially will be funded by a grant of $75,000 awarded the law school for that purpose by the Law Enforcement Assistance Administration.

The program, in cooperation with the Indiana Center for Judicial Education, is designed to furnish Indiana courts with personnel equipped to assist the judges in reducing court delays through improvement of case control and to upgrade court budgeting and other fiscal affairs.