

[CAPTION]

MOTION TO SUPPRESS (BODILY INTRUSIONS)

The Defendant, by counsel, respectfully requests this Court to suppress any and all evidence seized or obtained as a result of the search of his person at the [Insert Hospital]. In support of the Motion, the Defendant states the following:

1. On [insert date], after the Defendant allegedly delivered directly to a police officer three Dilaudid pills and was arrested for such delivery, the State Police sought a search warrant for the person of the Defendant in order to recover evidence believed to have been ingested by the Defendant. The application for the search warrant is attached hereto as Exhibit A.

2. Based upon the application, the search warrant attached hereto as Exhibit B was obtained and executed. Omitting formal parts, the search warrant authorized the police to:

...search the body of [client], and any fecal matter or other substances excreted from his digestive system, and to seize any items of contraband found therein on such search.

The search warrant was issued at [insert time] on [insert date] and, according to the Return, executed that same day at [insert time].

3. Apparently, based upon their reading of the Search Warrant, the police had the Defendant transported to [insert hospital] where he was admitted at [insert time] on [insert date] and held until his discharge at [insert time] on [insert day]. During the entire [insert length of stay] he was at the hospital, the Defendant was shackled, handcuffed and watched over by police officers. During his hospital stay, the Defendant was subjected to an endoscopy, injected with various medications, including narcotic pain relievers, had an IV inserted into his body, and was administered solutions which caused him to defecate. At [insert time] on [insert date], the Defendant passed a part of what has been described as a broken balloon neck.

4. The foregoing search was in violation of Article I, Section 11 of the Indiana Constitution and the Fourth Amendment to the U.S. Constitution in that:

a. It was not authorized by the search warrant. The search was more intrusive than reasonably necessary.

b. The search exceeded the scope of the search warrant.

c. The search warrant was issued on less than probable cause and any reasonably trained officer would not have relied upon the application as it lacked any indicia of probable cause and, therefore the “good faith” exception to the exclusionary rule does not apply.

d. The search warrant was obtained based upon material misrepresentations and false information provided to the issuing magistrate and, therefore, the “good faith” exception to the exclusionary rule does not apply.

e. The resulting search was unreasonable.

5. An evidentiary hearing is necessary in order for the Defendant to present evidence in support of this Motion and the Defendant intends to submit a memorandum in support hereof that will detail the arguments and points made herein.

WHEREFORE, the Defendant, by counsel, respectfully requests this Court to suppress any and all evidence gained as a result of the search of the Defendant’s person as described herein, and for all other relief just and proper in the premises.

(Signature)

CASE LAW

CASEBANK Z.2.c.3

Florence v. Board of Chosen Freeholders of County of Burlington, 132 S. Ct. 1510, 182 L.Ed.2d 566 (2012) (jail officials may subject arrestees to strip searches without need for individualized suspicion in order to ensure for the safety and security of the staff and other prisoners); cf. Edwards v. State, 759 N.E.2d 626 (Ind. 2001) (routine warrantless strip searches of misdemeanor arrestees are unreasonable and impermissible under the Indiana Constitution in the absence of reasonable suspicion that the arrestee is concealing weapons or contraband). But see Bryant v. State, 959 N.E.2d 215 (Ind.Ct.App. 2011) (circumstances surrounding misdemeanor arrest gave rise to reasonable suspicion that Defendant was carrying weapon or contraband, as to justify warrantless strip search, where police had probable cause at time of arrest to believe that Defendant had also committed dealing in a narcotic drug, a major felony, and Defendant's actions indicated to officer that he was attempting to conceal something).

Grier v. State, 868 N.E.2d 443 (Ind. 2007) (the application of force to a detainee's throat to prevent swallowing of suspected contraband violates constitutional prohibitions against unreasonable search and seizure). See also Conwell v. State, 714 N.E.2d 764 (Ind.Ct.App. 1999).

Schmerber v. California, 384 U.S. 757, 86 S.Ct. 1826, 16 L.Ed.2d 908 (1966) (search warrants are required absent an emergency where intrusions into the human body are concerned).

Winston v. Lee, 470 U.S. 753, 105 S.Ct. 1611, 84 L.Ed.2d 662 (1985) (factors in determining reasonableness of intrusion are: extent to which procedure threatens safety or health of individual; extent of intrusion upon individual's dignitary interests in personal privacy and bodily integrity, and community's interest in fairly and accurately determining guilt or innocence).

Adams v. State, 260 Ind. 663, 299 N.E.2d 834 (1973) (removal of bullet from inside Defendant's body to secure evidence for the purpose of establishing guilt or innocence constituted unreasonable search; Fourth Amendment prohibits forcible removal of bullet from Defendant's body as intrusion into Defendant's body, even with a search warrant).

Balding v. State, 812 N.E.2d 169 (Ind.Ct.App. 2004) (convicted offenders may be compelled to submit a DNA sample for inclusion in state DNA database).

Smith v. State, 744 N.E.2d 437 (Ind. 2001) (State's retention and use of DNA profile from unrelated case in which Defendant was acquitted did not violate U.S. or Indiana Constitutions).

Garcia-Torres v. State, 949 N.E.2d 1229 (Ind. 2011) (because the intrusion caused by a buccal swab for DNA is slight, Pirtle does not apply).

Powell v. State, 898 N.E.2d 328 (Ind.Ct.App. 2008) (cutting Defendant's underwear in order to retrieve cocaine from pocket-type enclosure in the underwear during a search incident to arrest along side the road in a non-residential area was reasonable).

Hendricks v. State, 897 N.E.2d 1208 (Ind.Ct.App. 2008) (Court agrees that the area of one's buttocks would be considered private; however, in the totality of the circumstances of this case, pulling out Defendant's waistband and subsequently removing a napkin full of cocaine protruding from his buttocks was reasonable under the Indiana Constitution).

People v. Hall, 886 N.E.2d 162 (N.Y. 2008) (police officers, during a lawful body cavity examination of an arrested drug dealer, violated the Fourth Amendment when they saw an object protruding from Defendant's rectum and removed the object).

Maryland v. King, 133 S.Ct. 1958, 186 L.Ed.2d 1 (2013) (search of detainee's person when he is booked into custody may involve relatively extensive exploration, including requiring detainee to lift their genitals or cough in squatting position).