IN THE

Indiana Supreme Court

Supreme Court Case No. 22S-CR-294

James E. McCoy,
Appellant (Defendant below)

–v–

State of Indiana,
Appellee (Plaintiff below).

Argued: June 30, 2022 | Decided: August 29, 2022

Appeal from the Cass Superior Court,
No. 09D01-2008-F6-290
The Honorable James K. Muehlhausen, Judge

On Petition to Transfer from the Indiana Court of Appeals,
No. 21A-CR-2000

Opinion by Justice Goff

Chief Justice Rush and Justices David and Slaughter concur.
Justice Massa concurs in the judgment with separate opinion.

Goff, Justice.

Under the Indiana Bill of Rights, "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable search or seizure, shall not be violated." Ind. Const. art 1, § 11. To ensure this protection, our constitution requires a warrant, issued "upon probable cause, supported by oath or affirmation, and particularly describing" the scope of the intended search and seizure. *Id.* A suspect may, of course, waive the warrant requirement by consenting to the search. But to secure consent from a suspect in custody, police must first inform that suspect of the right to consult with counsel. *Pirtle v. State*, 263 Ind. 16, 28, 323 N.E.2d 634, 640 (1975). Without that advisement, any incriminating evidence seized during the search is inadmissible at trial. *Id.*

The defendant here, an apparent victim of a robbery **and** as a suspect under arrest for an unrelated offense, consented to a search of his home, ostensibly for the officer only to document the stolen property, without having received the requisite *Pirtle* warning. Because we see this case as a clear-cut violation of *Pirtle*'s protections, and because we need not inquire into the officer's subjective views of whether the defendant was a victim or a suspect (as the State would have us do), we hold that the trial court abused its discretion by admitting evidence obtained during the search. We thus reverse the defendant's convictions and remand for a new trial.

Facts and Procedural History

Officer Cody Scott, while on patrol for the Logansport Police Department, received a tip of a nearby robbery in progress. The pedestrian who reported this tip to Officer Scott described the suspect and identified the victim's residence, adding that the victim himself—James McCoy—had an outstanding warrant for his arrest.[1] Upon arriving at the house, Officer Scott observed McCoy, confirmed his identity, and

[1] The transcript reveals that the arrest warrant may have been related to unpaid fines and court costs McCoy had incurred. Tr. Vol. II, p. 70.

"immediately" detained him for the active warrant. Tr. Vol. II, p. 62. Once in handcuffs, McCoy explained that several items from his residence had been stolen and that the robber had driven away just as the officer had arrived. The suspected robber—an acquaintance of McCoy's—eventually returned to the residence, having been located in the vicinity by other officers. At this point, a female approached the scene, identifying herself to Officer Scott as Jalyn Parkevich. The incident, she explained to him, was little more than a domestic dispute. According to Jalyn, she had been at McCoy's house the night before where she "observed methamphetamine" and where McCoy "had offered her" this drug in exchange for sex. App. Vol. II, p. 17. Evidently angered by this illicit proposition, the alleged robber, Jalyn claimed, sought retaliation by stealing some of McCoy's possessions. Immediately following this exchange, and upon Officer Scott's request, McCoy identified several items belonging to him still inside the suspected robber's vehicle. The officer then asked McCoy if he would escort him inside the house to document any other missing items. McCoy, still in handcuffs, agreed to the request.

Once inside the house, Officer Scott detected the odor of burnt "spice" (or synthetic marijuana) emanating from upstairs. *Id.* When they arrived at McCoy's bedroom on the second floor, the officer observed several plastic baggies strewn about the room. Based on these observations, and with knowledge of "possible narcotics inside the residence," Officer Scott suspended the investigation and contacted the prosecutor to apply for a search warrant. *Id.* The subsequent execution of that warrant revealed various drug paraphernalia, including a glass pipe with residue that later tested positive for meth, a vape cartridge containing THC oil, an opened pack of syringes, and a plastic baggie containing a substance that also tested positive for meth. After Officer Scott advised him of his *Miranda* rights, McCoy admitted that most of the items belonged to him, with the glass pipe apparently used "for smoking crack cocaine." *Id.* at 18.

The State charged McCoy with several offenses: level-6 felony possession of meth, level-6 felony unlawful possession of a syringe, class-A misdemeanor possession of marijuana, and class-C misdemeanor possession of paraphernalia. *See, respectively*, Ind. Code § 35-48-4-6.1(a) (2021); I.C. § 16-42-19-18; I.C. § 35-48-4-11(b)(1); I.C. § 35-48-4-8.3(b)(1).

At trial, McCoy moved to suppress the State's evidence, arguing that the search was unlawful because, despite his detention, the arresting officer failed to give the necessary *Pirtle* warning. The trial court denied the motion. While acknowledging that McCoy "was in custody" when the officer asked to search the house, the court reasoned that McCoy's detention rested on a "[w]arrant unrelated to the charges that [are] subject to this case." Tr. Vol. II, p. 73. What's more, the court didn't "see this as a search," but, rather, "as an attempt to identify stolen property" from the alleged robbery, of which McCoy was the "apparent victim." *Id*. Finally, the court found nothing to suggest that the officer "was looking for evidence other than the stolen property," adding that, when the officer came across incriminating evidence, he stopped and left the premises to secure a proper search warrant. *Id.*

A jury found McCoy guilty on all counts except the unlawful-possession-of-a-syringe charge. And after entering judgment of conviction on all counts except the marijuana charge (for which it had entered a directed verdict of not guilty), the trial court sentenced McCoy to an aggregate term of 910 days.

The Court of Appeals affirmed in a memorandum decision, holding that the trial court did not abuse its discretion by admitting evidence obtained during the search. *McCoy v. State*, No. 21A-CR-2000, 2022 WL 274713, at *4 (Ind. Ct. App. Jan. 31, 2022). In so holding, the panel reasoned (1) that because the officer detained him for an unrelated crime, McCoy was not entitled to a *Pirtle* warning; and (2) that the officer's search, performed only to document any property stolen from the residence and while in the presence of McCoy, did not amount to "an unlimited search, an unlawful search, or constitutionally prohibited police conduct as contemplated by *Pirtle*." *Id.*

After hearing oral arguments from both parties, we now grant McCoy's petition to transfer, thus vacating the Court of Appeals decision. *See* Ind. Appellate Rule 58(A).

Standard of Review

On appeal, an abuse-of-discretion standard applies to a trial court's decision on the admissibility of evidence, with reversal warranted only if the trial court's ruling is clearly against the logic and effect of the facts and circumstances and the error affects a party's substantial rights. *Carpenter v. State*, 18 N.E.3d 998, 1001 (Ind. 2014). But when, like here, the trial court's determination involves the constitutionality of a search or seizure, that determination is a question of law to which a de novo standard of review applies. *Campos v. State*, 885 N.E.2d 590, 596 (Ind. 2008).

Discussion and Decision

For nearly a half century, *Pirtle v. State* has withstood the test of time as the "seminal case" on Indiana's constitutional requirement for consent to searches. *Dycus v. State*, 108 N.E.3d 301, 304 (Ind. 2018). In *Pirtle*, police arrested the defendant for possession of a stolen vehicle. 263 Ind. at 21, 323 N.E.2d at 636. After police informed him of his *Miranda* rights on two occasions, Pirtle asked to speak with an attorney. *Id.* at 22, 323 N.E.2d at 637. But nearly twelve hours later, two other officers—unaware that Pirtle had invoked his right to counsel—questioned him about an unrelated homicide and asked for his consent to search his home. *Id.* Pirtle, never having spoken with a lawyer, agreed to the search, ultimately leading police to evidence implicating him in the homicide. *Id.* at 22–23, 323 N.E.2d at 637.

Pirtle challenged the admission of this evidence, which the trial court denied. *Id.* at 21, 323 N.E.2d at 636. But this Court reversed, holding "that a person who is asked to give consent to search while in police custody is entitled to the presence and advice of counsel prior to making the decision whether to give such consent." *Id.* at 29, 323 N.E.2d at 640. Absent such a warning, the Court added, any evidence recovered during that search must be suppressed at trial. *Id*. While acknowledging a defendant may waive this right, the Court emphasized that the burden lies with the "State to show that such waiver was explicit." *Id.*

Because there's no dispute over his custodial status when Officer Scott asked to search his home, and because there's no dispute that the officer failed to advise him of his right to counsel before requesting that consent, this case, McCoy contends, amounts to a clear-cut violation of *Pirtle*'s "core holding." Appellant's Br. at 19.

For its part, the State acknowledges *Pirtle*'s concern with a custodial suspect's uninformed waiver of important constitutional protections when he consents to a search without the benefit of counsel. But because the officer here spoke to McCoy "as the victim of a crime," rather than as a suspect, the State insists that "the constitutional concerns expressed in *Pirtle* simply do not apply." Appellee's Br. at 11.

We agree with McCoy that this case only "requires a straightforward application of *Pirtle* to the uncontested facts." *See* Pet. to Trans. at 9–10.

Pirtle applies when a person (1) is in custody and (2) is asked by police to consent to a home or vehicle search. *Pirtle*, 263 Ind. at 29, 323 N.E.2d at 640; *Dycus*, 108 N.E.3d at 306. And because no one here—not the State, not the trial court, not the Court of Appeals, and certainly not McCoy—disputes these elements have been met, we need not inquire into the arresting officer's subjective views of whether McCoy was a victim or a suspect.

Even if the officer's "subjective understanding of the situation [were] relevant," as the State insists, Opp. to Trans. at 9, the record here clearly shows that Officer Scott **knew** McCoy's house potentially contained drugs. According to the probable-cause affidavit, Jalyn Parkevich, the woman who approached the scene during the officer's initial questioning, maintained that she had been at McCoy's house the night before and that McCoy and another man "had offered her drugs in exchange for sex." App. Vol. II, p. 17. The affidavit goes on to explicitly note that Jalyn had "observed methamphetamine inside of the residence" the previous night and that McCoy "had offered her" this drug. *Id.* It was only after her statement, according to the affidavit, that Officer Scott "asked [McCoy] if [they] could go inside" the house to document "any other items still missing." *Id.*

For these reasons, we find that McCoy was constitutionally entitled to a *Pirtle* warning before Officer Scott sought consent to search his home.

Conclusion

Because there's no dispute over McCoy's custodial status when the officer asked to search his home, because there's no dispute that the officer failed to advise McCoy of his *Pirtle* rights before requesting that consent, and because we need not inquire into the officer's subjective views of whether McCoy was a victim or a suspect, we hold that the trial court abused its discretion by admitting evidence obtained during the search.[2]

In so holding, we emphasize that our decision should **not** be viewed as an extension of the *Pirtle* doctrine to cases where an officer asks the victim of a crime for permission to enter the home for investigative purposes, so long as that victim has not been detained. Nor should our decision be viewed as a constraint on our highly valued police officers. To the contrary, our opinion today preserves the status quo by requiring a *Pirtle* warning when a person (1) has been detained and (2) is asked to consent to a home or vehicle search.

Reversed and remanded for a new trial.

Rush, C.J., and David and Slaughter, JJ., concur.
Massa, J., concurs in the judgment with separate opinion.

[2] The State also contends (1) that "McCoy's *Pirtle* rights did not attach" at the time of his arrest because the offense underlying the arrest warrant was not related to—or "inextricably intertwined" with—the robbery offense under investigation; and (2) that an officer's request to walk through the home of a "victim" simply "to document missing items is not the type of search that requires a *Pirtle* advisement." Appellee's Br. at 12, 14. But these arguments likewise turn on the officer's subjective view of McCoy's status as a victim rather than a suspect, and so we decline to address them.

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Massa, J., concurring in result.

We today dispassionately apply *Pirtle* to grant James McCoy a new trial. *Pirtle v. State*, 263 Ind. 16, 323 N.E.2d 634 (1975), says if a suspect is in custody, he must receive a warning akin to *Miranda* before police can obtain consent to search his home. McCoy was in custody and had not been warned when he gave consent. Therefore, *Pirtle* requires suppression of the fruits of the ensuing search. Given that blackletter Hoosier law, I am hard-pressed to dissent from its application here.

However, mechanically applying this unique precedent to these rare facts leads to a result that borders on the absurd and leaves me open to reconsidering *Pirtle* in a future case. As the trial court and Court of Appeals implicitly recognized below, there ought to be a difference between asking a suspect, "Can I search your home?" and asking a victim, "You want to show me what's missing?"

Pirtle birthed a precedent unnecessary to its result and largely ignored in sister states. *See Developments in the Law—The Interpretation of State Constitutional Rights*, 95 Harv. L. Rev. 1324, 1379 n.80 (1982). The Court today nonetheless elevates it rhetorically to the pantheon of state-constitutional jurisprudence as if it were on par with, say, *Litchfield v. State*, 824 N.E.2d 356 (Ind. 2005) (analyzing the Indiana Constitution's protection against unreasonable searches and seizures), and *Brady v. State*, 575 N.E.2d 981 (Ind. 1991) (analyzing the Indiana Constitution's Confrontation Clause). Yet if a lawyer today tracked *Pirtle*'s reasoning in a brief to support an independent state constitutional basis for its result, we would find waiver for lack of cogent argument.

Pirtle himself was arrested for one crime. *Pirtle*, 263 Ind. at 21–22, 323 N.E.2d at 636–37. When police attempted to interrogate him at the station, he invoked his right to remain silent and his right to counsel. *Id.* at 22, 323 N.E.2d at 637. Hours later, while still in custody, police approached him again to discuss a separate murder investigation. *Id.*, 323 N.E.2d at 637. This was a clear violation of *Miranda*, and the consent to search his home (which revealed the murder weapon) was invalid on that basis alone. *See*

id. at 25, 323 N.E.2d at 638; *State Constitutional Rights*, *supra*, at 1379 n.80. But after a long discussion of *Miranda* and other federal cases, we concluded with what we have since found to be a state-law holding. *Pirtle*, 263 Ind. at 29, 323 N.E.2d at 640. Yet nowhere is there any independent state constitutional **analysis**.

Pirtle is an Indiana case grounded in federal constitutional law, *see State v. King*, 684 P.2d 174, 176 (Ariz. Ct. App. 1984) (citing *Pirtle* as an application of federal law), that other states have declined to adopt. And today, despite the Court's disclaimer to the contrary, we have expanded it to a situation where no police officer in Indiana would have thought a warning was necessary. A precedent of questionable foundation and doubtful force compels my concurring in the judgment and invites further scrutiny. Ultimately, *Pirtle* is what it is—"good law" until overruled. Accordingly, I concur in result.