

# Police Prosecutor Update

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## SEARCH AND SEIZURE TRAFFIC STOP – TINTED WINDOWS

On January 22, 2013, the Indiana Court of Appeals issued a decision in *Sandersv. State*, \_\_\_\_\_ N.E.2d \_\_\_\_\_ (Ind.Ct. App. 2013), reversing the trial court's order denying the defendant's motion to suppress evidence.

At 4:30p.m., an officer pulled over the defendant because he believed the rear window of the defendant's vehicle was tinted so dark that he was unable to clearly identify or recognize the occupants inside the vehicle. Once the officer started talking to the defendant, he smelled an odor of burnt marijuana. The defendant admitted he had just smoked a joint. The officer searched the vehicle and found cocaine.



The defendant filed a motion to suppress the evidence. At the hearing the state introduced photographs of the vehicle taken by an evidence technician an hour after the traffic stop. The arresting officer testified that the tint did not allow him to clearly recognize or identify the occupant inside. The officer testified that if he can't tell the occupant's approximate age, ethnicity and gender, then the windows are too dark. The defense called a window tint expert who had been tinting windows for twenty-four years for several local car dealerships and was familiar with the tinting regulations in Indiana. He testified that the light transmittance of the windows in question was thirty eight percent, which was in compliance with Indiana law. He also testified that he looked through the rear window of the vehicle at the same time of day as the time of the traffic stop and he could see clearly through the back window.

The trial court denied the motion to suppress and held that even though the windows were later found to be in compliance with Indiana law, the officer had a good faith belief that the window tint was illegal and therefore, justified the stop.

The Court of Appeals disagreed and found that the evidence conclusively proved the defendant's windows were not in violation of I.C. 9-19-19-4(c) and that the officer mistakenly believed that the windows were in violation of the statute. Although an officer's good faith belief that a person has committed a violation will justify a traffic stop, an officer's mistaken belief about what constitutes a violation does not amount to good faith. Based on the evidence presented at the hearing, the officer did not have an objectively justifiable reason to stop the defendant.

Note: Unless and until this case gets reviewed by the Indiana Supreme Court, it might be wise not to make traffic stops based ONLY on a window tint violation unless officers are absolutely certain (which would seem difficult to do) it is a violation of the law.

This is a publication of the Monroe County Prosecutor's Office which will cover various topics of interest to law enforcement officers. Please direct any suggestions you may have for future issues to Chris Gaal of the Monroe County Prosecutor's Office.



## SEARCH AND SEIZURE

On January 24, 2013, the Indiana Court of Appeals issued a decision in *Gordon v. State*, \_\_\_\_\_ N.E.2d \_\_\_\_\_ (Ind. Ct. App. 2013), affirming the defendant's convictions.

At 12:00 p.m. Jodi Pearce heard a loud banging sound coming from her neighbor's home. When she looked out her window she saw two men hiding around the corner at the back of the neighbor's home and then went to the back door and began kicking it. Pearce called 911 and then watched the men walk away from the home and down the driveway. She then ran outside to see which way they walked and yelled at them. Officers arrived and found damage to the neighbor's back door and window.



Within an hour, officers learned the defendant was a suspect. A detective transported Pearce to the defendant's nearby home where he was standing outside. Pearce immediately identified the defendant as one of the men she saw trying to break into her neighbor's home. The defendant was on home detention and records from his ankle monitor also showed he left his home for ten minutes during the time of the crime. The defendant was convicted at trial and appealed arguing that the "show up" identification procedure was unduly suggestive.

The United States Supreme Court and the Indiana Supreme Court have both condemned the practice of conducting a one-on-one show-up because of its inherent suggestiveness. However, the Court also noted that identification evidence gathered through a show-up procedure is not automatically excluded. The admissibility turns on an evaluation of the totality of the circumstances and whether they lead to the conclusion that the confrontation was conducted in a manner that could guide a witness into making a mistaken identification. Courts should consider the following factors:

- 1) the opportunity to view the criminal at the time of the crime,
- 2) the length of initial observation of the criminal,
- 3) lighting conditions,
- 4) distance between the witness and the criminal,
- 5) the witness's degree of attention,
- 6) the accuracy of the witness's prior description of the criminal,
- 7) the level of certainty demonstrated by the witness,
- 8) any identifications of another person, and
- 9) the length of time between the commission of the crime and the show-up procedure.

In this case, the Court found that Pearce observed the defendant for several minutes, in the middle of the day, at a fairly close distance. Pearce's attention was focused solely on the defendant and his companion the entire time. Pearce was absolutely certain about her identification and her initial description was relatively detailed. Under these circumstances, the Court held that the show-up identification was not unduly suggestive and affirmed the convictions.