

# Police Prosecutor Update

Issue No. 249  
March 2013

## SEARCH AND SEIZURE TERRY STOP AND CANINE SNIFF

On February 5, 2013, the Indiana Court of Appeals issued a decision in *Perez v. State*, 981 N.E.2d 1242 (Ind.Ct. App. 2013), affirming the trial court's order denying the defendant's motion to suppress evidence.

After an undercover police officer made several purchases of cocaine and marijuana from an individual, they decided that the defendant, Perez, might be the source of the drugs. After arresting the person who had been delivering the drugs, the police went to the home of the defendant and noticed two surveillance cameras. The police knocked on the front door and the defendant stepped onto the porch after closing and locking the door behind him.

During the conversation the defendant denied owning the truck that had just delivered the drugs. The defendant was nervous, agitated, breathing heavily and was pacing back and forth. At one point his wife opened the door and he screamed something to her in Spanish. The defendant began trying to get past the officers to the front door. The police told the defendant to stop, but the defendant began to "chest bump" the officers and tried to physically force his way past the officers.



One officer tried to handcuff the defendant but he continued to pull his arm away and move backwards. The defendant grabbed the officer's gun and the two wrestled to the ground. The defendant was arrested for resisting law enforcement. The officers found \$1000 in cash including \$260 of the buy money. The police then had a canine conduct a sniff of the defendant's front door. The canine alerted and the officers got a search warrant for the house.

The Court of Appeals held that the encounter between the defendant and the police started as a consensual encounter when the defendant answered the door and stepped outside.

As the encounter progress, the police developed reasonable suspicion to detain the defendant for investigatory purposes, even though it was on private property. The police had established that the defendant's home had been linked to multiple sales of cocaine and that his truck had been used earlier that day. The defendant had surveillance cameras and an alarm system. They also suspected the defendant might be armed because he had a handgun permit. In addition, the defendant displayed an unusual preoccupation with excluding the police from his home. His behavior was also suspicious and he lied about the use of his truck.



The Court went on to say that the police had probable cause to arrest the defendant for resisting law enforcement and that the search incident to arrest was proper. The Court pointed out that a citizen may not use force to resist a peaceful arrest by an individual he knows, or has reason to know, is a police

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officer performing his duties regardless of whether the arrest in question is lawful or unlawful. The Court did not mention the amendment of the self-defense statute that was passed last year.

Finally, the Court found that the canine sniff did not violate the 4<sup>th</sup> Amendment because the canine was not taken anywhere on the defendant's property where members of the public may go at any time. Under the Indiana Constitution an officer needs reasonable suspicion to conduct a dog sniff of a private residence and the police had reasonable suspicion to do so in this case.

In summary, police may conduct a canine sniff of a private residence if the officer is lawfully on the premises (ie: in a place where the public may go) and has reasonable suspicion to do so.

### SEARCH AND SEIZURE RELIABILITY OF CANINE SNIFF

On February 19, 2013, the United States Supreme Court issued a decision in *Florida v. Harris* \_\_\_\_\_ S. Ct. \_\_\_\_\_ (2013), affirming the trial court's denial of the defendant's motion to suppress the evidence.

A canine officer in Florida was on routine patrol and stopped the defendant because of an expired license plate. After observing signs of nervousness and an open beer can, the officer asked for consent to search the truck. The defendant refused. The officer then retrieved his canine from the car and walked him around the truck. The dog alerted on the truck giving him probable cause to search. The search turned up nothing the canine was trained to detect but did reveal ingredients for manufacturing methamphetamine, including pseudoephedrine. While the defendant was out on bond, he was stopped again by the same officer and the same canine alerted on the truck. The search revealed no drugs. At a suppression hearing, the defense attacked the dog's performance in the field, not his training.



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The Florida Supreme Court created a strict evidentiary checklist that had to be checked off to assess the credibility of a drug detection dog. The Court went on to say that an alert cannot establish probable cause without comprehensive documentation of the dog's prior "hits" and "misses" in the field.

The United States Supreme Court held that a probable cause hearing focusing on a dog's alert should proceed like any other. If the State produced proof from controlled settings that a dog performs reliably in detecting drugs, and the defendant has not contested that showing, the court should find probable cause. In this case, the State introduced substantial evidence of the dog's training and his proficiency in finding drugs. The Defendant declined to challenge any aspect of the training or testing at the suppression hearing. Accordingly, the decision of the Florida court was reversed.