

Police Prosecutor Update

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RESISTING LAW ENFORCEMENT

On July 3, 2013, the Indiana Court of Appeals issued a decision in *Gaddie v. State*, _____ N.E.2d _____ (Ind.Ct. App. 2013), REVERSING the defendant's conviction for resisting law enforcement by fleeing.

An officer responded to a report of a disturbance at a residence. When he arrived, he saw several people standing on the porch and in the front yard, yelling and screaming. He saw several other people, one of whom was the defendant, walking on the side of the house towards the back. The officer tried to "corral" everyone to the front yard to keep an eye on them for officer safety. Everyone moved to the front yard except the defendant, who was walking towards an alley. When back-up arrived, one officer headed to the back, identified himself and ordered the defendant to stop. The defendant kept walking. The officer followed him and repeated the order to stop. The defendant looked back at him two or three times but did not stop. Another officer intercepted him the next street over and arrested him for resisting law enforcement.

The Court held that a seizure requires, at the minimum, a reasonable suspicion of criminal activity based on specific and articulable facts. As long as a seizure has not taken place within the meaning of the Fourth Amendment, a person is free to disregard a police officer's order to stop and cannot be convicted of resisting law enforcement for fleeing. Because there was no reasonable suspicion, let alone probable cause, which would justify a seizure of the defendant, he was subject to an unlawful stop and thus his conviction for resisting law enforcement was reversed.

SEARCH AND SEIZURE DETENTION OF SUSPECT

On July 24, 2013, the Indiana Court of Appeals issued a decision in *Sugg v. State*, _____ N.E.2d _____ (Ind.Ct. App. 2013), affirming the defendant's convictions for drug related offenses.

The police began looking at the defendant and her husband for methamphetamine related offenses when NPI.Ex revealed that they both purchased a box of pseudoephedrine within five minutes of each other at the same Walgreens store. Both the defendant and her husband had previously been charged with Manufacturing Methamphetamine.



Detectives went to their rural home to conduct a "knock and talk". When they arrived, the front door was blocked with items so they proceeded to the back door. Although it was February, they found the defendant standing on the back porch with socks on, but no shoes or a jacket. The police observed on the back porch, a gallon of muriatic acid and a bottle of charcoal lighter fluid.



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.

The police identified themselves and advised they were investigating the manufacture of methamphetamine. The defendant was asked when she last purchased pseudoephedrine and she lied. The detective then asked for consent to search her house and she refused after being allowed to call her husband about it. The detective then advised the defendant that they were going to obtain a search warrant. The defendant was told that she would be allowed to go inside to retrieve any personal items, but that she would be escorted by a police officer. The defendant asked to go inside to get a jacket and cigarette. The officer that accompanied her inside smelled the odor of burnt marijuana and saw seeds and stems on a table. The search warrant was served and the police found methamphetamine and precursors.

On appeal the defendant claimed the court erred in allowing into evidence the items seized by the police. While several issues were raised, one issue was one of first impression in Indiana. Can the police restrict the defendant's entrance back into her residence while the police were in the process of applying for a search warrant?

The Court of Appeals relied on a United States Supreme Court case to uphold the conduct of the police based on the following factors set forth by the United States Supreme Court:

1. The police had probable cause to believe the home contained evidence of a crime, manufacturing meth.
2. The police had good reason to fear that, if left unrestrained, the defendant would destroy evidence before the police could return with the warrant.
3. The police made reasonable efforts to reconcile their law enforcement needs with the demands of personal privacy.
4. The police imposed the restraint for a limited period of time.

Based on these factors the Court found that the restraint did not violate the Fourth Amendment, and the brief seizure of the premises was permissible.

SEARCH AND SEIZURE TERRY STOP – AUTOMOBILE EXCEPTION

On July 30, 2013, the Indiana Court of Appeals issued a decision in *Miller v. State*, _____ N.E.2d _____ (Ind.Ct. App. 2013), REVERSING the trial court's order denying the defendant's motion to suppress evidence.

A police officer on patrol initiated a traffic stop of the defendant's vehicle because it had an expired plate. The officer saw the defendant reach to the right side of the car prior to pulling into a parking lot and then reach to the left side after he stopped his car. Despite being told to stay in the car, the defendant got out of the car multiple times. The fourth time the defendant got out of the car, the officer handcuffed him outside the car and then patted down his clothing. He found no weapons but noticed the burnt smell of marijuana on his clothing. When asked about this, the defendant stated that he did not smoke marijuana and that his father was a police officer. The officer asked if he had any guns, knives, needles etc. The defendant said none that the officer needed to know about. The officer didn't like these responses and was concerned the defendant might have a weapon.



Due to the fact that the car had an expired plate, the officer decided to tow the car pursuant to policy. Prior to the tow, officers began an inventory. The defendant was told he was free to leave. The defendant told the officer that he needed his backpack and cell phone from the car. The officer retrieved the items and searched the backpack for weapons before giving it to the defendant. Inside the backpack were marijuana residue and a pipe that smelled like burnt marijuana. The defendant was then arrested.

The court held that the officer did not testify to any articulable facts supporting a reasonable suspicion that criminal activity was afoot or any articulable facts supporting a reasonable suspicion that the defendant was armed and potentially dangerous. Therefore the search of the backpack was not justified as a search for weapons during a Terry investigative stop.

The state also argued that the officer had probable cause to search the defendant's vehicle (including the backpack) because the officer smelled burnt marijuana coming from the defendant's vehicle. The Court of Appeals seemed to distinguish prior cases stating that there was no evidence that the odor of burnt marijuana came from the vehicle as opposed to his person.