

# Police Prosecutor Update

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## SEARCH AND SEIZURE EXIGENT CIRCUMSTANCES

On July 20, 2012, the Indiana Court of Appeals issued a decision in *Paul v. State*, \_\_\_\_ N.E.2d \_\_\_\_ (Ind. App. 2012), affirming the defendant's conviction for Murder.

The defendant and another man, Wroten, killed a man over a feud with the man's father. After the killing, Wroten called the police and reported the murder. He told them the defendant committed the murder and told them where the defendant lived. Shortly after getting this information, the police went to the multiple-apartment building to secure the building and attempt to locate the defendant. They entered the apartment building through an unlocked common door and proceeded up what appeared to be common area stairs to try to determine which apartment the defendant lived in. At the top of the stairs, the officers saw an open door, and they observed the defendant inside using a wrench on a bike that had belonged to the victim. Because of loud music, the defendant did not hear the officers approaching. The door to the apartment was wide open directly above the common stairs, so the officers were concerned that the defendant would turn and see them. Not knowing what the defendant might do, the officers announced themselves, entered the apartment with guns drawn and arrested the defendant. The apartment was then secured and the officers obtained a search warrant which produced numerous items of evidence of the crime.



**COME BACK  
WITH A  
WARRANT.**

The defendant filed a motion to suppress all of the evidence seized from his apartment on the basis that entry into the residence was without a warrant for arrest or search and without exigent circumstances. The motion to suppress was denied and the jury found the defendant guilty of murder.

The warrantless arrest of a person in his or her home requires both probable cause and exigent circumstances that make it impracticable to obtain a warrant first. The validity of a warrantless arrest is determined by the facts and circumstances of each case. Although no exigency is created simply because there is probable cause to believe a serious offense has been committed, the gravity of the underlying offense is an important factor to be considered.

In this case, the court held that exigent circumstances existed to allow the officers to make a warrantless arrest. The court looked at the danger to the officers and tenants (defendant had just committed a vicious murder and threatened to commit two others, they were on an exposed stairway, not knowing whether defendant had a gun and could cause them or other tenants harm), coupled with the tampering of evidence (the bicycle) to find that exigent circumstances existed here.

## HABITUAL TRAFFIC VIOLATOR MOTOR VEHICLE

On July 26, 2012, the Indiana Supreme Court issued a decision in *Lock v. State*, \_\_\_\_ N.E.2d \_\_\_\_ (Ind. App. 2012), affirming the defendant's conviction for operating a vehicle as a habitual traffic violator.

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The defendant was driving a 2009 Yamaha Zuma, which appears to be a scooter. A trooper pulled up behind the defendant on a highway and observed the defendant had no license plate. The trooper followed the defendant for a quarter mile at a constant speed on a flat, level surface and determined the defendant was traveling 43 mph. When the trooper pulled the defendant over he learned that the defendant's driving privileges were suspended for being a habitual traffic violator.



The defendant was convicted at a bench trial and the defendant appealed his conviction arguing that the HTV statute was unconstitutionally vague and that there was insufficient evidence to support his conviction because he was riding a "motorized bicycle" not a "motor vehicle". The Court of Appeals reversed the conviction finding that the State's evidence of the Zuma's speed – standing alone – was too speculative to affirm a conviction. The Indiana Supreme Court accepted transfer, thereby vacating the opinion of the Court of Appeals.

For purposes of the HTV statute (I.C. 9-30-10), the definition of a motor vehicle does not include a motorized bicycle. A "motorized bicycle" is defined as:

a 2 or 3 wheeled vehicle that is propelled by an internal combustion engine or a battery powered motor, and if powered by an internal combustion engine, has the following:

- (1) An engine rating of not more than 2 horsepower and a cylinder capacity not exceeding 50 cc.
- (2) An automatic transmission.
- (3) A *maximum design speed* of not more than 25 mph on a flat surface.

At trial the defendant stipulated to all of the requirements set out above except that the "maximum design speed" was more than 25mph. The defendant did stipulate to the radar speed of 43 mph. The defendant's argument on appeal was that the State must present more evidencethat the defendant's Zuma was created with a particular purpose or scheme to the effect that the Zuma would exceed 25 mph on any given day. The fact that the Zuma went 43 mph that day would only allow the court to speculate as to the actual "maximum design speed". The defendant argued that there was no evidence as to the manufacturer's specifications, nor any evidence that the defendant had modified the Zuma in any way.

The Indiana Supreme Court upheld the HTV conviction on constitutional grounds and then went on to say that the evidence that the defendant traveled 43 mph was sufficient evidence to show that the Zuma had a "maximum design speed" of greater than 25 mph.

Note of Caution: Although the court held that under the facts of this case, the Zuma met the definition of a "motor vehicle", the term "maximum design speed" has not been defined by the court. This decision does not mean that every scooter-type vehicle traveling over 25 mph will fall within the definition of "motor vehicle".

#### SEARCH AND SEIZURE TRAFFIC STOP

On July 27, 2012, the Indiana Court of Appeals issued a decision in *Graham v. State*, \_\_\_\_\_ N.E.2d \_\_\_\_\_ (Ind. App. 2012), the Court affirmed the defendant's convictions for drug related offenses.

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After one officer observed what he believed was a drug deal, another officer pulled the car over for failing to signal a lane change. The defendant was the driver of the car and there were 2 passengers in the car. One passenger seemed nervous and avoided eye contact. The second passenger appeared intoxicated. The officer asked the defendant for license, registration and proof of insurance and found the car was not registered to him. He asked the defendant to get out of the car and then asked if he had any drugs or guns. The defendant stated he did not have a gun but had some hydrocodone in his pocket and didn't have a prescription. He was placed under arrest and then surrendered some cocaine.

The defendant filed a motion to suppress the evidence seized during the traffic stop which was denied. The defendant was found guilty after a jury trial and sentenced to an executed term of 35 years.

On appeal, the defendant acknowledged that the traffic stop was valid and that the police were authorized to ask the defendant to get out of the car. But the defendant argued that the traffic stop became unlawful because it was prolonged beyond the time reasonably required to complete the stop.

The court found that an officer is permitted to ask questions of a detained motorist, including questions regarding the presence of drugs and guns during a valid traffic stop. In this case, the officer was in the process of writing the defendant a citation and waiting for the warrant checks to come back when he asked the defendant if he had weapons or drugs. The defendant did not have to answer the officer's question but he volunteered that he possessed drugs which led to his arrest and extended the duration of the traffic stop. The court held that the officer's questions did not prolong the traffic stop to such an extent that it violated the defendant's rights.