

# Police Prosecutor Update

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## SEARCH AND SEIZURE INVENTORY SEARCH

On May 3, 2012, the Indiana Court of Appeals issued a decision in *Berry v. State*, \_\_\_\_\_ N.E.2d \_\_\_\_\_ (Ind. App. 2012), reversing the defendant's conviction for A misdemeanor possession of marijuana.

Defendant worked at a car wash business in Indianapolis. He borrowed a relative's car to pick up his last check from work. After the manager told him his check was unavailable, defendant drove his car to the entrance of the car wash and blocked customer traffic. The police were called and they asked the defendant to move his car to the vacuum bays and he complied.



The officer told the defendant that this was a civil matter and he couldn't block customer traffic. The officer then ran the defendant's license, determined he was suspended and issued him a ticket. Because the defendant was unsure whether the car was insured, the officer told him that the car must be towed. During an "inventory" of the car, the officer found marijuana and a digital scale. Apart from placing the marijuana and scale in an evidence bag, the officer did not create formal inventory sheets detailing the defendant's personal effects.



During a bench trial the defendant moved to suppress the evidence obtained during the inventory search of his car. The Court denied the motion and convicted the defendant.

A valid inventory search is an exception to the warrant requirement. Courts review the reasonableness of an inventory search with two factors in mind: first, whether the impoundment giving rise to the inventory search was proper, and second, whether the inventory search was excessive in scope.

Impounding a vehicle is proper when authorized by statute or when done pursuant to the police's community caretaking function. To demonstrate that the community caretaking function justified impoundment of the defendant's vehicle, the State must satisfy a two prong test: (1) that the officer's belief that the vehicle posed a harm or a threat to the community was "consistent with standards of sound policing and (2) that the decision to combat that threat by impoundment was in keeping with established departmental routine or regulation."

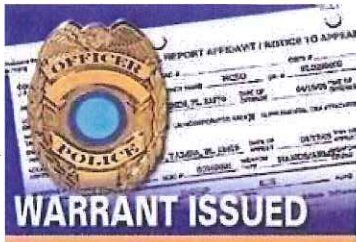
Statutory authority to impound a vehicle is not required. Impoundment is sometimes warranted by exigencies not set out in statutes. Additionally, an owner or operator of a business may demand removal of a third party vehicle impeding the operation of the business. Here, the defendant's vehicle arguably represented a hazard or threat to a community interest.

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The Court went on to say that an officer's choice to impound must rest upon "standard criteria and on the basis of something other than suspicion of evidence of criminal activity." The decision to impound must be "in keeping with established departmental routine or regulation." The record in this case lacked ANY evidence of the police policy on impoundment so there was no way for the Court to determine if the officer's decision to impound was in keeping with that policy. The search violated the 4<sup>th</sup> Amendment.

### SEARCH AND SEIZURE ABANDONED PROPERTY

On May 9, 2012, the Indiana Court of Appeals issued a decision in *Wilson v. State*, \_\_\_\_\_ N.E.2d \_\_\_\_\_ (Ind. App. 2012), affirming the defendant's convictions for drug related offenses.



An officer ran the plate number of a vehicle and determined the registered owner had a suspended driver's license and two outstanding warrants. He followed the vehicle until it pulled into a strip club and parked. The officer pulled up behind the car, turned on its emergency lights, got out of his car and waited for a break in radio transmission. The driver of the car stepped out and the officer told him to get back in his car. The driver got out a second time and when ordered to get back in his car he fled. The officer chased him but was unable to apprehend him.

The officer identified the defendant as the registered owner through a photo. The defendant's car was locked but was unlocked by the tow truck driver and inventoried prior to being towed. The defendant filed a motion to suppress the drug evidence located in his car and argued that it was an improper inventory search and therefore the evidence should be suppressed.

The Court concluded that they did not need to decide whether the search was a proper inventory search because the evidence showed that the defendant abandoned the vehicle before it was searched. Abandoned property is not subject to Fourth Amendment protection. However, if a defendant abandons property after he is improperly detained, the evidence is not admissible. The fact that the car was locked does not necessarily change the analysis here. The car was not parked on the defendant's own property or on the property of any acquaintance, but was left in the parking lot of a business. By abandoning the car, the defendant relinquished any reasonable expectation of privacy in it and the evidence should not be suppressed.

### SEARCH AND SEIZURE TRAFFIC STOP

On May 30, 2012, the Indiana Court of Appeals issued a decision in *Ervin v. State*, \_\_\_\_\_ N.E.2d \_\_\_\_\_ (Ind. App. 2012), the Court affirmed the trial court's denial of the defendant's motion to suppress the evidence.

An off-duty police officer was driving home with his wife and daughter and was not in uniform or driving a marked police car. He was behind a vehicle driven by the defendant. The defendant was weaving, crossing over the center and fog lines and nearly hit some objects on the side of the road. The off-duty officer contacted the police department and continued to follow the defendant to notify the police of his location.

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At some point the defendant abruptly pulled over. When the off-duty officer stopped also, the defendant got out of his car and began to walk towards the officer in an aggressive and confrontational manner, shouting with his arms up in the air and asking why he was being followed. The officer was concerned for his family's safety, so he grabbed his gun, pointed it at the defendant, identified himself as a police officer, and told the defendant to return to his car. The defendant complied and moments later on-duty officers arrived and conducted an investigation. Ultimately, the defendant was arrested for operating while intoxicated and other related offenses.



The defendant filed a motion to suppress the evidence arguing he was unlawfully seized because the off-duty officer was not in uniform or driving a marked police car as required by I.C. 9-30-2-2. The Court held that the off-duty officer did nothing to indicate that the defendant should pull over. Instead, the defendant, of his own accord, abruptly pulled over and stopped his car in a neighborhood. The defendant then approached the officer's car in an aggressive, confrontational manner. The Court went on to say that in these circumstances I.C. 9-30-2-2 was not implicated to the extent that the evidence should be suppressed. The off-duty officer did not arrest the defendant for violating a law regulating the use of a motor vehicle. His acts of drawing and pointing his weapon were in response to the threatening and aggressive behavior that the defendant initiated, and his purpose was to keep the defendant away from his family to ensure their safety.