

Police Prosecutor Update

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SUFFICIENCY OF THE EVIDENCE METH LAB

On April 5, 2012, the Indiana Court of Appeals issued a decision in *Fancil v. State*, _____ N.E.2d _____ (Ind. App. 2012), reversing in part the defendant's conviction for A felony dealing in methamphetamine.

During a police investigation of the defendant for manufacturing methamphetamine, the defendant consented to a search of his property. The defendant also admitted to manufacturing meth for eight months and described the process and quantities of materials he used to make meth. The police were unable to recover any measurable amount of meth from the defendant's residence; but because of the volume of manufacturing materials and the empty pseudoephedrine packets found and the defendant's recent history of purchasing pseudoephedrine, the State charged him with dealing in three or more grams of meth, a class A felony.

To prove that the defendant manufactured more than three grams of meth, the state called a detective experienced in meth manufacturing to testify regarding the conversion ratio of pseudoephedrine to meth. The detective testified that "you could" use fifteen grams of pseudoephedrine to manufacture five grams of meth.

The Court held that this testimony is insufficient to prove beyond a reasonable doubt that the defendant manufactured three or more grams of meth. In light of the defendant's confession, the evidence found and the experienced detective's testimony, the evidence WAS sufficient to prove the B felony dealing in meth.



SUFFICIENCY OF THE EVIDENCE 1000 FEET ENHANCEMENT

On April 11, 2012, the Indiana Court of Appeals issued a decision in *Baker v. State*, _____ N.E.2d _____ (Ind. App. 2012), reversing the defendant's enhanced convictions.



The defendant's neighbor called police to report a chemical odor coming from the defendant's apartment. When the police arrived, the officer verified the odor was consistent with the manufacturing of meth. The police obtained a search warrant for the apartment and found marijuana, some pills and a coffee filter containing meth residue. The State charged the defendant with possession of meth within 1000 feet of a school, a class B felony, possession of a controlled substance within 1000 feet of a school, a class C felony and possession of marijuana with a prior,

a class D felony.

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.

At trial the state presented the testimony of an officer that the defendant's apartment was located approximately 600 feet from the Early Training Center (ETC). The officer testified that the ETC had "continuing education classes for students who wish to pursue their high school education to get their diplomas." The State presented no evidence that the ETC was a building or other structure owned or rented by a school corporation or other type of entity or organization as described by the statute. There was also no evidence that the students enrolled were school-aged kids which was the purpose of the statute, to afford special protection to children from the perils of drug dealing. On remand the court was ordered to reduce the enhanced convictions to class D felonies.

SEARCH AND SEIZURE
REASONABLE SUSPICION FOR PAT-DOWN

On April 17, 2012, the Indiana Court of Appeals issued a decision in *Westmoreland v. State*, ___ N.E.2d ___ (Ind. App. 2012), reversing the trial court's denial of the defendant's motion to suppress evidence.

The defendant was a passenger in a car that police stopped for a routine traffic violation. The defendant was arrested for outstanding warrants and the car was going to be towed. Another officer removed the defendant from the passenger seat, handcuffed him and patted him down for officer safety. During the pat down, the officer found a baggie of marijuana in the defendant's pocket.



The officers testified at the suppression hearing that the defendant made no furtive movements. In addition, neither officer testified that the defendant was hostile, belligerent, or even uncooperative during the traffic stop. The Court held that based on this there was no reasonable suspicion that the defendant was armed and dangerous. The case was remanded with instructions for the court to dismiss the possession of marijuana charge.

Note: If the officers had articulated any reason for the pat-down other than it was done for officer safety, this case may have gone the other way.