

Police Prosecutor Update

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SEARCH AND SEIZURE PROBABLE CAUSE OWI

On November 5, 2013, the Indiana Court of Appeals issued a decision in *Gilbert v. State*, _____ N.E.2d _____ (Ind. Ct. App. 2013), REVERSING the trial court's order suppressing the evidence.

The officer conducted a traffic stop after observing the defendant roll through a stop sign. When he approached the defendant's car, he smelled a strong odor of alcohol. The defendant initially presented work identification instead of a driver's license as requested. The defendant eventually produced a license after further prompting. The defendant stumbled when he attempted to get out of the car. The officer radioed for an officer who specializes in operating while intoxicated investigations. At that officer's request, the defendant was transported to a roll call site for further investigation. Once there, the defendant failed the HGN. No further field sobriety tests were given because the defendant stated that he had bad knees. The defendant agreed to take a chemical test and was arrested.



The trial court granted the defendant's motion to suppress, concluding there was not probable cause to arrest the defendant and transport him to the roll call site. The state appealed the court's ruling. The Court of Appeals disagreed with the trial court's ruling and held that even without conducting field sobriety tests or administering a portable breath test, the officer had probable cause to suspect the defendant was driving while intoxicated. It is well settled that an officer's detection of the odor of alcohol combined with other indicia of intoxication, like unsafe driving, constitutes probable cause to believe a person is driving while intoxicated. Here, the officer smelled a strong odor of alcohol, observed the defendant run a stop sign and stumble while attempting to get out of his car. These observations were sufficient to constitute probable cause, and therefore, the defendant's arrest and transportation to the roll call site did not violate his rights under the Fourth Amendment.

SEARCH AND SEIZURE CANINE SNIFF

On November 13, 2013, the Indiana Court of Appeals issued a decision in *Gray v. State*, _____ N.E.2d _____ (Ind. Ct. App. 2013), affirming the trial court's granting of the defendant's motion to suppress.

The officer had received information from a neighboring police department that the defendant had been "involved in the activity of illegal narcotics". The officer had no knowledge of the specifics or source of the information. Soon after, the officer conducted a traffic stop on the defendant for speeding.

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The officer obtained the defendant's license, registration and proof of insurance. He then returned to his car, placed the defendant's information on the seat and removed his canine to conduct a free air sniff. The canine sniff process lasted approximately one and a half to two minutes and the canine alerted to the presence of narcotics. The officer searched the car, found drugs, and then ran the routine checks on the defendant's license and registration.



The trial court granted the defendant's motion to suppress the evidence and the State appealed the court's ruling. The Court of Appeals agreed with the trial court and held that the officer extended the traffic stop for purposes outside the scope of the traffic stop – to conduct a canine sniff. Additionally the Court held that the officer did not have reasonable suspicion to increase the duration of the traffic stop. The State offered no evidence as to the original source of the information, did not call the officer who provided the information and the tip itself lacked detail, providing only a vague indication that the defendant was involved with illegal narcotics. Furthermore, the officer did not notice any suspicious signs or behavior about the defendant or her vehicle.

Without reasonable suspicion, the canine sniff and subsequent search of the defendant's vehicle were violations of the defendant's Fourth Amendment rights. Accordingly, the Court affirmed the decision of the trial court to suppress the evidence recovered during the search.