

Police Prosecutor Update

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RESISTING LAW ENFORCEMENT

On December 12, 2013, the Indiana Supreme Court issued a decision in *Walker v. State*, _____ N.E.2d _____ (Ind. 2013), affirming the defendant's conviction for Resisting Law Enforcement.



Just after midnight, an officer was dispatched to a fight in progress. When the officer arrived, he encountered the defendant and another man fighting in the intersection of two streets. The officer told the two men to quit fighting and lay on the ground. They ignored the officer and continued to fight. Finally the officer gave one final warning, telling the men if they refused to comply, they would be tased. The other man dropped to the ground but the defendant did not. The defendant walked towards the officer with his fists clenched in an aggressive manner. The officer continued to tell the defendant to stop and get on the

ground but he did not comply. When the defendant got 3 to 4 feet from the officer, the officer tased the defendant. The defendant was charged with resisting law enforcement by force and found guilty.

The Indiana Supreme Court affirmed the conviction holding there was sufficient evidence that the defendant resisted law enforcement by force. The Indiana Supreme Court discussed the amount of force necessary to constitute forcibly resisting law enforcement. The Court stated that a person "forcibly" resists, obstructs, or interferes with a police officer when he or she used strong, powerful, violent means to impede an officer in the lawful execution of his or her duties. This does not require an overwhelming or extreme level of force. This may be satisfied with even a modest exertion of strength, power, or violence. The statute does not require commission of a battery on the officer or actual physical contact. It can include an active threat of strength, power or violence when that threat impedes the officer's ability to lawfully execute his or her duties. In this case, the Court held that the evidence was sufficient to support a conviction.



SEARCH AND SEIZURE
RESIDENCE CURTILAGE

On December 23, 2013, the Indiana Court of Appeals issued a decision in *Jadrich v. State*, _____ N.E.2d _____ (Ind. Ct. App. 2013), REVERSING the trial court's admission of evidence and subsequent convictions.

A deputy went to the defendant's home in an attempt to serve a protective order. When he arrived, he knocked on the front door but got no answer. As the deputy walked to the rear of the house, he passed several signs indicating that visitors were only to use the front door and no trespassing was allowed. He then entered the back yard through a closed gate in a chain link fence. As the deputy walked down the sidewalk to the back patio he noticed a circular pile of firewood in the back yard that seemed a little strange. He knocked on the back door several times, again getting no answer. As he was leaving, he took two steps off the patio and noticed marijuana plants growing inside the circle of firewood. The deputy called his supervisor and ultimately the defendant was arrested.



It is clear that the Fourth Amendment protects the curtilage of a house and that the extent of the curtilage is determined by factors that bear on whether an individual reasonably may expect that the area harbors the intimate activity associated with the sanctity of a man's home and the privacies of life. The Court went on to point to four factors when determining whether property is considered to be curtilage. The factors are as follows: the proximity of the area claimed to be curtilage to the home, whether the area is included within an enclosure surrounding the home, the nature of the

uses to which the area is put, and the steps taken by the resident to protect the area from observation by people passing by.

The Court had little trouble concluding that the route to the defendant's back door was not one that visitors would reasonably view as open to the public. There were numerous indications that the back door was not open to the general public including prominent signage, a closed gate with a fenced in back yard. The Court went on to find that the deputy's purpose for being at the defendant's home – to serve a civil protective order – did not justify him going into the back yard. There was no evidence of any emergency or special urgency particular to the order at issue here. There was also no evidence that the deputy observed or heard anything that would have lead a reasonable person to believe that any criminal activity was afoot. The Court held that the trial court erroneously admitted the marijuana found in the back yard.