

# Police Prosecutor Update

Issue No. 256  
October 2013

## REASONABLE SUSPICION CONCERNED CITIZEN TIP

On September 12, 2013, the Indiana Court of Appeals issued a decision in *Russell v. State*, \_\_\_\_\_ N.E.2d \_\_\_\_\_ (Ind. Ct. App. 2013), affirming the Court's order denying the defendant's motion to suppress evidence of operating while intoxicated.

At approximately 2:00 a.m. witness Bogart was driving home on Highway 421. The defendant closed in on his car from the back and flashed his headlights on and off. Bogart pulled over thinking there was a problem. The defendant pulled alongside and said he was lost and needed directions. Bogart noticed his speech was slurred and the defendant told him he had been drinking. After the defendant begged Bogart to show him the way to another highway, Bogart agreed. As the defendant followed, Bogart called 911 and said he thought the defendant was intoxicated, and asked an officer to meet them at a gas station. The officer that was dispatched, went to the gas station but saw no cars. Dispatch confirmed that the two cars were close to the station. Shortly thereafter, the officer observed two cars enter the gas station parking lot, one trailing the other as Bogart stated. Bogart and the defendant stopped at the pumps and Bogart parked so as to block the defendant from leaving. Bogart got out of his car and pointed to the officer and then to the defendant. The defendant then got in his car and began to drive away. The officer activated his lights and stopped the defendant before he left the parking lot. Ultimately the defendant was arrested for operating while intoxicated.

It is well established that a tip from a concerned citizen may justify an investigatory stop if sufficiently reliable. The reliability of a concerned citizen tip generally must be established by reference to underlying facts and circumstances which indicate that the information is trustworthy. Here, the tip included specific information regarding where the suspect would be, when he would be there and how he could be identified. The information was corroborated when moments later, the officer observed two cars pull into the gas station parking lot, one trailing the other. The witness also asked the police to meet him at the gas station opening himself up to possible charges of false informing. For these reasons, the Court held that the tip demonstrated sufficient reliability to give rise to reasonable suspicion to support an investigatory stop under both the Fourth Amendment and the Indiana Constitution.

## CONSENSUAL ENCOUNTER REASONABLE SUSPICION

On September 17, 2013, the Indiana Supreme Court issued a decision in *Clark v. State*, \_\_\_\_\_ N.E.2d \_\_\_\_\_ (Ind. 2013), REVERSING the defendant's conviction for attempted dealing in methamphetamine, a Class A felony.

Dunlap owned a self-storage facility and suspected a renter was living in his storage unit in violation of his rental agreement. When confronted, the renter denied he was living in the storage unit.

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One evening Dunlap noticed several cars parked behind the building. Dunlap called the police to request assistance in helping remove the renter from the facility. Two officers responded shortly after midnight to assist. When they approached the storage building they encountered three individuals, including the defendant, outside the storage unit.



As the officers approached, the defendant dropped a black bag that he had been carrying. The officers then ordered all three men to sit on the ground and identify themselves. They then began to question the defendant about the contents of the black bag. The defendant eventually admitted there was marijuana in the bag. The officer then searched the bag and found meth along with other items that lead the police to believe the defendant was dealing drugs. Soon after, they found the defendant's car parked behind the storage building with the windows down. The interior of the car smelled like burnt marijuana. The officers ended up searching the car as well and found an inactive meth lab in the trunk.

The Indiana Supreme Court held that the case turned on whether the initial encounter with the men was a consensual encounter or a nonconsensual investigatory stop requiring reasonable suspicion. The Court ultimately held that once the officers employed their authority to control and restrict the defendant's freedom to depart (by ordering the men to sit down), the encounter moved past what would be considered consensual. No reasonable person would have believed they were free to simply get up and walk away under those circumstances.

The Court then addressed whether the officers had reasonable suspicion to conduct a brief investigatory stop under *Terry*. Ultimately the Court held that the officers had no reason to seize the defendant and the two other men. The officers saw nothing illegal or responsive to Dunlap's complaint or anything appearing to constitute narcotics use, dealing or manufacturing. None of the men turned away, evaded or fled when officers shouted at them. The presence of the storage facility in a high crime neighborhood alone was not enough either.

Finally the Court found that all statements made by the defendant and all evidence seized were fruits of the poisonous tree (tainted by the illegal seizure) and should have been suppressed by the trial court.