

# Police Prosecutor Update

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## TRAFFIC STOP BROKEN TAIL LAMP

On August 5, 2013, the Indiana Court of Appeals issued a decision in *Kroft v. State*, \_\_\_\_\_ N.E.2d \_\_\_\_\_ (Ind. Ct. App. 2013), REVERSING the Court's order denying the defendant's motion to suppress evidence of operating while intoxicated.

The officer did not have reasonable suspicion to stop the defendant because one of his tail lamps had a dime-sized hole that let out a small amount of white light. It was not a violation of I.C. 9-19-6-4 requiring vehicles to have two tail lamps that, when lighted emit a red light plainly visible from a distance of 500 feet to the rear. The Court held that there was no requirement that only red light be visible and that there was no evidence of any danger to motorists approaching the defendant from the behind.

## TRAFFIC STOP FOG LINE

On August 13, 2013, the Indiana Court of Appeals issued a decision in *Atkinson v. State*, \_\_\_\_\_ N.E.2d \_\_\_\_\_ (Ind. Ct. App. 2013), affirming the defendant's conviction for operating a vehicle as an habitual traffic violator.

The Court of Appeals distinguished *Robinson* (decided in April but the Indiana Supreme Court has accepted transfer on the case) wherein the Court held that brief contact with the fog line was **not** sufficient to establish reasonable suspicion under the facts of that case.

In *Atkinson*, the officer testified that he observed more pronounced conduct over a protracted period of time under different road conditions (straight stretch of highway) justifying reasonable suspicion for the stop.

## TRAFFIC STOP WINDOW TINT

On August 20, 2013, the Indiana Court of Appeals issued a decision in *Johnson v. State*, \_\_\_\_\_ N.E.2d \_\_\_\_\_ (Ind. Ct. App. 2013), affirming the trial court's order denying the defendant's motion to suppress evidence.

The defendant was pulled over by an officer because he was unable to clearly identify the occupants inside. Despite the uncontroverted evidence that the tint on the defendant's minivan was factory standard, the trial court denied the defendant's motion to suppress the evidence.

The Court held that even assuming that the tinting on the



windows was legal, it does not negate the testimony of the officer that at the time of the stop he could not clearly identify the vehicle's occupants. Therefore, the officer had reasonable suspicion for the stop.

### SEARCH AND SEIZURE COMMUNITY CARETAKING FUNCTION

On August 14, 2013, the Indiana Court of Appeals issued a decision in *McIlquham v. State*, \_\_\_\_\_ N.E.2d \_\_\_\_\_ (Ind. Ct. App. 2013), affirming the defendant's convictions.

Officers responded to a call regarding a young child standing near a pond. When the officers arrived, they observed a little girl who appeared to be about three years old standing with another woman near the pond. The child was naked from the waist down and appeared to be attempting to eat cheerios off the ground. The defendant came out after a short time and said he was the child's father. He went on to say that he must've fallen asleep allowing the child to get out of the apartment.

The officers advised the defendant that they needed to go back to the apartment to make sure the living conditions were safe for the child. The defendant agreed and the officers followed him back to the apartment. Upon entering the apartment, the defendant made a "bee line" for the kitchen and started putting things from the counter into his pockets. After a pat down, the officers found marijuana in his pockets. The officers then observed marijuana all over the carpet and on a child's table. After mirandizing the defendant, he told the officers he "sometimes" lived at the house but his name was not on the lease. When the leaseholder arrived, the officers explained the situation and she agreed to sign a consent to search the home. The officers then found more marijuana and a loaded .22 which the defendant admitted were his.

At trial, the defendant sought to suppress the evidence from the search at the apartment maintaining that there was no valid consent to search. The Court of Appeals did not address the consent issue because they held that the officers were entitled to enter the apartment under the community caretaking exception to the warrant requirement.

The Court reminded us that the community-caretaking function recognizes that police are expected to not only enforce the criminal laws but also to aid those in distress, abate hazards, prevent potential hazards from materializing, and perform an infinite variety of other tasks calculated to enhance and maintain the safety of communities. In this case, the Court pointed out that there were objectively reasonable concerns about the defendant's right to retain custody of the child in light of the condition and circumstances in which she was discovered. The Court held that the adoption of a limited community-caretaking authority for officers to enter a residence under such circumstances does not offend Fourth Amendment concerns.

### PUBLIC INTOXICATION

On August 14, 2013, the Indiana Court of Appeals issued a decision in *Naas v. State*, \_\_\_\_\_ N.E.2d \_\_\_\_\_ (Ind. Ct. App. 2013), affirming the defendant's conviction for public intoxication.

An officer was dispatched to a gas station on a report of a disturbance. The defendant was in the parking lot as the officer approached and was observed yelling and walking aggressively toward a male

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and female as they backed away from him. The officer approached the defendant and observed all the classic signs of intoxication.

The Court held that the evidence of the parties backing away is sufficient to infer that the defendant alarmed them when he yelled and walked in an aggressive manner toward them. Accordingly, there was sufficient evidence to support a conviction for public intoxication under the new statute.

On August 15, 2013, the Indiana Court of Appeals issued a decision in *Stephens v. State*, \_\_\_\_\_ N.E.2d \_\_\_\_\_ (Ind. Ct. App. 2013), REVERSING the defendant's conviction for public intoxication.

The defendant lived with his niece who had guardianship over him due to a brain injury. The police were dispatched to their house to investigate an altercation between defendant's niece and her boyfriend, during which the boyfriend body-slammed the defendant. The police made no arrests and left the home.

The defendant walked to a nearby convenience store and called the police. When an officer arrived, the defendant told him that he was very drunk, had been drinking all day and wanted to be taken to jail because he did not want to go back home due to the altercation that had just occurred. The defendant displayed all the classic signs of intoxication. The officer obliged the defendant and arrested him for public intoxication.

The Court of Appeals reversed the conviction holding that there was no evidence that the defendant endangered either himself or others, breached or was in imminent danger of breaching the peace, or harassed, annoyed or alarmed another person. In reversing the conviction, the Court also mentioned that the defendant was asking the police for help and merely being intoxicated in a public parking lot did not amount to a violation of the statute.