

Police Prosecutor Update

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REASONABLE SUSPICION TRAFFIC STOP

On April 29, 2014, the Indiana Court of Appeals issued a decision in *Veerkamp v. State*, _____ N.E.2d _____ (Ind. Ct. App. 2014), affirming the court's order denying the defendant's motion to suppress.

An officer was driving his patrol car when he saw the defendant, driving his truck, make a turn about a block in front of the officer. When the defendant's truck turned and accelerated, its exhaust system emitted "excessive smoke". At one point, the officer could not see the passenger side tail light of the truck. The officer initiated a traffic stop due to the smoke and then discovered the driver was intoxicated. After an investigation, the defendant was arrested and ultimately charged with operating while intoxicated as a D felony.



The defendant filed a motion to suppress the evidence, arguing the officer did not have reasonable suspicion to stop his car because the smoke coming from his truck did not constitute a traffic violation. The officer testified at the hearing that he did not see any other signs of intoxication based on the defendant's driving that would justify a traffic stop. When asked by the defendant's lawyer how he differentiates between excessive and non-excessive smoke, the officer said it is excessive if it obscures visibility. The trial court denied the motion to suppress and found the defendant committed an infraction leading to reasonable suspicion.

The Court of Appeals agreed with the trial court, holding the defendant committed an infraction by violating I.C. 9-19-8-5, which provides that "the engine and power mechanism of a motor vehicle must be equipped and adjusted so as to prevent the escape of excessive fumes and smoke". Indiana Code does not define excessive but the court held the definition in the dictionary (excessive is exceeding what is usual, proper, necessary, or normal) would apply. Based on this definition, the court held that the smoke coming from the defendant's truck was excessive because the officer testified that he could not visibly see through the smoke and at one time covered the passenger side tail light.

SEARCH AND SEIZURE KNOCK AND TALK

On April 29, 2014, the Indiana Court of Appeals issued a decision in *J.K. v. State*, _____ N.E.2d _____ (Ind. Ct. App. 2014), REVERSING the juvenile adjudications.

In the early morning hours, police received a complaint that a number of juveniles were pushing a shopping cart through a neighborhood, making noise, and causing dogs to bark. Officers arrived in the area and saw several vehicles parked outside the defendant's house. One vehicle was a pickup truck with

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a shopping cart in the bed of the truck. The officers suspected the cart had been stolen from a store located just about a mile away.

One officer knocked on the door while two others went around the sides of the house to the back to ensure no one attempted to flee from a back door. No one answered the front door but the officer saw people inside moving around and peeking through the blinds. Officers in the back were able to see through a window where several empty beer cans and wine cooler bottles were on the kitchen counter.

After ten or fifteen minutes without a response from the occupants, the officers called for a tow truck to impound the pickup with the shopping cart in it. For an additional forty minutes, officers remained on the front porch and in the back yard knocking and yelling inside for the occupants to come out. Upon arrival of the tow truck, the owner of the truck came out of the front door. He was seventeen years old and exhibited signs of intoxication. Officers told him to get the owner of the residence and the defendant, also seventeen years old, came to the door. He showed signs of intoxication as well. The officers spoke to the defendant's mom over the phone and she was an hour away. The officers then entered the house and searched it finding more evidence of underage drinking. Additional persons found inside were all under eighteen and several had signs of intoxication. The juvenile defendant's motion to suppress evidence was denied by the trial court. The defendant appealed.

The Court of Appeals addressed several issues: 1) officers entry onto the defendant's curtilage; 2) validity of the knock and talk; and 3) entry into the home and exigent circumstances.

Officers enjoy a limited invitation to approach a home through ordinary routes of ingress and egress open to visitors. Officers may knock on a door and request to speak with the occupants. Once officers are no longer in a place where visitors could be expected to be, those areas of curtilage are protected by the Fourth Amendment. Here, the court held that the sides and back of the defendant's home were curtilage and no exigency existed such that it was necessary for the officers to enter the defendant's curtilage. Therefore the sight of empty alcohol containers and any suspicion resulting from that evidence is tainted and should have been excluded.

Officers have a limited invitation to approach a home by the front path, knock promptly and wait briefly for someone to answer, and then leave. The occupant of a home has no obligation to open the door or to speak. If residents exercise this right, officers generally must leave and secure a warrant. Here, the court held that the officers' conduct was an unconstitutional search in violation of the Fourth Amendment. The officers' action went far beyond anything that would ordinarily be expected to occur on one's doorstep. The court looked at the officers' conduct as well as the length of time the officers remained on the property.

Finally, the court held that the officers' warrantless entry into the home was unreasonable under the Fourth Amendment. First, the court found that there was no objective evidence that the underage drinking that occurred created an imminent threat of injury or death to someone inside the home. There is nothing so inherently dangerous about underage drinking that renders the person subject to the threat of imminent injury. Additionally, there was no exigency justifying warrantless entry based on the need to prevent the imminent destruction of evidence.

The court held that all evidence was obtained as a result of constitutional violations and the juvenile adjudications must be reversed.

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