

SEARCH AND SEIZURE EXIGENT CIRCUMSTANCES

On October 21, 2014, the Indiana Supreme Court issued a decision in *Carpenter v. State*, ___ N.E.3d ___ (Ind. 2014), reversing the defendant's conviction for Maintaining a Common Nuisance, Possession of Marijuana, and three counts of Possession of a Controlled Substance, and vacating the opinion of the Indiana Court of Appeals in *Carpenter v. State*, 3 N.E.3d 1068 (Ind. Ct. App. 2014), which was reported in Issue No. 261, March 2014, of the Police Prosecutor Update.

Police and animal control officers were called to the defendant's home on a report four dogs were fighting in the yard. When they arrived the dogs were still fighting, but one had retreated under a deck and seemed wounded. The dogs were covered with mud and blood and they kept running in and out of the house through an opened sliding glass door. One animal control officer climbed the fence to enter the backyard and captured three of the dogs. The fourth had gone into the house through the open door. Two police officers entered the house to search for the dog and to determine if the dogs had injured anyone inside the house. The officers observed dog feces and urine throughout the house and they noticed what appeared to be blood on the walls, though it was unclear whether it was human or canine. As they searched for the dog, they found marijuana plants in the house.



Officers captured the dog and found no people inside the home. The defendant arrived at the house before the police left and was taken into custody. Police obtained a search warrant for the home and seized the marijuana and other controlled substances.

The Supreme Court found that exigent circumstances sufficient to justify entry without warrant did not exist. No one answered when officers knocked on the door or responded to the officers' announcements. A neighbor told the officers that the defendant was at work. Officers had the defendant's phone number at work and could have called him to make sure no one was in the house. Threat of danger to the public was slight as the dogs were confined in a fenced yard with a locked gate, and officers could have further lessened the threat by closing the sliding door.

Finally, the Court said that an animal's behavior could give rise to reasonable grounds to enter a house without a warrant, but that it was error for the trial court to make that judgment on these facts.

RESISTING LAW ENFORCEMENT

On October 30, 2014, the Indiana Court of Appeals issued a decision in *M.J. v. State*, ___ N.E.3d ___ (Ind. Ct. App. 2014), reversing the juvenile's delinquency determination.

Two officers were dispatched to an apartment complex to investigate a report of a suspicious person, described as a young black male wearing a white t-shirt and seen around a white Ford SUV. When the officers arrived, they did not see anyone in the area, but they discovered the white SUV had been reported stolen. Later one of the officers saw M.J., a young black male in a maroon t-shirt, walking towards him. When M.J. looked up and saw the officers, he immediately turned and headed away from the officers. M.J. looked over his shoulder, walked faster and began to run. This prompted the officer to yell, "Police, come here!" M.J. outran officers; later, with the assistance of canines, officers found M.J. hiding under some trees. The state alleged M.J. was delinquent for committing resisting law enforcement, a Class A misdemeanor if committed by an adult. The juvenile court found that M.J. committed resisting law enforcement, and ordered him to probation.

The Court reversed M.J.'s adjudication. M.J. did not match the description of the individual police had been dispatched to investigate. None of M.J.'s actions, changing direction, walking faster, looking over his shoulder, or running, suggested that there was reasonable suspicion of criminal activity or probable cause to believe M.J. had committed a crime. Without reasonable suspicion that a crime had been committed, was being committed, or was about to be committed, no grounds to detain M.J. existed.

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On October 21, 2014, the Court of Appeals issued an opinion in *Harris v. State*, ___ N.E.3d. ___ (Ind. Ct. App. 2014), affirming the defendant's conviction for carrying a handgun without a permit.

Uniformed officers had been dispatched to a report of an armed individual who had pointed a gun at a female. When they arrived, one officer observed the defendant, who matched the description in the report, remove a black handgun from his waistband, open the door of his apartment, and place the handgun inside the door. The officers approached the defendant and hand cuffed him. The view into the apartment was obscured. One officer opened the apartment door and retrieved the handgun from the floor. The officer testified he may have stepped inside. A teen-aged girl was sitting on a couch, about five feet from the gun. The defendant was charged with a Class A misdemeanor of carrying a handgun without a permit, and a jury found him guilty.

The Court found that exigent circumstances justified the seizure. The intrusion into the apartment was slight. The extremely dangerous nature of the handgun and the potential for evidence tampering were sufficient to establish exigent circumstances.