

SEARCH AND SEIZURE CANINE SNIFFS

On June 30, 2016, the Indiana Court of Appeals issued its opinion in the case of Cassady v. State, ___ N.E.3^d ___ (Ind. Ct. App. 2016). A sheriff's deputy stopped Cassady for turning without signaling. He notified dispatch, obtained Cassady's license and observed that she was defensive and guarded in her comments. When he returned to his car, he got his narcotics detection canine out, and while he waited for dispatch to provide Cassady's driver's license status, he exposed the dog to the exterior of her car. Before



the license check came back, the dog had indicated the odor of drugs. The deputy took his dog around the car again, and just prior to, or at about the same time as, the license check results came in, the dog indicated a second time. Approximately 4 minutes elapsed between the time Cassady stopped her vehicle and the completion of the dog sniff. Cassady was charged with possession of methamphetamine and paraphernalia as a result of the deputy's search of her car. Cassady filed a motion to

suppress, and the trial court granted the motion. It stated, "[T]here was no reasonable articulable suspicion of criminal activity for a further non-traffic investigation . . . [N]either the total amount of time of the stop nor the sequence of whether the drug dog hit before or after dispatch completed the check of her license are determinative."

The state appealed the trial court's ruling. The Court disagreed that the search was invalid because the officer lacked a reasonably articulable suspicion of criminal activity to conduct a canine sniff. A dog sniff is not a search and is not covered by the 4th Amendment. No degree of suspicion is required to summon a dog to conduct an exterior sniff of a car. Also, the reasonableness of a traffic stop does not depend on the actual motivation of the individual officer involved. The Court then turned to the length of the stop. Rodriguez v. U.S., 135 S.Ct. 1609 (2015) had ruled that a police stop exceeding the time needed to handle the matter for which the stop was made violates the Constitution's shield against unreasonable seizures. The critical question is whether the canine sniff prolongs or adds time to the stop. The burden is upon the state to show that canine sniff did not prolong the stop. In this case there were an audio recording of the dispatch communications and a video recording from the in-car camera. Both showed approximately 3 minutes and 35 seconds elapsed between the time that the deputy called off his location and the time he concluded walking his dog around the car. The court concluded the deputy's actions were done in a manner that did not prolong the stop beyond the time reasonably required to complete the issuing of a ticket. The trial court's grant of the Cassady's suppression motion was reversed.

OPERATING WHILE INTOXICATED REFUSAL

On June 30, 2016, the Indiana Court of Appeals issued its opinion in the case of Hurley v. State, ___ N.E.3^d ___ (Ind. Ct. App. 2016). Hurley was the subject of a traffic stop. She failed some field sobriety tests and consented to a chemical breath test. The state trooper explained to her and showed her how to blow into the tube as hard as she could. She blew into the instrument but failed to blow enough to get a sufficient sample. She repeated the process two more times, both times failing to provide a sufficient sample. Based on his interaction and observation of Hurley, the trooper concluded she was not cooperating and charged her with refusing the breath test. He subsequently obtained a warrant for a blood sample, and based on that Hurley was charged with operating a vehicle with an alcohol concentration equivalent to 0.15% or more. Hurley filed a petition for judicial review of the refusal determination. After a hearing, the trial court denied her petition. Hurley appealed.

Hurley claimed the trooper failed to follow the regulations for administration of the chemical breath test, and that the evidence was insufficient to sustain a refusal determination. Hurley argued that she should have been given a breath test on another instrument per 260 IAC 2-4-2(b)(5). However, that same regulation provides, "If an 'Insufficient Sample' . . . message is caused by the lack of cooperation of the subject, the breath test operator should record that the test was refused" Because the trooper believed that the insufficient sample was the result of Hurley's failure to cooperate, his decision to record the test as a refusal fell within the parameters of the Indiana Administrative Code. Further, the trooper's testimony that he explained to her to blow into the tube as hard as she could and that she would be charged with refusal if she did not blow hard enough, that he demonstrated how to blow into the instrument, that despite his instructions and demonstration she failed to give a complete sample, and that by her demeanor and actions he found her uncooperative, was sufficient evidence to sustain the refusal determination. The Court declined to re-weigh the evidence. It upheld the refusal finding.