



# POLICE / PROSECUTOR UPDATE

Issue No. 141

August 2003

The Court of Appeals recently decided a **trash search** case, upholding the trial court's suppression of evidence.

In the case, a State Police Detective was conducting a surveillance of the defendant's residence. The Detective was familiar with the defendant because he had been involved in an arrest of the Defendant a few months earlier. At sundown, the Detective observed the defendant exit his home with a garbage bag in his hand. He observed the defendant place the garbage bag at the bottom of a garbage pile approximately 10 feet from the property line near the end of his driveway. A "No Trespassing" sign was posted on the defendant's property near the garbage pile.

Approximately two hours later, the Detective retrieved the garbage bag that he had seen the Defendant remove from his home (the court's opinion did not give the reason for the two-hour delay). Inside the garbage bag, the Detective found a burned hand-rolled marijuana cigarette and rolling paper. A field test on the substance found in the garbage bag proved positive for marijuana. Based on this information, the detective applied for and obtained a search warrant for the Defendant's property. The detective executed the search warrant and recovered a large quantity of marijuana and oxycontin on the Defendant's property.

At the hearing on Defendant's Motion to Suppress, the Defendant testified that his sister's fiance collected his garbage rather than any government-run collection service. He also testified that his property was fenced in except for the stone area by the road where the gate was located and the garbage is collected. Finally, the trial court heard

evidence that the Detective had to enter the defendant's property to retrieve the garbage bag which was located approximately ten feet from the road.

The Detective's actions did not violate the federal constitution, under which the placing of items inside a garbage bag and placing the garbage bag out for collection manifests an intention to abandon the items inside the garbage bag. Nevertheless, the Indiana Constitution, rather than looking to the federal requirements such as warrants and probable cause, places the burden on the State to show that under the totality of the circumstances its intrusion was reasonable.

In the court's view, the Detective's trespass onto the Defendant's property and the fact that the garbage would not have been collected by a public trash collection service made this an unreasonable search. Prior Indiana cases on the subject have held that coming onto the Defendant's property is the benchmark. In those cases, as long as the police did not have to enter the property, the search was considered reasonable. The court felt the Defendant's expectation of privacy was reasonable. It stated, "If we were to hold otherwise, police could search everyone's opaque garbage bags on their property without reason and thereby learn of their activities, associations, and beliefs." It is exactly this type of overbroad government intrusion that the Indiana Constitution was intended to prevent.

State v. Stamper, 788 N.E.2d 862 (Ind. Ct. App. 2003).