



# POLICE / PROSECUTOR UPDATE

Issue No. 180

November 2006

This month, we will look at a **search and seizure** case where the police entered the property with a reasonable belief of imminent risk of bodily harm to others.

After dark one evening, a person, who lived in a relatively woody and rural area, was standing on his front porch when he saw an explosion in the woods across the road. He telephoned law enforcement, provided his name, reported that he had seen an explosion across the road, explained that there had been suspicious activity on the property, and requested that an officer be sent to check it out.

A deputy sheriff, an ISP trooper, and a conservation officer were dispatched. The three officers converged on the scene to find a locked gate blocking the driveway to the property. Initially, the officers could not see fire but could smell that something had been burning. They then heard a “swoosh or that type of noise of a fire.” They noted the flicker of firelight reflecting on the top of the bare trees. This supported the report of an explosion and fire and renewed concern of the need to investigate “to see if anybody was hurt or what was going on.”

The officers climbed the steep hill directly toward the location of the fire. At the top of the hill, the officers saw an unlit building and the glow of fire behind it. At that time, they were unable to determine the nature of the building and whether it was on fire. They moved to the left of the house and by the light of flashlights found themselves on the edge of a pull-around type driveway leading to a house.

The officers then saw a man (the defendant) wearing “some type of light on his head” and standing by what appeared to be an active meth lab. About the same time, the trooper saw a woman (the property owner) leave an active burn pile and approach the house wearing rubber gloves. The officers placed both under arrest and handcuffed them. Pursuant to consent from both, methamphetamine and the ingredients for its manufacture were found in the house and methamphetamine in defendant’s truck.

One well-recognized exception to the search warrant requirement is when exigent circumstances exist. Under this exception, police officers may enter a residence or curtilage if there is a reasonable belief of risk of bodily harm, a person in need of assistance, a need to protect private property, or actual or imminent destruction of evidence before a search warrant can be obtained.

In this case, the initial phone call to police was not from an anonymous informant to report suspicious activity or the existence of a possible methamphetamine lab. Instead, an *identified* citizen called to report having seen an explosion and fire in the woods across the road. When officers arrived shortly thereafter, a burning smell confirmed the report. Although the officers initially saw no sign of fire, the unexpected “swoosh” sound like an accelerant on a fire and the emergence of firelight on the trees signaled that the fire was not out and that future danger was possible. Uncertainty and the nature of the situation warranted investigation. Being unable to drive up past the locked gate, the officers took the most direct route toward the fire, still unsure if they were responding to a risk of bodily harm or the protection of private property. Being properly on the property, the officers were allowed to keep their eyes open. It was from this vantage point that the officers observed the defendant inside the curtilage, wearing a light on his head, and attending to a methamphetamine lab. Baird v. State, 854 N.E.2d 398 (Ind. Ct. App. 2006).

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In a recent case, an **OWI** defendant argued that his **refusal** to submit to a chemical test should not be allowed as evidence at trial because the officer had not informed him that such a refusal could be used against him in a criminal prosecution. His argument failed. The Court of Appeals stated that the plain and unequivocal language of IC 9-30-6-7 states that a person only need be advised that refusing to submit to a chemical test will result in suspension of his or her driving privileges. Also, the text of IC 9-30-6-3(b) does not provide any requirement that a suspected driver be advised that his refusal can be admitted into evidence in a criminal prosecution. Jacks v. State, 853 N.E.2d 520 (Ind. Ct. App. 2006).

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