



POLICE / PROSECUTOR UPDATE

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A recent case involved a fact situation where police conduct would probably be legal under the Fourth Amendment to the federal Constitution but was found to be unreasonable under the Indiana Constitution.

The facts reveal that one evening, law enforcement received a complaint regarding a **noisy party** on property located outside a small town. The town marshal arrived at the scene first and pulled in front of a gate that crossed a lane down which the party was being held. A Deputy Sheriff arrived a few minutes later and heard "a very large party going on." The officers saw a couple of cars at the entrance to the gate and "a bunch in the back." The marshal and deputy approached the gate, spoke with four or five of the party organizers and requested that the noise be turned down. The organizers immediately complied.

As the deputy was preparing to leave, he observed a truck drive by, turn around, and pull into the lane. Although the deputy was ready to leave, he decided to go and talk to the driver. The truck proceeded up the lane, turned off onto a grassy area, and parked close to where the deputy was standing. The driver, later identified as the defendant, exited the vehicle. The deputy testified that he wanted to speak with the defendant and inform him of the noise complaint and to request his assistance in notifying the people at the party to keep the volume down. However, the deputy never conveyed this information to him.

The deputy noticed that he appeared to be very nervous and asked to see his driver's license. He responded that he had left it at home. The deputy then asked him for his name and birth date. Twice, the defendant gave him false information, with no person with that name and birth date on file. The marshal, who was also preparing to leave, returned to where the deputy and

defendant were standing to provide assistance if necessary. The marshal recognized the defendant and addressed him by his correct name. The deputy then ran a license check using correct information and determined that defendant was a habitual traffic violator. The defendant was arrested and charged with the Class C felony. The defendant filed a motion to suppress, which the trial court granted.

Under the Fourth Amendment, a police officer may approach an individual and ask him if he is willing to answer some questions. This is a consensual encounter or contact and not a detention or seizure of the individual. The trial court found no Fourth Amendment violation, but suppressed the evidence on the basis that the police activity was unreasonable under the **Indiana Constitution**. Under the Indiana Constitution, the legality of government action turns on an evaluation of the *reasonableness of the police conduct* under the totality of the circumstances. In this case, by the time the defendant arrived, the officers had already spoken to the individuals at the party regarding the excessive noise complaint and the matter had been resolved. The officers were preparing to leave. The court concluded that there was no need to interact with the defendant and no need to ascertain his identity.

Whether or not this case was decided correctly can be the subject of debate. But law enforcement should know that courts are increasingly deciding cases under the Indiana Constitution. And the Indiana Supreme Court has stated that, while there may be other considerations, the reasonableness of a search or seizure turns "on a balance of (1) the degree of concern, suspicion, or knowledge that a violation has occurred, (2) the degree of intrusion the method of the search or seizure imposes on the citizen's ordinary activities, and (3) the extent of law enforcement needs." *State v. Brown*, ___ N.E.2d ___ (Ind. App. 2009).

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