



POLICE / PROSECUTOR UPDATE

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The Indiana Supreme Court recently decided a trash search case which limited (at least theoretically) the circumstances in which a **warrantless trash search** would be permissible.

Based on information from the DEA, ISP believed the defendants (husband and wife) might be growing marijuana. On two occasions, troopers went to the address where they found trash barrels in the same general area where the collection service normally picked up the trash and where the barrels were routinely kept.

The barrels were located on the defendants' property about 15-25 feet from the edge of the county road and about 175 feet from the nearest corner of the defendants' house.

On both occasions, the troopers entered onto the property and removed several garbage bags. The bags contained marijuana stems, seeds, and leaves, and burnt rolling papers and hemp rolling paper packaging. Based on this evidence, they obtained a warrant to search the residence. The defendants contended the search of both the trash and the house were illegal.

Under the Indiana Constitution, a search, to be legal, must be "reasonable" under the "totality of the circumstances." Reasonableness must be evaluated from the perspective of both the investigating officer and the subject of the search. Courts are to consider both the degree of intrusion into the subject's ordinary activities and the basis on which the officer selected the subject of the search.

There have been several trash search cases decided by the Court of Appeals. Some of these cases have held that a trespass by the police onto private property to retrieve the trash automatically makes the seizure and search of the trash illegal. However, the Court decided that the reasonableness of searching a person's trash does *not* turn on whether the police entered onto the person's property.

If the trash is located in the place where it is normally picked up, the trash collection service, whether public or private, is invited onto the property to the extent necessary to pick up the trash. Police officers can perform the same acts with no greater intrusion. Prohibiting officers from examining trash before it is collected imposes burdens on law enforcement by forcing officers to accompany or follow trash collectors or work at the dump to do what could be accomplished much easier and provides no real protection to the citizen. Therefore, because there is no intrusion, trash searches are generally reasonable.

However, a factor that may make a search unreasonable is an arbitrary selection of the subject. Therefore, the Supreme Court stated that it is *not* reasonable for law enforcement officers to search *indiscriminately* through people's trash. To protect against this, the Court held that the police must have an *articulable basis justifying reasonable suspicion* that the subject of the search has engaged in violations of the law that might reasonably lead to evidence in the trash. This articulable individualized suspicion is basically the same as is required for a "Terry stop."

Finally, the Court cautioned that police do need to ensure that they do not cause a disturbance or create the appearance of a police raid of the residence.

To summarize, a search of trash is reasonable *if*: (1) it is recovered from the place where it is left for collection; and (2) the investigating officials have an articulable basis justifying reasonable suspicion that the subject of the search has engaged in violations of law that might reasonably lead to evidence in the trash. Litchfield v. State, 824 N.E.2d 356 (Ind. 2005).