



POLICE / PROSECUTOR UPDATE

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The law has been well settled for years that the Fourth Amendment to the United States Constitution, subject to a few long established exceptions, requires a warrant be issued before a **search of a home** is conducted. One exception to this warrant requirement is exigent circumstances. Under this exception, police may enter a residence without a warrant "when they reasonably believe that **a person within is in need of immediate aid.**" A recent case examined whether the odor of ether coming from an apartment reported to contain a small child constituted exigent circumstances justifying a warrantless search.

A woman, who identified herself, called the state police post to report an odor at her apartment complex. She described the odor as a mixture of roach spray and rubbing alcohol and indicated that the smell was strong. She was concerned over the fact that a small child lived in the apartment which the smell came from. She also reported that the male occupant of the apartment had been bringing things into the apartment from the trunk of his car and that she thought he might be involved in something illegal.

Several troopers were dispatched to investigate the complaint. Upon arriving at the apartment complex, the officers immediately detected an odor of ether, which they knew was associated with the manufacture of methamphetamine.

Two troopers knocked on the door and rang the doorbell of the apartment from which the odor came. They announced that they were officers but received no answer. They noticed the curtain at the front window move as if someone was trying to peek out. There was a closed cooler on the front porch, and one trooper opened it and looked inside. The cooler contained a jar and hoses, which are consistent with the manufacture of methamphetamine. Another trooper opened the window to the apartment, cut the screen, and entered the apartment. He ordered the occupants of the apartment out, including the defendant, a woman, and her young son. The apartment contained precursors and materials for the manufacture of methamphetamine.

The State argued that the smell of ether constituted exigent circumstances justifying the warrantless entry of the defendant's apartment. The court did not dispute that the "combined knowledge of the fact that the manufacture of methamphetamine can be very dangerous and the fact that there were people in the residence would cause any reasonable police officer to see the immediate need to remove any persons from the residence." However, two of the three judges stated that they were "not ready to draw a bright line which would allow officers to enter a home without a warrant *based solely* on the smell of ether." Nevertheless, the warrantless entry here was proper under the exigent circumstances exception.

Aside from the odor of ether, the Troopers were presented with other indicia of meth manufacture. There was a credible report that a small child was in the apartment. The rustling of the curtain in the front window indicated that there were people present. These circumstances, combined with evidence of the presence of the small child, thus being exposed to both risks from explosions due to the flammability of the chemicals used in producing meth and from the effects that ether can have on the respiratory system, caused the Troopers to reasonably believe that a person inside the apartment was in immediate need of aid.

It should be noted that the third appeals judge involved in the case believed that the smell of ether coming from the apartment – regardless of the presence of the child – was enough to justify the officers' warrantless entry and subsequent search of the apartment. State v. Crabb, ___ N.E.2d ___ (Ind. Ct. App. 2005) (Clark County).

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