



POLICE / PROSECUTOR UPDATE

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A very recent Indiana Court of Appeals case discussed the **search warrant exception for exigent circumstances because of officer safety**. The facts reveal that due to recent robberies of CVS stores in the area, a police officer was conducting surveillance of a CVS store in an unmarked car. A little before 10:00 p.m., the officer observed a man dressed in black first walking, then jogging across the CVS parking lot. The man broke into a run as he approached the store entrance. As he entered the store, the man raised his arm in such a manner that led the officer to believe he was brandishing a weapon. The officer radioed other units that he believed an armed robbery was in progress at the location, and other officers soon arrived.

Three officers, each in separate cars, saw the man run out of the store and across the parking lot. All three officers yelled at the man to stop, but he kept running. One officer stopped his car in a parking lot near a car that was in the general direction to which the man was running. The officer stepped out of his car and walked to the driver's side of the other car, intending to cut off and apprehend the man. When the man was within 6 to 8 feet of the car, the officer identified himself and ordered the man to stop, but he turned around and ran in a different direction.

The officer's attention was drawn to the car to which the man had been running, whose driver's side door was open about six inches and whose windows were tinted such that he could not see inside. Feeling that there might be an accomplice in the car and concerned for officer safety, the officer opened the door wider to make sure "that there was nobody lying down in the car in the back seat or on the back floorboard or in the driver or passenger area of the car." While looking for a possible accomplice, the officer saw an activated handheld police scanner, a holster on the front floorboard, keys in the ignition, a plastic bag, and clothing. Without ever touching anything in the car or even sticking his head inside, the officer confirmed no

one was in the car. The officer then felt the hood and found the engine compartment was still warm. Nothing was removed from the car until a search warrant was obtained.

The defendant filed a motion to suppress, alleging that the officer's actions in opening the door wider and inspecting the car's interior constituted an illegal search. The Court of Appeals "assumed without deciding" that the officer's actions in opening the car door wider and inspecting the interior constituted a search. It then had to determine whether an exception to the warrant requirement existed. One exception is where exigent circumstances "make the needs of law enforcement so compelling that the warrantless search is objectively reasonable." Threats to the safety of police officers and others are among the exigencies that may properly excuse the warrant requirement. However, a search extending beyond the exigencies presented is improper.

Looking to the facts in the case, the court noted the officer opened the door wider in order to determine whether an accomplice was in the car, an obvious concern for officer safety. In light of the fact that the officer saw the man brandishing a weapon in the CVS and then saw him running toward a car that had its door open, it was not unreasonable for the officer to believe that the car was the getaway car and that an accomplice, possibly also armed, would be inside.

It was also very important that the officer ceased his search as soon as he confirmed that no one was in the car and thus had no reason to believe that safety was a concern. Nothing in the car was seized until the search warrant was obtained. The court concluded that the exigent circumstance of officer safety was present to justify a warrantless search. Lindsey v. State, __ N.E.2d __ (Ind. App. 2009).