



# POLICE / PROSECUTOR UPDATE

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A recent Indiana Court of Appeals case serves as a vehicle to examine several aspects of the law of search and seizure. In the case, the defendant visited his wife in a state park where she had been camping in a tent for several days. The defendant paid the campsite rental fee for that night. Later that night, three conservation officers were alerted by the park's security guard of possible drug activity at the defendant's campsite. They proceeded to an adjacent campsite and observed the defendant's campsite for several minutes. The defendant's tent had two "rooms," one being enclosed on three sides by screen and the other enclosed by canvas. The tent was lit by an electric lamp. There were three men and two women in the tent. The officers observed one man and one woman in the *screened* area sharing a hand-rolled cigarette, which the officers believed to be a marijuana cigarette. They approached the tent and knocked on a bucket sitting outside the tent as they unzipped the flaps to the screened room. The defendant was sitting in the back, canvas part of the tent. One officer noticed the defendant slide his hand under a blanket. The officer ordered the defendant not to move, and another officer drew his gun and pointed it at the defendant. In defendant's hand was a 35mm film canister which contained a substance later determined to be methamphetamine.

The threshold issue in the case was whether a person camping in a tent in a public campground is entitled to constitutional protection against unreasonable search and seizure. The court noted that the law in Indiana is well-settled that a person renting a hotel or motel room may have a legitimate expectation of privacy in the room. The court stated that as a general proposition the constitutional protections afforded those who rent hotel rooms should also be extended to those who make their "transitory home" a tent, IF they exhibit a subjective and reasonable expectation of privacy in the tent. The court felt the defendant had exhibited such an expectation of privacy in the tent.

The court then looked at whether there was probable cause for the officers to believe a crime was being committed. The persons in the screened area of the tent, which was well-lit, had no reasonable expectation of privacy in that their actions could be viewed by anyone in the vicinity. The officers therefore lawfully viewed activity which was consistent with illegal drug activity. Thus, there was probable cause to believe a crime was being committed.

However, even with probable cause, a search warrant is necessary to enter a protected area, absent some exception to that requirement. The State first contended that the "plain view" of the marijuana did away with the warrant requirement here. This is incorrect. The "plain view" exception applies only when an officer, *after lawfully entering a protected area*, observes contraband in plain view. It did not apply here because it had to be shown that the officers were *lawfully in the tent before* the plain view doctrine was utilized.

The State also contended that the warrantless entry was justified to prevent the destruction of evidence. However, the court noted that the only evidence of "destruction of evidence" was the consumption of the marijuana cigarette in the normal course, which was unlikely to be so totally consumed that no evidence of its existence remained. In any event, the plain view of the marijuana cigarette, or its imminent destruction, would not justify the search which revealed the film canister.

Finally, it should be noted that the officers observed activity which, at most, would constitute only a misdemeanor. Our courts have held that a warrantless home entry should rarely be sanctioned when there is probable cause to believe that only a minor offense has been committed.

Haley v. State, 696 N.E.2d 98 (Ind. App. 1998).