Police Prosecutor Update

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This month we will look at an underage drinking party case. In the early morning, law enforcement received a report of an underage drinking party at the defendant's residence. Several officers arrived at the defendant's subdivision, parked their police vehicles, and began walking toward the defendant's house. At some point, the officers noticed a "young male" approach them. However, he suddenly turned around and began to run. A deputy stopped him and asked whether "there was an underage drinking party going on" at the defendant's house. After the young man responded affirmatively, another officer continued walking toward the defendant's house and approached a teenage boy who was leaning against a vehicle in the defendant's driveway. As the teen ran toward the backyard, the officer chased him and detected the smell of alcohol on the boy after stopping him.

At that point, some of the officers saw several empty beer cans in the defendant's front yard. An officer then heard commotion in the backyard and saw someone crawling out a basement window. The person stopped after being ordered to do so. As the officers stood in the backyard, they looked through the basement window and saw other suspected juveniles along with beer and liquor containers. At that point, several officers knocked on the back door. When the defendant opened the door, she acknowledged that she was the homeowner. She told the officers they could come inside. An officer asked her if she knew what was going on, and she said she "saw a few beer cans but didn't think anything of it." The officers then summoned the occupants from the basement for a "head count." An officer then walked through the house and found three teenage girls hiding in the basement closet. He observed an empty case of beer, empty beer cans, and a number of liquor bottles. The officers subsequently administered portable breath tests to all the suspected juveniles, which revealed that thirteen of them had consumed alcohol. The defendant was charged with and convicted of contributing to delinquency.

The defendant first contended that all evidence was inadmissible because the police officers improperly entered her yard and the curtilage of her home. The curtilage of a dwelling is that area surrounding a dwelling in which society recognizes a legitimate expectation of privacy and is thus protected by the Fourth Amendment. However, the mere fact that a legitimate police investigation allows items within the curtilage to be seen does not transform a warrantless observation into an unconstitutional search. Here, police officers responded to a report of an underage drinking party at the defendant's residence. When the officers walked toward the residence, a suspected underage person saw them and began to run away. Once this individual was stopped, he told the officers that an underage drinking party was occurring in the defendant's residence. An officer questioned another teenager, who had been leaning against a vehicle in the defendant's driveway, and the youth smelled of alcohol.

IC 7.1-5-7-7 defines a minor in possession of alcohol as a Class C misdemeanor. The officers reasonably believed that two teens had been drinking at the defendant's residence. Also, an officer entered the defendant's yard to stop juveniles who were running from the house because he thought they might have been drinking at the party. Another officer saw a young person climbing out a basement window. When apprehending that individual, officers looked in the basement window and noticed several juveniles, open beer cans, and a portable bar with several liquor bottles on it. Thus, the officers were lawfully on the defendant's property to investigate the suspected underage drinking party.

The defendant also attacked the search of her house, claiming she did not consent to it. However, she told the officers she was the homeowner and that "it was fine" for them to come inside. Also, although the defendant correctly maintained that she had not given her express consent to search her residence, she did not indicate that she was limiting the scope of the officer's entry. In fact, she accompanied one of the officers as he walked through the house, thereby assenting to their actions. As a result, there was no indication that the officers exceeded any purported scope of the defendant's consent to enter the residence.

Case: *Rush v. State*, ___ N.E.2d ___ (Ind. Ct. App. 2008)