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A recent Court of Appeals opinion discussed whether the distinct **odor or smell of burnt marijuana**, by itself, is enough to establish probable cause. Although three Indiana Court of Appeals decisions have *suggested* that smell alone might establish probable cause, all stopped short of deciding that specific question. In each case, additional facts were present which made it unnecessary to resolve the issue. Now the court has squarely answered the question. To quote the court, "we have no hesitation in deciding that when a trained and experienced police officer detects the strong and distinctive odor of burnt marijuana coming from a vehicle, the officer has probable cause to search the vehicle." Therefore, the smell of burnt marijuana *alone* establishes probable cause.

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Another case discusses the **uniform or marked vehicle requirement** of IC 9-30-2-2. This statute provides that a law enforcement officer may not arrest or issue a traffic information and summons unless at the time the officer is wearing a distinctive uniform and a badge of authority, or operating a motor vehicle that is clearly marked as a police vehicle.

The facts reveal that the defendant was traveling on an interstate in a semi tractor-trailer truck. At the time, an Indiana State Police trooper was also traveling on the interstate in her unmarked State Police vehicle. She was off-duty and therefore was not in uniform. The defendant passed the trooper and appeared to be speeding. The trooper used her in-car radar to note the defendant's speed. The radar indicated that defendant was exceeding the posted speed limit. The trooper also observed the defendant make an illegal lane change. The trooper radioed for marked police units as the defendant exited the interstate. The defendant pulled into a truck stop to refuel. While the defendant was inside paying for the fuel, the trooper and two uniformed police officers approached him. The trooper identified herself with her police identification card and issued the defendant citations for speeding and unsafe lane movement.

The defendant argued that the trooper lacked authority to issue the citations because she failed to meet the requirements of IC 9-30-2-2. However, the Court of Appeals ruled that because two uniformed officers accompanied the trooper when she issued the citations, she was not precluded from doing so.

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Finally, the Court of Appeals has again instructed that an **investigatory stop cannot be based on an untested anonymous tip**. It also held that there is no "firearm exception" to this rule.

An anonymous caller informed a police dispatcher that a suspect had produced a firearm and had waved it around on the parking lot of a Burger King. The suspect said before leaving the lot that he was going to "cap someone." The suspect was described as a white male in a green jacket, driving an S10 Blazer. The caller provided a partial license plate number. A police officer, based upon this call, stopped the defendant's Blazer, with the partial license plate number, about six blocks from the Burger King. This stop was bad because the officer's suspicion that the defendant was armed or engaged in criminal activity did not arise from anything the officer observed; it arose solely based upon the anonymous call.

In these types of cases, the tip must be corroborated and bear "sufficient indicia of reliability." When the tip predicts future behavior of the suspect and when significant aspects of these predictions can be verified by police, "there is reason to believe not only that the caller was honest but also that he was well informed, at least enough to justify the stop."

The court stated that the officer stopped defendant based solely on an anonymous tip of unknown reliability. He did not observe any activity that would provide an independent basis or reasonable suspicion for the stop. Finally, the tipster failed to provide any predictions of the defendant's future behavior that would establish that he or she had inside knowledge of the defendant's affairs, if portions of the predictions could be verified.

State v. Hawkins, 766 N.E.2d 749 (Ind. Ct. App. 2002).

Hatcher v. State, 762 N.E.2d 189 (Ind. Ct. App. 2002).

Berry v. State, 766 N.E.2d 805 (Ind. Ct. App. 2002).

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