

## SUFFICIENCY OF THE EVIDENCE PUBLIC INTOXICATION

On September 12, 2019, the Indiana Court of Appeals issued its decision in Pulido v. State, \_\_\_ N.E.3d \_\_\_ (Ind. Ct. App. 2019). A police officer answered a dispatch based upon an anonymous call that a male was observed staggering on the sidewalk and “walking adjacent to the city street.” When the officer arrived, she notice Pulido, who was staggering. Pulido could not maintain his balance, had red glassy eyes and slurred speech, and when asked if he was okay, where he was headed and where lived, replied “that he did not know any of those things.” Pulido also stated the he did not know who to call to pick him up because he was so drunk. The officer arrested Pulido for public intoxication and was the sole prosecution witness at his bench trial. The trial court found Pulido guilty.

On appeal, Pulido argued the evidence was insufficient to support his conviction because the state failed to prove that he endangered himself as the state had charged. He contended that no evidence was presented to show that he had walked into the street or had fallen or hurt himself. The appellate court agreed that the evidence was not sufficient and reversed the conviction.

## SEARCH AND SEIZURE RESIDENCE OF A COMMUNITY CORRECTIONS’ PARTICIPANT

On September 25, 2019, the Indiana Court of Appeals issued its decision in McElroy v. State, \_\_\_ N.E.3d \_\_\_ (Ind. Ct. App. 2019). McElroy’s stepson was serving a sentence on home detention and was living with McElroy and his wife, Tamika. The stepson’s program conditions, to which the stepson had agreed, provided that the residence in which he was staying had to be drug-free and free of firearms, that he waived his right against search and seizure, that he consented to a search of his residence to insure compliance, and that he was to advise the owners of the residence of the conditions he was under. A community corrections officer and several law enforcement officers conducted a compliance check on the McElroy residence. Upon entering the residence, they smelled burnt marijuana. They did a sweep of the house for safety, during which they observed marijuana in plain view. The stepson on community corrections lived in the front room on the couch. Upon completing the protective sweep, officers in the kitchen discovered a handgun on top of a kitchen cabinet. McElroy told officers the gun was his. Tamika signed a consent to search the house. During that search, officers found a bag of marijuana in a dresser in the master bedroom. McElroy was charged with unlawful possession of a firearm by a serious violent felon and possession of marijuana. He filed a motion to suppress. After a hearing, the trial judge denied the motion, but granted leave to file an interlocutory appeal.

On appeal, McElroy contended the seizure of the gun and marijuana was unlawful because it was the result of a warrantless search in violation of the federal and state constitutions. McElroy’s stepson had waived his right against warrantless search and seizure when he signed his home detention conditions.

McElroy contended that neither he nor his wife were a party to that waiver, and therefore, the search as it applied to them was illegal.

Consent may be given by a third party who has common authority over the residence. Persons who share a residence with conditional release participants assume the risk that they will have diminished Fourth Amendment rights in areas shared with the participant. The handgun, while not in plain view, was discovered in the kitchen, which was a common area within the home. It was adjacent to the living room where the stepson was staying on the couch. The stepson had consented to a search of his residence, which includes areas of McElroy's residence over which he had common authority. This was a risk McElroy assumed by allowing the stepson to live with him. Therefore, the Court found McElroy's Fourth Amendment rights were not violated when the handgun was seized. The Court also found that his rights under the Indiana Constitution were not violated.

As to the marijuana, McElroy claimed that Tamika's consent to search was compelled once the police illegally found the handgun. The Court found the seizure of the handgun was not illegal, Tamika was not arrested or restrained in any way when she signed consent to search, and nothing in the evidence indicated that Tamika was unable to comprehend the consent form or that the officers had deceived her. Therefore, the Court affirmed the denial of the motion to suppress.