[CAPTION]

MEMORANDUM IN SUPPORT OF DEFENDANT'S MOTION TO SUPPRESS (STOP BASED ON YOUTHFUL APPEARANCE)

FACTS

[INSERT FACTS]

ARGUMENT

Because the State failed to prove that the excise officers had reasonable suspicion to stop Defendant in her garage and request identification, any evidence seized as a result of the stop was seized in violation of Article I, Section of the Indiana Constitution and the Fourth Amendment of the U.S. Constitution.

A. The officers needed reasonable suspicion to stop Defendant for the sole purpose of requesting identification.

A person cannot be stopped and asked to identify himself without the stop being based on "objective facts establishing reasonable suspicion to believe that the suspect was involved in criminal activity." Hiibel v. Sixth Judicial District Court of Nevada, 542 U.S. 177, 124 S.Ct. 2451, 159 L.Ed.2d 292 (2004) (citing Brown v. Texas, 443 U.S. 47, 51-52, 61 L.Ed.2d 357, 99 S.Ct. 2637 (1979)).

The State has cited Lawson v. State, 803 N.E.2d 237 (Ind.Ct.App. 2004), in support of the excise officers' stop of the Defendant. In Lawson, an excise officer approached a van parked at a concert because the officer saw people moving around in the van and a person peeking out of the blinds. Once at the van, the officer asked a young-looking Lawson with a beer for his age. Lawson told the officer he was eighteen.

Unlike the Defendant, Lawson never challenged the legality of the officers approaching the van or even the officers questioning him under the Fourth Amendment. Lawson only challenged the excise officer's questioning of him concerning his age under the Fifth Amendment. The Court in Lawson only held that an officer does not have to Mirandize an individual prior to asking that individual's age during

the course of a justified investigation or stop. Id. at 240. Lawson had nothing to do with the Fourth Amendment or Article I, Section 11.

Even if the Court would have upheld the officer's stop of Lawson under the Fourth Amendment and Article I, Section 11, the stop of Lawson is distinguishable from the stop of Defendant. In Lawson, the officer's reasonable suspicion to approach the van was based on someone peeping out of the van, and not on the young appearance of the passengers. Moreover, the officer did not request identification from Lawson, but only asked Lawson, who was free to not answer, his age. In fact, it is proper, under the Fourth Amendment, for an officer to ask possibly incriminating questions during the scope of a proper stop. Lockett v. State, 747 N.E.2d 539 (Ind. 2001) (police may routinely inquire about the presence of weapons during a proper traffic stop).

Thus, because the excise officers were not involved in an otherwise proper stop of the Defendant when requesting identification, but rather stopped the Defendant for the sole reason of requesting identification, the officers' stop had to be justified by reasonable suspicion.

B. The fact that Defendant was "young appearing" and elected to sit in her car at a liquor store rather than go into the store does not constitute reasonable suspicion to justify the officers following her home and stopping her in her garage.

"Appearing young" and electing to sit in the drivers' seat of the car rather than going into the liquor store does not rise to level of reasonable suspicion justifying following Defendant home solely to stop her for identification. Rather, at most, Defendant's appearance and decision to stay in the driver's seat constituted innocent activity proving a hunch of criminal activity. Reasonable suspicion to justify a stop cannot be a "mere hunch", but must be based on specific and articulable facts known to the officer at the time of the stop that lead the officer to believe that criminal activity may be afoot. Terry v. Ohio, 392 U.S. 1, 20 L.Ed.2d 889, 88 S.Ct. 1868 (1968).

First, Defendant's decision to sit in the car and wait for her friend cannot even be considered by this Court as an articulable fact supporting reasonable suspicion that Defendant was under twenty-one

years old because the officers testified that the fact did not bear on their decision to stop Defendant. The officers testified that they were also stopping Defendant's car to determine whether her friend who "appeared young" and entered the liquor store to purchase beer was twenty-one years old. The officers claimed that they had reasonable suspicion to stop both Defendant, who remained in the car, and her friend, who went into the store and bought beer. Both were stopped solely on the basis that they appeared young and were in possession of alcohol.

Second, because the officers could not give one articulable fact on which to base their feeling that Defendant was under twenty-one years old, their feeling as to Defendant's age is not a fact upon which reasonable suspicion can be based. One excise officer testified that someone "appears young" when that person does not have gray hair and wrinkles. The other officer could not name one physical characteristic that distinguished a twenty-one year old from a nineteen or twenty-year old. Thus, both officers were acting on mere hunches that Defendant was under twenty-one rather than articulable and objective facts as required.

Even if this Court were to consider the fact that Defendant sat in the car and the officers' hunch that Defendant was under twenty-one as articulable facts that could support reasonable suspicion, the totality of the circumstances still does not rise to the level of reasonable suspicion. One's location, even combined with other suspicious, but innocent, activity does not justify an investigatory stop. Williams v. State, 745 N.E.2d 241 (Ind.Ct.App. 2001) (no reasonable suspicion to justify investigatory stop when the police officer observed the Defendant and another person exchange something and then walk off in different directions after noticing the police); Burkett v. State, 736 N.E.2d 304 (Ind.Ct.App. 2000) (fact that the Defendant was the only African-American standing on the street corner in a high crime area at a late hour and wearing a hooded sweatshirt with the hood up in 76-degree weather and that he walked away when the officer pulled up to the curb did not constitute reasonable suspicion); Dowdell v. State, 747 N.E.2d 564 (Ind.Ct.App. 2001) (because officer was uncertain if the Defendant was smoking a "blunt" or cigar, he did not have reasonable suspicion that the Defendant was committing or about to commit a crime, and the stop was illegal); Bovie v. State, 760 N.E.2d 1195 (Ind.Ct.App. 2002) (officer's

observations of Defendant and his passenger, a known drug user and seller, leaving a known, drug house, proceeding to a gas station, and stopping their vehicle did not rise to a level of reasonable and articulable suspicion required to make a stop).

Just as the officer in Dowdell could not stop Dowdell to investigate the officer's hunch that Dowdell's cigar contained marijuana, the officers, here, could not stop Defendant on the officers' hunch she was under twenty-one years old. Just as the officer in Bovie could not stop the Defendant, who was leaving a place where drugs were sold with a person who sold drugs, the officers, here, could not stop Defendant who was leaving a liquor store with a youthful-appearing friend. Thus, the stop violated the Fourth Amendment.

C. The officers' stop of Defendant, simply because there was alcohol in her car and she "appeared young" was unreasonable, and thus, violated Article I, Section 11 of the Indiana Constitution.

Even if the Court were to find that the stop did not violate the Fourth Amendment, the stop did violate Article I, Section 11 of the Indiana Constitution. The Indiana Courts interpret Article I, Section 11 of the Indiana Constitution independently from the Fourth Amendment jurisprudence. State v. Bulington, 802 N.E.2d 435 (Ind. 2004). "The burden is on the State to show that under the totality of the circumstances its intrusion was reasonable." Id. at 438.

In Bulington, the Defendant was stopped because he and his passenger, each bought three packages of cold medicine. The Court held that the police had absolutely no reason to believe the Defendant had violated or was violating any law when he was stopped because he only had bought one precursor of methamphetamine. Id. at 439. However, based on the purchase of the one precursor, "there was at least some reason to believe that . . . 'criminal activity might be afoot.'" Id. at 439-40. This was not enough to establish reasonable suspicion for the purposes of Article I, Section 11. Id. "The opportunities for official arbitrariness, discretion, and discrimination are simply too great if we were to find that the purchase of two companions of three packages each of cold medicine justifies a search or seizure under art. I, section 11. Such a holding, at least in an Indiana winter, would permit so many

searches and seizures as to license official arbitrariness, discretion and discrimination in their execution." Id.

Like the officers in Bulington, here, at most, the officers had some reason to believe criminal activity was afoot, but did not have reasonable suspicion that a crime had taken place. The opportunities for official arbitrariness and discrimination are even greater in the instant case than in Bulington. Allowing officers to follow home and stop anyone who does not have wrinkles and gray hair in order to determine whether they are legal to buy alcohol is unreasonable and violates the Indiana Constitution.

CONCLUSION

The fact that the excise officers' duty is to enforce alcohol laws does not relieve the State of its burden of proving that the enforcement remains consistent with the Fourth Amendment and Article I, Section 11. Although officers may be able to ask how old someone is or may possibly even request identification during a legal traffic or investigatory stop, the officers cannot stop for the sole purpose of investigating someone's age on the hunch that the person is under twenty-one. Thus, all the evidence seized and statements made as a result of the illegal stop and search must be suppressed.

(Signature)