POLICE / PROSECUTOR UPDATE

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In this issue we will examine a Court of Appeals case which dealt with the seatbelt enforcement law (IC 9-19-10-3). Issue No. 102 of the PPU also discussed this law, specifically the language ". . . a vehicle, the contents of a vehicle, the driver of a vehicle, or a passenger in a vehicle may not be inspected, searched, or detained *solely* because of a violation of this chapter." The case discussed in that issue held that this language does not prohibit police from performing a limited weapons search *if* the search is based on actions or behavior on the part of the defendant after the initial stop that lead a police officer to fear for his safety. This month's case examined a police officer's latitude under the seatbelt enforcement law to take further action in a context other than a limited weapons search situation.

The facts are that while on patrol a police officer observed the defendant driving a vehicle without wearing the shoulder restraint of his seatbelt. He stopped the vehicle for the purpose of issuing a warning. When he asked the defendant for his driver's license and registration to issue the warning, the defendant said he did not have his license with him but provided the officer with his name and registration. The defendant stayed in his vehicle while the officer ran a driver's license check, which revealed that the defendant's license was suspended. He returned to the vehicle and asked the defendant to step out. When he did, the officer smelled the odor of alcoholic beverage on the defendant's breath. The defendant ultimately took a breathalyzer test which revealed a BAC of .10%.

The defendant filed a motion to suppress all evidence obtained after the initial stop, which was granted. The trial court stated that the seatbelt enforcement law prohibited the officer's conduct subsequent to the traffic stop of the defendant. In the court's view, IC 9-19-10-3 requires that when a stop to determine seatbelt compliance is made, the police are strictly prohibited from determining anything else. The trial court was incorrect.

The law is that a traffic stop based on the failure of either the driver or passenger to wear a seatbelt, *standing alone*, does not provide reasonable suspicion for the police to expand their investigation. "However, when circumstances arise *after* the initial stop that create reasonable suspicion of other crimes, further inspection, search, or detention is no longer *solely* because of a seatbelt violation. The officer may expand his or her investigation subsequent to the stop if other circumstances arise *after* the stop which *independently* provide the officer with reasonable suspicion of other crimes."

Here, upon learning that the defendant did not have a driver's license with him, the officer ran a license check and discovered that defendant's license was suspended. The defendant's failure to produce his license was a circumstance independent of the initial stop which provided the officer with reasonable suspicion that the defendant might not have a valid driver's license. After determining that the defendant's license was suspended, the officer acted reasonably in requesting that the defendant exit the vehicle because he could not allow the defendant to continue driving on a suspended license. When defendant exited the vehicle and the officer detected the odor of alcoholic beverage on the defendant's breath, a second circumstance independent of the seatbelt stop arose which led to the officer's reasonable suspicion that the defendant was driving under the influence. It would be unreasonable for an officer who smells alcoholic beverage on the breath of a driver of a vehicle to send the driver on his way without further inquiry merely because the initial stop was for a seatbelt violation.

State v. Morris, 732 N.E.2d 224 (Ind. App. 07/19/00).

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