



POLICE / PROSECUTOR UPDATE

Issue No. 112

March 2001

A recent Court of Appeals case contains an excellent review of the law regarding the **search of a vehicle incident to arrest** of an occupant. It also discusses the crimes for which an arrest will trigger the justification for the search.

While on patrol in the early morning hours a State Police Trooper observed a car without a light illuminating its license plate. The trooper activated his lights and followed the car into the lot of a business establishment. After he advised the driver of the reason for the stop, the driver identified himself and said he "might be" an habitual traffic offender. The trooper confirmed that BMV records indicated the driver was indeed an HTV and arrested the driver for operating a vehicle as an HTV. A search of the car's passenger compartment uncovered a quantity of various drugs.

An exception to the search warrant requirement is a search incident to arrest. "When a policeman has made a *lawful custodial arrest* of the occupant of an automobile, he may, as a contemporaneous incident of that arrest, search the passenger compartment of that automobile." This search may include an examination of the contents of any containers found in the passenger compartment, including the glove compartment. Containers may be searched even though they might be of a type which could hold neither a weapon nor evidence of the criminal conduct for which the suspect was arrested. "Container" means any object capable of holding another object, including "closed or open glove compartments, consoles, or other receptacles located anywhere within the passenger compartment, as well as luggage, boxes, bags, clothing, and the like." However, the authority for the search does *not* extend to the trunk of an automobile. The fact that an arrestee has been removed from the scene is irrelevant in determining whether a search of a vehicle

incident to arrest is proper.

For a search incident to arrest to be valid, the arrest itself must be lawful. Probable cause must be present to support the arrest. There was clearly probable cause here. The defendant was properly stopped for an equipment violation. The trooper was informed by a dispatcher that the defendant was an HTV after the defendant himself admitted he "might be" an HTV. The arrest was lawful. The fact that in this case the prosecutor dismissed the HTV charge because he felt he could not prove at trial that the defendant received notice of his right to administrative review of his HTV status did not affect the validity of the trooper's on-the-scene probable cause determination.

The defendant also argued that the search of his vehicle was incident to a traffic violation or citation, which is not constitutionally permissible. However, the defendant's attempt to equate operating as an HTV with, say, speeding failed. If the trooper had searched the defendant's car based *solely* on his stop for not having an illuminated license plate, the defendant would have had a good argument. However, the legislature has determined that a person who continues to operate motor vehicles after having achieved HTV status poses such a danger to society that he may be found guilty of a felony for doing so. Therefore, the suggestion that searches of vehicles incident to arrest cannot be made for a traffic-related offense is just plain wrong. There is no distinction for purposes of search justification based on the crime for which a person is arrested. The rule is simply that there must be a custodial arrest, as opposed to the mere issuance of a citation.

Leitch v. State, 736 N.E.2d 1284 (Ind. App. 2000).

Indiana Prosecuting Attorneys Handbook p. 1-62.