



POLICE / PROSECUTOR UPDATE

Issue No. 200

July 2008

A recent Indiana Court of Appeals case examined the propriety of a **vehicle stop** by police based upon knowledge that the *registered owner* has a **suspended driver's license**.

While on routine patrol in his squad car, a police officer conducts a license plate check of the vehicle in front of him, which revealed that the vehicle was registered to a female whose driver's license was suspended. The officer conducted a traffic stop, and as he approached he observed a male driver and two passengers.

At this point, because of the information he had received through the license plate check, the officer knew that the driver was not the registered owner. The driver (who was the defendant in the case) admitted he did not have a drivers license, but identified himself with name, DOB, and SS#. The officer then discovered that the defendant's driver's license was suspended. He ordered the defendant and passengers out of the car, and another officer conducted a search of the car. Marijuana was discovered, which the defendant admitted was his.

The court framed the issue as whether the officer's knowledge that the registered owner of the vehicle driven by the defendant has a suspended license created a reasonable suspicion that criminal activity was afoot when he saw the vehicle being driven. The court concluded that a police officer' knowledge that the registered owner of a vehicle lacks a valid license, *by itself*, is insufficient to provide the officer with reasonable suspicion sufficient to permit an investigatory stop.

The court noted that this was not a case involving irregularities in the registration or licensure of a vehicle which could indicate the vehicle could have been stolen or retagged, thereby warranting an investigatory stop.

The court stated that a police officer's knowledge that an owner of a vehicle may not lawfully drive creates reasonable suspicion of criminal activity *only where the officer has reason to believe that the owner is actually driving the vehicle*.

In a case such as this one where the officer has observed absolutely nothing that would indicate that the driver of the vehicle is the owner and the officer has no reason to believe that the vehicle is stolen or that a law is otherwise being broken, the officer lacks objective justification for conducting an investigatory stop. The court further stated that there are many reasons why a person who is not the registered owner of a vehicle might drive the vehicle, and it could not approve of investigatory traffic stops that are justified by nothing more than a police officer's knowledge that the owner's license is suspended. Thus, the evidence collected as a result of this stop was suppressed.

Holly v. State, ___ N.E.2d ___ (Ind. App. 2008).

* * * * *

Another case dealt with our seatbelt law and answered this question: Is an occupant who has the **lap belt** fastened but who is not wearing the **shoulder belt** across his shoulder violating the statute?

The court noted that the statute explicitly provides that an occupant must have a seatbelt "*properly fastened about the occupant's body*" at all times when the vehicle is in forward motion." The legislature's decision to use the word "properly" with the phrase "about the occupant's body" led the court to conclude that it intended for an occupant to fasten the lap belt and wear the seatbelt's shoulder strap across his shoulder to comply with the seatbelt statute.

State v. Massey, 887 N.E.2d 151 (Ind. App. 2008).