



POLICE / PROSECUTOR UPDATE

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This month we will look at a recent Court of Appeals opinion dealing with searches. A police officer in Clark County stopped the defendant's vehicle after observing it make an illegal left turn. The officer asked the defendant to exit the vehicle and then noticed that she had bloodshot eyes and smelled of alcohol. The officer administered three field sobriety tests which the defendant failed. She admitted drinking four or five beers. The officer administered a portable breath test. Because the test result was .07% BAC, the officer asked the defendant to take another test at police headquarters, to which she consented. The officer then handcuffed her and placed her in his patrol car. He called a tow truck to impound the defendant's vehicle and, while waiting for the tow truck, searched the vehicle. Among the items found was \$1,976 in cash and 11 ounces of cocaine. The defendant moved to suppress this evidence.

Two exceptions to the search warrant requirement were discussed. The officer testified that he "did a routine inventory" of the vehicle. However, the inventory search exception has been narrowed by the courts to apply *only* where there exists a *firmly established police policy* requiring that an impounded vehicle be inventoried. There was no such policy in this case, so this exception did not apply.

The second exception discussed is the search incident to arrest exception, under which a police officer may conduct a search "of the arrestee's person and the area within his or her control." The search of a suspect's vehicle under this exception is valid even if the suspect has been "removed from the scene" and her vehicle is no longer in her area of control.

Under this exception an arrest has occurred when a police officer "interrupts the freedom of the accused and restricts his liberty of

movement." Even when the police officer does not tell the defendant she is under arrest prior to the search, that fact does not invalidate the search so long as there is probable cause to make an arrest. Finally, the *subjective belief* of the police officer that he may not have probable cause to arrest a suspect when he handcuffs the suspect has no legal effect (the *subjective belief* of the officer that he has probable cause to arrest also has no legal effect).

In this case the officer had probable cause to arrest the defendant for operating a vehicle while intoxicated. The defendant had committed a traffic violation by turning left from a right-turn-only lane. Thus, the initial stop of the vehicle was justified. The officer observed that the defendant smelled of alcohol, had bloodshot eyes, and admitted to drinking four or five beers. She failed three field sobriety tests. In Indiana, proof of intoxication can be established by a showing of impairment, independent of tests for blood alcohol level.

The Court of Appeals also said that the defendant was under arrest prior to the search. Even though the officer testified she was not under arrest, he also stated that she was not free to go. She was handcuffed in the back seat of the patrol car when the search took place. Thus, her freedom and liberty of movement were restrained. Even if the officer believed he did not have probable cause to arrest her, his belief had no legal effect. Nor did his failure to tell her that she was under arrest invalidate the search.

Stevens v. State, ___ N.E.2d ___ (Ind. Ct. App. 10/30/98) (Clark County).