



POLICE / PROSECUTOR UPDATE

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In this month's issue, we will examine some recent cases in the Indiana and U.S. Supreme Courts:

The first involves the "Seatbelt Enforcement Act," **IC 9-19-10-3**, which provides, "A vehicle may be stopped to determine compliance with this chapter. However, 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." A trial court held the statute unconstitutional because it basically gave law enforcement officers unbridled discretion to stop motorists. The Indiana Supreme Court held the statute is constitutional *if enforced* in the following manner: a police officer may *not* stop a motorist in Indiana for a possible seat belt violation *unless* that officer *reasonably suspects* that the driver or a passenger in the vehicle is not wearing a seat belt as required by law. The court then stated that reasonable suspicion exists where the officer observes the driver or passenger under circumstances (e.g., bodily movement, distance, angle, lighting, weather) that would cause an ordinary prudent person to believe that the driver or passenger is not wearing a seat belt.

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A second case decided by the Indiana Supreme Court involves the following question under the "plain view" doctrine: if a police officer is properly in the residence of another and sees items that may be seized under the doctrine but leaves the premises without them, may the officer then return to seize the items without first obtaining a search warrant? The court held that if an officer leaves the residence, reentry is *not* justified in the absence of a warrant, the consent of the owner, or some other exception to the warrant requirement. The seizure must occur immediately if it is to occur at all.

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The law is well settled that if police have probable cause to search a lawfully stopped vehicle, they may conduct a warrantless search of any containers found inside the vehicle that may conceal the object of the search. The U.S. Supreme Court was asked to decide whether this rule applies only to containers belonging

to the driver or whether it also extends to containers belonging to a passenger.

The facts of the case reveal that during a routine traffic stop an officer noticed a syringe in the shirt pocket of the driver. Also in the front seat of the car were the driver's girlfriend and the defendant. The driver admitted using the syringe to take drugs. The officer then searched the passenger compartment for contraband, removing and searching what the defendant claimed was her purse, finding drug paraphernalia. The state supreme court suppressed this evidence. It held that if an officer knows or should know that a container belongs to a passenger who is not suspected of criminal activity, then generally the container is outside the scope of the search. The U.S. Supreme Court stated that this was an incorrect result. The correct rule of law is that police officers with probable cause to search a car may inspect passengers' belongings found in the car that are capable of concealing the object of the search. Thus, the current state of the law is that probable cause that a vehicle contains contraband justifies a warrantless search of the vehicle and its contents, including *all* containers capable of concealing the contraband.

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In May the U.S. Supreme Court addressed the legality of media "ride-alongs." While executing an arrest warrant for a person in a private residence, officers invited a newspaper reporter and a photographer to accompany them. The reporters observed the officers' activities in the home and took photographs but were not involved in the execution of the warrant. The homeowners sued the officers in their personal capacities for monetary damages.

The Supreme Court held that it violates the Fourth Amendment rights of homeowners for police to bring members of the media or other third parties into their home during the execution of a warrant. An example of the presence of third parties aiding in the execution of a warrant is where police enter a home with a warrant to search for stolen property. The presence of third parties for the purpose of identifying the stolen property is acceptable. Finally, while this case involved an arrest warrant, it would clearly also apply to the execution of search warrants.

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