Police Prosecutor Update

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On February 14, 2011, the Indiana Court of Appeals issued a decision in *Goens v. State*, _____ N.E.2d _____ (Ind. App. 2011), regarding the validity of a traffic stop. In this case, an officer with the Greenwood Police Department made a traffic stop, due to the vehicle having one brake light out. While the officer was conducting the traffic stop, it became apparent that the driver of the vehicle was drunk. Ultimately, the driver took a certified breath test, which resulted in a .21 BAC.

The defendant was charged with Operating While Intoxicated (as a Class D felony) and was also charged with the habitual substance offender sentence enhancement. Prior to trial, the defendant filed a motion to suppress, asking that all evidence relating to the drunk driving investigation be suppressed, because the traffic stop was improper. The trial court denied that motion and the defendant appealed.

The Indiana Court of Appeals reviewed I.C. 9-19-6-6(a) and held that this statute required that a motor vehicle in Indiana was required to have at least one, but no more than one, operating brake light. Therefore, the Indiana Court of Appeals ruled that there was, in fact, no moving violation for having one of the three brake lights not operating and that the Greenwood Police Department officer had no reasonable suspicion to stop the vehicle. As a result, all of the evidence obtained after the traffic stop was suppressed and the defendant (pictured above) got a walk.

The State argued on appeal that in a prior Indiana Court of Appeals case, *Freeman v. State*, 904 N.E.2d 340 (Ind. App. 2009), the Court had decided that a traffic stop for one tail light out was valid. The Indiana Court of Appeals rejected this argument by the State, holding that, due to the way in which the statutes were written, there was a difference between one tail light being out and one brake light being out.

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On February 24, 2011, the Indiana Court of Appeals issued a decision in *Mason v. State*, _____ N.E.2d _____ (Ind. App. 2011), where the Court defined, for the first time, the meaning of the word "use" as it relates to the crime of Unlawful Use of Body Armor (a Class D felony).

In this case, officers with the Indianapolis Police Department responded to a burglary in progress at an apartment complex. While checking the parking lot, an officer spied the defendant lying down in the back seat of a car. The officer ordered the defendant out of the car. Instead, the defendant jumped into the front seat and then accelerated directly towards the officer. Two officers responded by firing several shots into the car driven by the defendant.

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When the car finally rolled to a stop, the officers attempted to get the defendant out of the car. Although injured, the defendant fought like a wildcat. One officer almost wore out his taser on the defendant, but it seemed to have little, if any, effect. Finally, the officers managed to remove the defendant from the car and discovered that he was wearing a bullet-proof vest. When questioned about why, the defendant said that he was going to try to sell it to one of the residents of the apartment complex.

The defendant was charged and convicted of several crimes, including Unlawful Use of Body Armor, a Class D felony. On appeal, the Indiana Court of Appeals held that it was not sufficient to merely prove that a defendant wore body armor during the commission of a felony. Instead, the State was required to prove that the defendant wore body armor *to protect himself* during the commission of a felony. Based upon all of the facts and circumstances in this case, the Court of Appeals upheld the defendant's conviction for Unlawful Use of Body Armor.

Investigation Hint: If you run across an individual committing a felony while wearing body armor, please help out your prosecutor by trying to get a statement from the defendant about why he was wearing the body armor. Even a good lie by the defendant is better than nothing.

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On March 2, 2011, the United States Supreme Court issued a decision in *Snyder v. Phelps*, _____ U.S. _____ (2011), holding that the actions of members of the Westboro Baptist Church, during a protest at a military funeral, were protected by the First Amendment right to free speech.

The members of the Westboro Baptist Church protest at military funerals because they believe that God hates and punishes the United States for its tolerance of homosexuality, particularly in the military. This group has gone to about 600 funerals of our fallen American military heroes, waving signs stating things such as, "Thank God for Dead Soldiers" and "God Hates Fags."

Although the U.S. Supreme Court upheld the protests as protected by the First Amendment, the Supreme Court did note that such protests could be properly restricted by the individual States as to time, place and manner. Because of the protests by the Westboro Baptist Church, Indiana and 43 other states have passed legislation restricting or otherwise relating to funeral protests. In 2006, the Indiana General Assembly passed an amendment to the Disorderly Conduct statute, making that crime a Class D felony if it occurs within 500 feet of any funeral, burial or funeral procession and adversely affects the funeral, burial, funeral procession or memorial service.