

Police Prosecutor Update

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After the police received a complaint that the defendant, Michael Alexander, had returned to an apartment complex that had previously banned him, police checked the defendant's driver's license status through the Indiana Bureau of Motor Vehicles. The police discovered that the defendant was an habitual traffic offender and that his driver's license had been suspended for life. The police also obtained the defendant's picture from the Indiana Bureau of Motor Vehicles.



A short time later, when the police saw the defendant, Michael Alexander, driving by, they pulled him over and arrested him. The defendant was charged with and convicted of Operating a Vehicle After License Forfeited for Life, a Class C felony.

On appeal, the defendant claimed that the police violated his 4th Amendment rights by obtaining his driving record and his picture from the Indiana Bureau of Motor Vehicles, without probable cause. In *Alexander v. State*, ____ N.E.2d ____ (Ind. App. 2011 – decided April 21, 2011), the Indiana Court of Appeals rejected the defendant's claim, holding that there is no reasonable expectation of privacy with respect to a person's BMV records. The Court of Appeals also noted that law enforcement officers are authorized to obtain records from the Indiana Bureau of Motor Vehicles, pursuant to I.C. 9-14-3.5-10.

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In *Staten v. State*, ____ N.E.2d ____ (Ind. App. 2011—decided April 18, 2011), the Indiana Court of Appeals affirmed the defendant's conviction for Operating While Intoxicated, as a Class A misdemeanor.

On August 25, 2008, an Indiana State Trooper observed a vehicle, driven by the defendant, Gregory Staten, on the Booneville Junior High School access road. The trooper saw the vehicle drive left of center and also drive through a 3-way stop sign without stopping or even slowing down.

The trooper initiated a traffic stop and quickly discovered that the defendant was intoxicated. After being advised of the Indiana Implied Consent Law, the defendant took a chemical test for intoxication, which indicated a blood alcohol content of .15 percent. The defendant was convicted at bench trial of Operating While Intoxicated, a Class A misdemeanor.



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On appeal, the defendant claimed that the evidence gathered by the police after the traffic stop should have been suppressed. The defendant argued that he had been issued a traffic ticket for Failure to Obey a Stop Sign, pursuant to I.C. 9-21-8-32. That statute prohibits disobeying a stop sign at an intersection with one or more entrances to a through highway. The defendant claimed “checkmate” with his argument that the stop sign that he ignored was a stop sign on a school access road, which was not on an entrance to a through highway. Therefore, according to the defendant, the traffic stop was improper and all evidence obtained as a result of the improper traffic stop should have been suppressed.

The State argued on appeal that the stop sign was valid because the Indiana Department of Transportation had designated the intersection a “stop intersection” under I.C. 9-24-4-11. The Indiana Court of Appeals cut through all of the statutory red tape and held that the Indiana State Trooper had seen the defendant disobey a stop sign and, regardless of which statute the violation was under, the trooper had the right to conduct that traffic stop.

In order to commit the offense of Operating While Intoxicated, as a Class A misdemeanor, the State must prove that the defendant operated a vehicle while intoxicated *and* operated the vehicle in a manner that endangered a person (like the driver below).



The defendant claimed on appeal that, because it was late at night and no one was around, the State had not proven that his driving had endangered anyone. In a 2-1 decision, the Indiana Court of Appeals held that in order to prove endangerment, the State must prove that the defendant was operating a vehicle in a condition or manner that *could* have endangered any person, including the public, the police or the defendant. The State is not required to prove that a person other than the defendant was actually in the path of the defendant’s vehicle. A police officer is not required to wait until the drunk driver crosses the centerline and adds another victim to the list of those who have died in drunk driving accidents.

The dissenting judge on the Indiana Court of Appeals believed that the plain language of the Operating While Intoxicated statute requires the State to prove that the defendant operated the vehicle in a manner that *actually* endangers a person.

After all of the legal hair-splitting about the meaning of the Operating While Intoxicated statute, the key to successful drunk driving prosecution remains solid and thorough drunk driving investigations by the police. The more observations that police can make and record about the dangerous manner in which a defendant operated his vehicle, whether that dangerous operation constitutes a traffic violation or not, the more likely it is that a prosecutor will be able to prove, beyond a reasonable doubt, that the intoxicated defendant operated the vehicle in a manner that endangered a person.



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