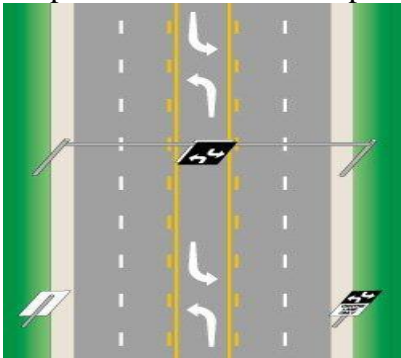


## SEARCH AND SEIZURE TRAFFIC STOP

On February 14, 2012, the Indiana Court of Appeals issued a decision in *State v. Lynch*, \_\_\_\_\_ N.E.2d \_\_\_\_\_ (Ind. App. 2012), REVERSING the trial court's order suppressing the evidence gathered by the police after a traffic stop.



At 1:00 a.m. an officer working with a drunk driving task force observed the defendant driving east on Washington Street in Indianapolis. Washington Street has two lanes for eastbound traffic and two lanes for westbound traffic, with a turn only lane in the center for use by both eastbound and westbound traffic. The officer observed the defendant turn left off of Washington Street, without using the turn only lane in the center of the street. As a result, the officer initiated a traffic stop.

During the stop, the officer reached the conclusion that the defendant was intoxicated. After his investigation, the defendant was arrested and charged with Operating While Intoxicated, as a Class D felony.

The defendant filed a motion to suppress the evidence arguing that the officer didn't have reasonable suspicion for the traffic stop. After a hearing, the trial court granted the motion to suppress stating there was insufficient evidence that the defendant committed a traffic violation.

The Court examined both the local ordinance and the state statute. The local ordinance stated, in relevant part:

“A driver of a vehicle intending to turn at an intersection shall do so as follows:

(2) The approach for a left turn shall be made in that portion of the right half of the roadway nearest the centerline thereof and, after entering the intersection, the left turn shall be made so as the leave the intersection to the right of the centerline of the roadway being entered.”

The state statute, I.C. 9-21-8-21, states in relevant part:

“A person who drives a vehicle intending to turn at an intersection must do the following:

(2) Make an approach for a left turn in that part of the right half of the roadway nearest to the centerline of the roadway. After entering the intersection, the person who drives a vehicle must make the left turn so as to leave the intersection to the right of the centerline of the roadway being entered.”

After examining these laws, the Court held that the defendant did, in fact, commit a traffic violation by turning left without using the turn only lane of the street. The Court stated that when there is a designated turn only lane for two directions of traffic, the center line is the outermost line of the turn only lane for that direction of travel.

### SEARCH AND SEIZURE REASONABLE SUSPICION

On March 1, 2012, the Indiana Court of Appeals issued a decision in *State v. Scott*, \_\_\_\_\_ N.E.2d \_\_\_\_\_ (Ind. App. 2012), AFFIRMING the trial court's granting of the defendant's motion to suppress evidence.

On April 27, 2010 at 9:00 a.m., a state trooper was parked in a median on I-65. The trooper clocked a BMW at fifty-six mph in a seventy mph speed zone. As the driver approached, the trooper saw the defendant, a black male, slow to fifty mph. He also thought the defendant was trying to "hide behind the pillar of the vehicle." The trooper then began to follow the defendant as he pulled into a McDonald's. The trooper waited at a nearby gas station and watched the defendant go through the drive-thru window. The defendant then drove to the gas station to eat his food and buy cigarettes and gas.



After watching for close to fifteen minutes, the trooper approached the defendant as he was pumping gas. He asked the defendant if everything was okay given his slow speed on the highway. The trooper also asked if he was wearing his seatbelt. The defendant responded that he was being careful because his tires were bald. The trooper then asked what he did for a living and asked him whether he had a "good license." The trooper then asked him for his driver's license and the defendant handed him his Illinois driver's license. While holding the license, the trooper asked more questions and told him he would be "good to go," if his license "checked out normally." However, prior to running the check on his license, the trooper continued to ask questions about the defendant's car – what year it was, how much it cost and what he did for a living.

After watching for close to fifteen minutes, the trooper approached the defendant as he was pumping gas. He asked the defendant if everything was okay given his slow speed on the highway. The trooper also asked if he was wearing his seatbelt. The defendant responded that he was being careful because his tires were bald. The trooper then asked what he did for a living and asked him whether he had a "good license." The trooper then asked him for his



Eventually the defendant opened his car door to get his registration. At some point, the trooper smelled the odor of burnt marijuana. The trooper asked the defendant to come back to his car and once inside read him his Miranda warnings. The defendant said his brother had borrowed the car and said there was no marijuana inside. A canine was then brought to the scene because the defendant refused consent to search his car. The canine alerted and they found a small amount of marijuana inside the car (Note: there is no discussion of how long it took for the canine to arrive at the scene). The defendant also told the trooper there was a handgun inside the car. It contained a partially obliterated serial number. The trial court granted the defendant's motion to suppress all the evidence. The Court of Appeals affirmed the trial court and held that the evidence should have been suppressed.

In general, an officer's approach and questioning of an individual that does not involve a detention in a public place is not a violation of the person's constitutional rights. However, the Fourth Amendment

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is triggered when there is a show of authority such that a reasonable person would have believed he was not free to leave. A full-blown arrest or a detention that lasts for more than a short period of time must be justified by probable cause. A consensual encounter occurs when a police officer makes a casual and brief inquiry of a citizen, which involves neither an arrest nor a stop. The encounter remains consensual as long as the person remains free to leave.

When an officer retains a person's driver's license, that person is considered detained. If there are additional factors that an officer observes, the retention of the license and further detention could be held reasonable. But in this case, the trooper did not observe the defendant commit a crime and he was not issued a ticket for any traffic violation. The trooper waited at least thirteen minutes before approaching the defendant. The Court held that once the trooper, who was standing between the defendant and his car, told the defendant that he had been following him, the defendant would not have believed that he was free to leave. Once the trooper asked for – and retained – the defendant's license, he was clearly not free to leave. The defendant was completely cooperative throughout the encounter. The Court pointed out that the trooper could have run the license plate on his car from the moment he started following the defendant but chose not to.

The Court finally held that this initial consensual encounter became a detention and seizure when the trooper retained the defendant's license for a much longer time period than what it would take to examine the license and perform a routine check. Therefore, the evidence was properly suppressed.