Police Prosecutor Update

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A recent case provides an opportunity to review the Seatbelt Enforcement law. Traffic stops based on a seatbelt violation are limited by the very statute that authorizes them. One sentence provides that a vehicle may be stopped to determine compliance with the seatbelt law. The next sentence limits police authority in such situations: "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.

However, the seatbelt enforcement law does not prohibit police from performing a limited pat-down search for weapons for officer safety when it is a result of actions or behavior on the part of the defendant *after the initial stop* which would lead the officer to fear for his safety. In such cases, a limited pat-down search for weapons is not a search *solely* because of a violation of the seatbelt law. The key to this rule, however, is that the circumstances justifying the limited pat-down search must be *over and above* the seatbelt violation.

Thus, where circumstances above and beyond the seatbelt violation arise after the initial stop, further police action may be justified. For example, one case held that the fact that the defendant became nervous and "fidgeted in his seat as if trying to hide or retrieve something" when the police officer approached the vehicle justified a pat-down search for weapons.

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In Issue No. 166 of the PPU, we discussed an Indiana Supreme Court case which held that placing a *permanent* license plate in a vehicle's rear window is an improper placement of the license plate and provides reasonable suspicion for a traffic stop. The court recently addressed the issue whether this law also applies to "interim" or temporary license plates. In this case, the defendant had a temporary paper plate of the type issued by a dealer to a purchaser in the rear window of his car.

The court reasoned that IC 9-18-26-10, which governs interim license plates, does not alter or amend the required placement and display of license plates set forth in IC 9-18-2-26 and IC 9-19-6-4(e). These statutes require that a license plate be displayed on the rear of the vehicle, securely fastened, in a horizontal position, and also be illuminated at night by a separate white light so as to be clearly legible from fifty feet. Placing a license plate on the inside of the rear window clearly does not satisfy the requirement that license plates be displayed on the *rear* of the vehicle. And, in the rear window, the license plate is not illuminated by a separate white light so that it is clearly legible from fifty feet.

In conclusion, because neither the statutes nor the regulations differentiate the display and illumination of permanent and interim plates, a license plate – be it permanent or temporary – must be mounted and illuminated as provided by IC 9-18-2-26 and IC 9-19-6-4. That is, the interim plate, even paper or cardboard, must be mounted in the same fashion as the permanent plate. Any other method of display would give rise to reasonable suspicion for law enforcement officers to initiate a traffic stop to determine whether the display complies with all statutory requirements.

This is a helpful case. The officer testified that he stopped the defendant's car solely for improper display of the temporary license plate. He asked for and received consent to search the car. Cocaine was found.

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Issue No. 197 of the PPU discussed the offense of DWI on private property. The evidence was pretty simple. DNR received a report of an off-road vehicle crash resulting in bodily injury. Investigation revealed that the defendant had suffered fractures and head trauma in a crash while operating his all-terrain vehicle well away from the public roadway in a wooded area on his own property. Officers suspected alcohol consumption, and blood was drawn at the hospital. His BAC exceeded 0.15. The defendant was charged with two DWI offenses. The trial court suppressed all evidence on the ground the defendant's operation of his all-terrain vehicle on his own private property "did not impact the public safety and should not be subject to charges of operating while intoxicated." The Court of Appeal affirmed.

The Supreme Court disagreed. It held that regardless of where the defendant's driving occurred, whether on public or private property, even if on the defendant's own property, the State is authorized to charge him with intoxicated driving offenses.

This is a publication of the Monroe County Prosecutor's Office which will cover various topics of interest to law enforcement officers. Please direct any suggestions you may have for future issues to Chris Gaal of the Monroe County Prosecutor's Office.