Police Prosecutor Update

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SEARCH AND SEIZURE
BLOOD DRAWS

On April 17, 2013, the United States Supreme Court issued a decision in *Missouri v. McNeely*, 133 S. Ct. 1552 (2013), affirming the trial court's granting of the defendant's motion to suppress the evidence.

A Missouri state trooper observed the defendant speeding and repeatedly crossing the center line. The traffic stop quickly turned into a drunk driving investigation. Eventually the defendant was offered a chemical test and the defendant refused. The trooper then transported the defendant to a hospital for a blood draw. The defendant did not consent to the blood draw but the trooper instructed the lab technician to take the blood sample anyway.

The trooper testified that normally he would have gotten a warrant for the blood draw but that he relied on an article that asserted he no longer had to get a warrant for nonconsensual blood draws due to changes in the Missouri implied consent laws. The defendant moved to suppress the blood draw alleging that the taking of the blood without a warrant was in violation of the 4th Amendment. All of the appellate courts found in favor of the defendant, including the United States Supreme Court. The Court held that exigent circumstances might apply to allow police to obtain a nonconsensual blood draw, without a warrant in a drunk driving case, but that the natural metabolism of alcohol by a human being was not, standing alone, a sufficient exigent circumstance. The Court emphasized that the exigent circumstances analysis was to be made on a case-by-case basis by examining the totality of the circumstances.

This decision by the United States Supreme Court seems to call into question I.C. 9-30-6-6(g) which allows for nonconsensual blood draws in certain circumstances with serious injury and/or death.

SEARCH AND SEIZURE
SEARCH WARRANT

On April 22, 2013, the Indiana Court of Appeals issued a decision in *Guilmette v. State*, ___ N.E.2d ___ (Ind. Ct. App. 2013), affirming the defendant's convictions.

The defendant and a co-worker were staying at their boss's house. One night the defendant murdered the co-worker in the boss's home. He then stole the victim's car and cash and went shopping at Walmart and

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Meijer. The defendant was on video driving the victim's car and spending his money. When the defendant was questioned about the murder, he denied any involvement in the murder and told the police he was at the Walmart and Meijer. A few days later, the defendant was confronted with the video, admitted stealing the victim's car keys and eventually admitted stealing his money as well. The defendant was then arrested for theft from both stores.

Officers took the defendant's clothes and shoes and gave him jail clothes to wear. They saw what they believed to be spots of blood on the shoes. The clothes and shoes were then transported to the lab where they were analyzed for blood and DNA. The police never obtained a search warrant for the items.

The results were not conclusive but showed a mixture on the shoes from which both victim and defendant could not be excluded. Later more evidence came to light allowing the State to charge the defendant with murder.

The Court found that it was appropriate for the police to take the defendant's shoes at the time of his arrest and to look at them for any evidence in plain view. However, because the defendant was arrested for the unrelated crime of theft and not murder, the police should have obtained a warrant prior to sending the items for blood and DNA analysis. The Court went on to say that the erroneous admission of the evidence was harmless because the conviction was supported by other substantial independent evidence of guilt.

SEARCH AND SEIZURE
TRAFFIC STOP

On April 23, 2013, the Indiana Court of Appeals issued a decision in *Robinson v. State*, ___ N.E.2d ___ (Ind. Ct. App. 2013), REVERSING the defendant's convictions.

A deputy observed the defendant twice drive her car across the fog line on the right side of the road and initiated a traffic stop for unsafe lane movement. The defendant was ultimately arrested for operating a vehicle while intoxicated as well as other offenses. The defendant filed a motion to suppress the evidence alleging the deputy lacked reasonable suspicion to stop the car because the in car video showed the defendant only touched the fog line but never left her lane of travel. The motion to suppress was denied and the defendant was convicted.

The Court of Appeals reversed the defendant's convictions stating that several factors should be considered when determining whether swerving within a lane or onto the fog line gives rise to reasonable suspicion. Those factors include the following: whether there is repeated swerving, whether there is swerving over an extended distance or period of time, whether the driver narrowly avoids hitting an object or causing an accident, whether road or weather conditions might explain the driver's conduct, and whether the driver overcorrects when returning to the proper lane of travel. Based upon the above factors, the Court of Appeals held that the traffic stop of the defendant was improper and that the evidence should have been suppressed.

SEARCH AND SEIZURE
TRAFFIC STOP

On April 24, 2013, the Indiana Court of Appeals issued a decision in *Keck v. State*, ___ N.E.2d ___ (Ind. Ct. App. 2013), affirming the trial court's order suppressing the evidence.

The defendant was traveling on a country road with "chip and seal" surface in parts and gravel in others. The road had potholes and no center line. The defendant was driving in the center portion of the road while being followed by a deputy. There was no oncoming traffic and the defendant was driving slower than the posted speed limit, but not erratically. The deputy conducted a traffic stop for driving left of center, in violation of I.C. 9-21-8-2. The defendant was ultimately charged with OWI.

The defense filed a motion to suppress alleging the deputy lacked reasonable suspicion to make the stop. The trial court granted the motion to suppress the evidence stating that driving left of center has become a necessity with the current conditions of our county roads.

I.C. 9-21-8-2 states:

"(a) Upon all roadways of sufficient width, a vehicle shall be driven on the right half of the roadway except as follows:

(1) When overtaking and passing another vehicle proceeding in the same direction under the rules governing overtaking and passing.
(2) When the right half of the roadway is closed to traffic under construction or repair.
(3) Upon a roadway divided into three (3) marked lanes for traffic under the rules applicable to a roadway divided into three (3) marked lanes.
(4) Upon a roadway designated and signposted for one-way traffic.

(b) Upon all roadways, a vehicle proceeding at less than the normal speed of traffic at the time and place under the conditions then existing shall be driven:

(1) In the right-hand lane then available for traffic; or
(2) As close as practicable to the right-hand curb or edge of the roadway;

except when overtaking and passing another vehicle proceeding in the same direction or when preparing for a left turn at an intersection or into a private road or driveway."

The Court of Appeals agreed with the trial judge and held that compliance with I.C. 9-21-8-2 was not possible under the circumstances of this case and affirmed the trial court's suppression of the evidence.

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