

Police Prosecutor Update

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The Seatbelt Enforcement Act, IC 9-19-10-3, was repealed but re-enacted verbatim in IC 9-19-10-3.1(a), effective July 1, 2007. It provides that "a vehicle may be stopped to determine compliance with this chapter. 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." A recent Court of Appeals case indicates that this statute severely restricts what a law enforcement officer can do during a seatbelt violation stop.

The facts indicate that a police officer observed the defendant driving a vehicle without wearing a seatbelt and initiated a traffic stop. The officer ordered him out of the car so he could conduct a pat-down search for weapons, believing it was necessary for his own safety because of his knowledge of prior incidents during which the defendant had been violent. While conducting the pat-down search, the officer asked him if he had anything on his person that the officer should know about, and the defendant responded that he had marijuana in his pants pocket. The officer retrieved the marijuana and placed him in custody. In a further search of the defendant, the officer found a white paper sleeve containing methamphetamine in a different pocket.

The Court first addressed the legality of the pat-down search. There was no question about the propriety of the initial traffic stop. The seatbelt law does not prohibit a limited weapons search for officer safety. The Court noted that a limited search for weapons would be "the result of actions or behavior on the part of the defendant *after* the initial stop that lead a police officer to fear for his safety." The officer testified that the sole basis for the pat-down search was his prior knowledge of the defendant's violent conduct on previous occasions. Although not based on the defendant's conduct after the stop, the Court said the officer's knowledge warranted the minimal intrusion of a weapons search.

Be that as it may, the marijuana was not discovered during the weapons search but only after the defendant's response to the officer's question. So long as it does not extend the length of a traffic stop, the general rule is that an officer may ask questions of a motorist, inquire about weapons in the vehicle, or request to search the vehicle. However, the Court said this general rule does *not* apply to a traffic stop based *solely* on a seatbelt violation. It stated that the General Assembly intended to limit, not expand, police authority when it passed the seatbelt law. The Court noted that our Supreme Court has stated that the statute requires that when a stop to determine seatbelt law compliance is made, *the police are strictly prohibited from determining anything else.*

A traffic stop based solely on the failure of the driver or a passenger to wear a seatbelt does not provide reasonable suspicion for an officer to unilaterally expand an investigation and "fish" for evidence of other possible crimes. However, an officer may expand his or her investigation subsequent to the traffic stop for a seatbelt violation if other circumstances arise after the stop which *independently provide* the officer with reasonable suspicion of other crimes.

The Court noted that in 2004 another Court of Appeals case held that without an independent reasonable suspicion of another crime arising out of circumstances after the seatbelt violation stop was initiated, the officer was prohibited from seeking consent to search the defendant's vehicle. Therefore, in the present case, the Court held that the officer was not justified in asking the defendant if he had anything on his person. As the Court stated, without circumstances arising after the stop which independently provide the officer with reasonable suspicion of other crimes, such conduct on the part of police officers is not permitted.

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.