

Police Prosecutor Update

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SEARCH AND SEIZURE TRAFFIC STOP

On November 13, 2015, the Indiana Court of Appeals issued its opinion in the case of Darringer v. State, ___ N.E.3d ___ (Ind. Ct. App. 2015). A sheriff's deputy observed that Darringer's vehicle did not have a license plate and followed it for about a mile. During that time, the deputy observed no traffic infractions. He stopped Darringer for having no license plate. When he was about 12 to 15 feet behind the vehicle, he activated his spotlight and at that time observed a temporary paper license plate taped in the rear window. He approached the driver's side. When he did so, he developed probable cause to arrest Darringer for operating a vehicle while intoxicated and operating a vehicle with an alcohol concentration of 0.08 grams or more.



Darringer filed a motion to suppress the evidence of intoxication, arguing that the deputy did not have grounds to stop the vehicle because the placement of the plate in the window was proper under I.C. 9-32-6-11. The Court denied Darringer's motion, and Darringer was found guilty in a court trial. During the court trial, the deputy testified that he was not aware that the law had changed to permit the temporary license plate to be posted in the window. On appeal Darringer argued that the interim plate was properly placed and that the State had failed to prove that the deputy had reasonable suspicion to stop the car. The State argued that the facts known to the deputy were sufficient to justify a reasonable officer's decision to stop Darringer's vehicle because the deputy testified he did not see a plate on Darringer's vehicle and only saw the interim plate after he had already exited his vehicle.

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.

The court, in analyzing this case, distinguished Heien v. North Carolina, 135 S.Ct. 530 (2104), where the court allowed evidence seized after a police officer pulled the defendant over under the mistaken belief that his vehicle had an equipment violation. In Heien, the Court found that the officer's interpretation of the statute, though wrong, was reasonable when read with other sections of the statute. Unlike Heien, the Indiana Code explicitly allows an interim plate to be displayed in the rear window. Therefore, the deputy's mistake of law was not reasonable.

If a police officer makes a temporary detention on a basis later determine to be insufficient, the stop may be upheld on another basis shown by the facts known to the officer. The deputy testified that he did not see a license plate on the bumper and did not look for one elsewhere on the car. Therefore, the court could not conclude that the interim plate was not clearly visible because the deputy did not look in the rear window. The court, therefore, reversed the defendant's conviction.

OPERATING WHILE INTOXICATED PRIOR FELONY ENHANCEMENT

On November 10, 2015, the Indiana Court of Appeals issued its opinion in the case of State v. Bazan, ___ N.E.3^d ___ (Ind. Ct. App. 2015). Bazan was arrested for operating a vehicle while intoxicated and was charged with numerous counts including Counts IV and V, which were operating while intoxicated enhance to a Level 6 felony by a conviction in New York on May 20, 2014, of operating a motor vehicle while ability impaired. Bazan filed a motion to dismiss counts IV and V, which the trial court granted. The state was granted leave to file and interlocutory appeal. The state contended that Bazan's 2014 conviction qualified as a previous conviction of operating while intoxicated. "Intoxicated" means under the influence of alcohol "so that there is an impaired condition of thought and action and the loss of normal control of a person's faculties." I.C. 9-13-2-86. A previous out-of-state conviction may be used to enhance the charges if the elements of the crime are substantially similar to the elements of I.C. 9-30-5-1 through 9. I.C. 9-13-2-130. Under New York law, operating while ability impaired is defined as "operate a motor vehicle while the person's ability to operate such motor vehicle is impaired by the consumption of alcohol." N.Y. Vehicle and Traffic Law § 1192.1. New York also has a statute prohibiting operating a vehicle while in an intoxicated state. The lesser offense of driving while impaired requires only a showing that the defendant's ability to operate a vehicle was impaired to some extent. Therefore, the court found, the previous conviction was not substantially similar to any of the Indiana crimes which can be used to enhance Operation While Intoxicated to a Level 6 felony. The court affirmed the trial court's dismissal.

