POLICE / PROSECUTOR UPDATE

Issue No. 102 May 2000

The Court of Appeals recently examined the seatbelt enforcement law. Specifically, the opinion addressed the scope of the following language in IC 9-19-10-3: ". . . 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."

The facts indicate that a law enforcement officer observed a vehicle in which the driver and passenger were clearly not wearing their seatbelts and initiated a traffic stop. The officer approached the passenger side of the vehicle where the defendant was sitting. The defendant appeared nervous and "fidgeting down in his seat as if he may be attempting to hide something." The officer feared that the defendant might be hiding a weapon and asked him to step out of the vehicle. As the defendant exited the vehicle, the officer saw a glass tube with burnt residue on the end (which he recognized as a pipe used to smoke crack cocaine) lying on the seat of the car where the defendant had been sitting. After discovering the crack pipe, the officer conducted a search of the passenger compartment and found another crack pipe inside the torn seat on which the defendant had been sitting. Both pipes had cocaine residue on them. The defendant attempted to suppress the pipes based upon the illegality of the initial stop. However, the Court held that the officer clearly observed that the defendant and the driver were not wearing seatbelts, so the stop was legal.

IC 9-19-10-3 does not prohibit police from performing a limited weapons search for officer safety." A limited search for weapons after the stop is not a search "solely because of a violation" of the seatbelt law. Rather, such a search is the result of actions of the defendant after the initial stop that lead a police officer to fear for his safety. Thus, IC 9-19-10-3 is *not* to be interpreted to prohibit police officers from conducting limited weapon searches to ensure their safety *so long as* circumstances exist over and above the seatbelt violation itself.

* * * * *

Another recent case also discussed searches during traffic infraction stops and reached a result opposite that in the first case. A police officer stopped the truck the defendant was driving because it had no rear bumper. As he activated his emergency lights, the officer observed the defendant turn around and reach with his right arm toward the floor of the truck. When the vehicles stopped, the defendant exited his truck and began pacing. He appeared "nervous" and "suspicious" to the officer. The officer asked him if he had any weapons, and he said no. The defendant consented to a weapons search of his person, and the officer found none. When the officer asked for permission to search the truck for weapons, the defendant said he had no weapons and refused to give consent for the vehicle search.

The officer believed the defendant was being honest about not having a weapon in the truck and therefore concluded that his nervousness must have another cause. He felt that cause might be drugs. He retrieved a trained narcotics dog from his squad car. The dog sniffed the exterior of the truck and alerted to the presence of drugs. A search of the truck led to the discovery of rock cocaine. The Court of Appeals said this evidence should be suppressed because, although the initial stop was proper, the officer lacked the requisite reasonable suspicion to detain the truck for the dog sniff.

While the law permits a vehicle search incident to a custodial arrest, it does not permit such a search incident to a traffic violation. However, detention for a sniff test by a trained narcotics detection dog is not prohibited IF law enforcement has reasonable suspicion to believe the property contains narcotics. Reasonable suspicion requires something more than a vague or unparticularized suspicion or hunch. In this case, the officer's safety concerns were alleviated before he retrieved his canine. At that point, his suspicion about the contents of the defendant's truck was based solely on the defendant's "nervousness." The officer's hunch based only on a vague and general characterization of demeanor did not rise to the level of reasonable suspicion.

Trigg v. State, 725 N.E.2d 446 (Ind. App. 2000).
Cannon v. State, 722 N.E.2d 881 (Ind. App. 2000).