POLICE / PROSECUTOR UPDATE

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In the February and June issues of the PPU, we looked at some Indiana Court of Appeals cases that held to prove the **"endangerment" element of Class A misdemeanor OWI** mere evidence of intoxication is not sufficient. The Indiana Supreme Court recently looked at this issue and concluded that these cases correctly stated the law. The current statutory scheme requires more than evidence of intoxication to prove endangerment. Outlaw v. State, ____ N.E.2d ____ (Ind. June 24, 2010).

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Our Supreme Court recently took a look at the **Seatbelt Enforcement law**. The facts show that a police officer was working an overtime shift when she drove past a pickup truck stopped at a stop sign and noticed that the driver, the defendant, was not wearing a seat belt. The officer approached the truck and recognized the defendant from a prior traffic stop, during which she had encountered no problems with him. The defendant was immediately cooperative with the officer and admitted that he did not have his seatbelt on. When speaking to the passenger, the officer noticed "a very large, unusual bulge" in the defendant's pocket. The officer asked him what was in his pocket, and he told her that it was his handgun. She asked him to exit the truck so she could retrieve his gun. Another officer who had arrived to assist started a pat down and felt a large object in the defendant's underwear. The defendant began to struggle and attempted to flee. The officers were eventually able to subdue him. The object in his underwear was later determined to be cocaine.

The Seatbelt Enforcement Act, IC 9-19-10-3.1, 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." The Court went on to state that the statute requires that when a stop to determine seat belt compliance is made, the police are *strictly prohibited* from determining anything else, even if other law would permit. A police officer making a seat belt stop is prohibited from even asking the driver for consent to search the vehicle or its occupants.

Basically, the statute simply does not permit investigatory behavior on the part of the police based solely on a seat belt violation unless circumstances *arise after* the stop that independently provide the officer with reasonable suspicion of other crimes. Also, an officer may conduct a limited search or inquiry concerning weapons if the officer reasonably believes that he or others may be in danger.

In this case, the officer initiated the traffic stop solely under the Seatbelt Enforcement Act after she observed the defendant driving without wearing a seat belt. When the officer approached the car, she recognized the defendant from a prior traffic stop, during which she had encountered no problems with violence or resistance. Additionally, the defendant was immediately cooperative with the officer and admitted that he was not wearing his seat belt.

While the officer did observe an "unusual bulge," this fact standing alone did not provide independent basis of reasonable suspicion, especially in light of the defendant's immediate compliance and the officer's prior peaceful exchange with the defendant.

State v. Richardson, 927 N.E.2d 379 (Ind. June 3, 2010).

This is a publication of the Clark County Prosecuting Attorney, covering various topics of interest to law enforcement officers. It is directed solely toward issues of evidence, criminal law and procedure. Please consult your city, town, or county attorney for legal advice relating to civil liability. Please direct any suggestions you may have for future issues to Steve Stewart at 285-6264.