



# POLICE / PROSECUTOR UPDATE

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In the September, 1999, issue of the PPU, we looked at a case in which the Court of Appeals (in a 2-1 decision) held that a police officer may not routinely order a passenger of a vehicle to remain at the scene of a routine traffic stop. Last month a different three-member panel (in a 3-0 decision) disagreed. It held that the police have a limited right to briefly detain a passenger who exits a vehicle after it has been lawfully stopped. As an exercise of this authority, the police may order a passenger who has exited a lawfully stopped vehicle to return to the vehicle for purposes of ensuring officer safety and allowing the officer to assess the situation. This authority extends only long enough for the police to make an initial assessment of the situation. This brief detention does not necessarily encompass the entire length of the traffic stop. Again, the detention is authorized only to ascertain the situation and to alleviate any concerns the officer has for his or her safety. However, if probable cause or reasonable suspicion develop during this short period of time, then the officer may be justified in detaining the individual longer in order to further investigate.

Therefore, until the Indiana Supreme Court addresses the question, there is authority to support both sides of this issue.

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Again last month, the court of appeals issued an opinion which also addressed the scope of a police officer's authority during a routine traffic stop. The issue presented in the case was whether a police officer may routinely ask a driver legitimately stopped for a traffic violation if he has a weapon in the vehicle or on his person. The court stated that a police officer may not as a matter of routine practice make such an inquiry. More specifically the court stated that prior to

making an inquiry about the presence of weapons, the officer must either: (1) be warranted in believing that his safety was threatened; or (2) the question must reasonably relate to the basis for the traffic stop. When an officer's safety is not at risk, the officer may not as a matter of routine practice inquire about the presence of weapons. The police do not have a right to inquire about the presence of weapons without some reasonable and articulable basis for the question.

In this case, the police officer testified that he was on patrol in a high crime area in the early morning hours. He observed the defendant's vehicle being driven erratically and the defendant committing traffic infractions (failing to signal turns). The officer stopped the vehicle on suspicion the driver was impaired. He also testified he noticed that a passenger in the back seat of the car kept turning around to look at the pursuing patrol car. After stopping the car, the officer, before asking for identification, asked the defendant whether he had any weapons in the car. The defendant said he did. The officer further stated that he asked this question of every person he stops for safety reasons. He once had to shoot a person during a traffic stop and he had been stabbed during traffic stops.

The Court of Appeals stated that the officer's testimony did not establish that his inquiry was based on any specific and articulable facts that caused him to fear for his safety. While the officer may have had a subjective fear for his safety based on his experience in other traffic stops, he pointed to no objective facts that caused him to believe the defendant was armed and dangerous. The evidence was suppressed. (Yes, this logic is ridiculous, but for now we have to live with it.)

Tawdul v. State, \_\_ N.E.2d \_\_ (Ind. App. 12/20/99)

Lockett v. State, \_\_\_ N.E.2d \_\_\_ (Ind. App. 12/20/99).

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