



POLICE / PROSECUTOR UPDATE

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IC 9-30-2-2 provides that a "law enforcement officer may not arrest . . . a person for a violation of an Indiana law regulating the use and operation of a motor vehicle . . . unless at the time of the arrest the officer is (1) wearing a distinctive uniform and a badge of authority; or (2) operating a motor vehicle that is clearly marked as a police vehicle." A Court of Appeals case examined the scope of this statute.

The facts of the case are simple. The defendant was stopped by plain clothes police officers in an unmarked police car. Immediately before stopping the defendant's vehicle, the officers had observed that he had almost rear-ended a car that was stopped in order to allow a pedestrian to cross the street. The defendant was arrested for criminal recklessness. While officers were looking for registration papers in the defendant's car, they found a pill bottle containing packets of heroin. The defendant contended that this evidence should have been suppressed. Relying on the distinctive uniform or marked vehicle statute, the defendant argued that since the officers were neither driving a marked police car nor wearing a distinctive uniform, they had no authority to arrest him; therefore, the arrest was unlawful, and the heroin found in the car was inadmissible. The defendant was wrong.

The defendant was arrested and charged with criminal recklessness. The criminal recklessness statute is not a law "regulating the use and operation of a motor vehicle." The statute's purpose is to punish those whose personal conduct presents a substantial risk of bodily harm to others. The defendant was charged with a class A misdemeanor, which results from committing a reckless act that includes the use of a vehicle. However, this element does not cause the criminal recklessness statute to become a law "regulating the use and operation of a vehicle." Instead, it merely provides for a more serious penalty when the individual commits the reckless act while using a vehicle. Here, because the officers stopped the defendant based on his criminally reckless actions,

there was a valid arrest and the evidence found in the car as a result of that arrest was admissible.

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We will now look briefly at the law regarding "protective sweeps." A protective sweep is a "quick and limited search of a premises, *incident to an arrest* and conducted to protect the safety of police officers or others. It is narrowly confined to a cursory visual inspection of those places in which a person might be hiding."

As an incident to an arrest, the officers can, as a precautionary measure and without probable cause or reasonable suspicion, look in closets and other spaces *immediately adjoining* the place of arrest from which an attack could be *immediately* launched. To go beyond immediately adjoining areas, there must be articulable facts warranting the arresting officers to reasonably believe that "the area to be swept harbors an individual posing a danger to those at the arrest scene.

Scope of sweep - A protective sweep cannot be a full search but only a quick inspection of those areas where a person could be found. It can last no longer than is necessary to dispel the reasonable suspicions of the officers, but in any event, it cannot last longer than it takes to complete the arrest and depart the premises. If the protective sweep has been properly undertaken and limited, evidence found in plain view may be seized.

Thompson v. State, 702 N.E.2d 1129 (Ind. App. 1998).

Maryland v. Buie, 494 U.S. 325, 110 S.Ct. 1093 (1990).

Smith v. State, 565 N.E.2d 1059 (Ind. 1991).

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