



# POLICE / PROSECUTOR UPDATE

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Both the United States and Indiana Supreme Court have stated that “**pretextual**” traffic stops – police stops for traffic violations as a pretext to investigate drivers or vehicles for other reasons – are reasonable and therefore constitutional. Our Supreme Court said it found nothing unreasonable in permitting an officer, who may have knowledge or suspicion of unrelated criminal activity by the motorist, to nevertheless respond to an observed traffic violation. However, a Court of Appeals case reminds us that the stop must still be proper and legal.

The basic facts are that during the course of an investigation into a series of break-ins, the police came to suspect the defendant was responsible and began surveillance. Early one morning, a detective saw the defendant leave his home. The detective instructed a deputy sheriff, who was in uniform and in a marked car, to stop the defendant if he observed him commit any traffic violations. The deputy was stopped for a red light when he observed the defendant’s vehicle. The deputy watched the vehicle “for probably just under a quarter of a mile.” He testified it took “less than a minute,” for the vehicle to travel that distance. Based on his observations, the deputy (who had been trained to estimate vehicle speeds within 5 miles per hour over or under what radar would detect) estimated the defendant “was probably going 55.” The deputy “believed” the speed limit was 45 m.p.h. but did not “know exactly.” He stopped the vehicle and told the defendant he was being stopped for speeding.

The deputy verified the identities of the defendant and his passenger and returned to his vehicle to check the defendant’s driving status. The deputy informed the detective that he had stopped the defendant. The detective arrived as the deputy was getting out of his car to complete the traffic stop. No paperwork was generated in connection with the traffic stop and no ticket was issued.

The detective identified himself and told the defendant he was free to leave. He asked the defendant if he would be willing to discuss the burglaries. The defendant agreed to talk. The two sat in the detective’s car for ten to fifteen minutes. The defendant first denied knowledge of the burglaries but later admitted to some of them.

The Court of Appeals said the stop of the defendant’s vehicle was unreasonable and violated the Indiana Constitution. Evidence arising out of the illegal stop, including the confession, had to be suppressed. Police officers may stop a vehicle when they observe minor traffic violations. A stop is lawful if there is an objectively justifiable reason for it, and the stop may be justified on less than probable cause. If there is an objectively justifiable reason, then the stop is valid whether or not the police officer would have otherwise made the stop but for ulterior suspicions or motives.

In this case, although the deputy estimated the defendant’s speed at 55 miles per hour, he did not know the speed limit in the area of the stop. Therefore, the stop was not reasonable. Also, the detective intended to use the traffic stop to “provide a situation” to talk to the defendant. The encounter between the defendant and the detective began shortly after the deputy stopped him. After telling the defendant he was free to leave, the detective asked to speak with him regarding the burglaries and he agreed.

In the court’s view, because of the detective’s intent and the short amount of time that elapsed before the conversation with the detective began, the defendant’s agreement to talk was not an intervening circumstance sufficient to remove the taint of the illegality of the traffic stop. The confession was suppressed. Turner v. State, 862 N.E.2d 695 (Ind. App. 2007).

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