[**CAPTION]**

MEMORANDUM IN SUPPORT OF MOTION TO SUPPRESS EVIDENCE (SEATBELT STOP)

STATEMENT OF FACTS

[Insert Facts]

INDIANA SEATBELT ENFORCEMENT ACT

Indiana's Seatbelt Enforcement Act, found at Ind. Code § 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."

In Baldwin v. Reagan, 715 N.E.2d 332, 337 (Ind. 1999), the Indiana Supreme Court held that a police officer may not stop a motorist in Indiana for a possible seat belt violation unless the officer reasonably suspects that the driver or a passenger in the vehicle is not wearing a seat belt as required by law. Such reasonable suspicion exists when the officer observes the driver or passenger under circumstances that would cause an ordinary prudent person to believe that the driver or passenger is not wearing a seat belt as required by law. Id. For purposes of this motion only, Defendant does not dispute the officer's indication that he observed Defendant not to be wearing his seat belt.

The Baldwin Court further discussed the importance of the second sentence that a search cannot be based solely on a violation of the seatbelt statute. The Court adopted the interpretation of the statute urged by the Indiana Attorney General, i.e., that the Act was intended to provide motorists with protection from pretextual seat belt searches and seizures that Whren v. United States, 517 U.S. 806 (1996), authorized. Following Baldwin, supra, the Court of Appeals held that a search of a car pursuant to the driver's consent violated Article I, Section 11 of the Indiana Constitution because the traffic stop was based solely on a seatbelt violation, and no facts arose during the stop that would have reasonably led him to believe that criminal activity had occurred or was about to occur. Clark v. State, 804 N.E.2d 196 (Ind.Ct.App. 2004).

In contrast, in Trigg v. State, 725 N.E.2d 446, 448 (Ind.Ct.App. 2000), it was determined that a limited search for weapons subsequent to an investigative seatbelt stop was not a search "solely because of the violation" of the seatbelt law, when the vehicle occupant behaved in a way to cause the officer to fear for his safety and such a search was otherwise justified under Terry v. Ohio, 392 U.S. 1 (1968). Such a limited weapons search was held not to be invalid pursuant to I.C. § 9-19-10-3 and Baldwin, supra.

However, even when legitimate safety concerns arise during a seatbelt stop, the acts the officers take to ensure their safety must be limited in scope. See, e.g., Pearson v. State, 870 N.E.2d 1061 (Ind.Ct.App. 2007) (officer was not justified in asking the defendant during pat-down search if he had anything on his person, which led to discovery of marijuana and methamphetamine; question was an attempt to "fish" for evidence of other crimes and went beyond the discretion afforded officers during traffic stops initiated under I.C. 9-19-10-3 solely for purposes of seatbelt enforcement).

This statute was further reviewed in State v. Morris, 732 N.E.2d 224 (Ind.Ct.App. 2000):

> We think the plain language of this statute evidences the General Assembly's intent that a traffic stop based upon the failure of either the driver or passenger to wear a seatbelt, standing alone, does not provide reasonable suspicion for the police to unilaterally expand their investigation and "fish" for evidence of other possible crimes. However, when circumstances arise after the initial stop that create reasonable suspicion of other crimes, further reasonable inspection, search, or detention is no longer "solely" because of a seatbelt violation and does not contravene the plain language of the statute. The officer may only expand his or her investigation subsequent to the stop if other circumstances arise after the stop, which independently provide the officer with reasonable suspicion of other crimes. Reasonable suspicion exists where the facts known to the officer, together with the reasonable inferences arising from such facts, would cause an ordinarily prudent person to believe that criminal activity has or is about to occur.

Id. at 228 (citing Baldwin, 715 N.E.2d. at 337).

In Morris, a police officer observed that Morris was not wearing his seatbelt and initiated a traffic stop. The officer requested Morris' license for the purpose of issuing a warning or citation for failure to wear a seatbelt. Upon learning that Morris could not provide a license, the officer ran a driver's license check and discovered that Morris was suspended. Morris was asked to exit the vehicle and was subsequently observed to be under the influence of alcohol.

The Morris Court reversed the trial court's order suppressing evidence of Morris' license suspension and intoxication finding that such evidence was not obtained solely because Morris was not wearing a seatbelt. Id. at 228. Morris' failure to produce his license was determined to be a circumstance independent of the initial seatbelt violation [i.e. the inability to produce a drivers license], which provided the officer with a reasonable suspicion that Morris might not have a valid driver's license.

In the instant case, the Defendant presented a facially valid, unexpired license. The officer had sufficient information in his possession for the purpose of issuing a citation or warning. No independent circumstances arose after the stop which required further investigation. Nevertheless, the officer ran a driver's license check which led to the officer's discovery of the Habitual Traffic Violator suspension. The driver's license check and discovery of the suspension was not obtained as a result of an independent circumstance (such as furtive gestures in Trigg, supra., or failure to produce a license in Morris, supra) arising after a proper initial stop. There was no subsequent independent circumstance justifying the officer's action.

No independent reasonable suspicion of other crimes existed based upon the facts known to the officer, together with any reasonable inferences arising therefrom, which would cause an ordinarily prudent person to believe that criminal activity had occurred. Morris, at 228 (quoting Baldwin, 715 N.E.2d at 337). Such suspicion only existed after the officer's impermissible expansion of the investigation.

CONCLUSION

The investigation and arrest of Defendant for Operating a Vehicle While Suspended as an Habitual Traffic Violator was contrary to law and any evidence regarding Defendant's driver's license status; any statements, utterances, reports of gestures and responses by Defendant during the investigation and the subsequent detention which followed his arrest; any identifying information, photographs, fingerprints and other information, the product of the processing of Defendant following his arrest, and the fruits thereof should be suppressed.

(Signature)

CASE LAW

Taylor v. State, 904 N.E.2d 259 (Ind.Ct.App. 2009) (where officer searched the defendant for his safety after completion of traffic stop due to seatbelt violation, I.C. 9- 19-10-3.1 was not violated because the search was not solely due to the seatbelt violation).

Harper v. State, 922 N.E.2d 75 (Ind.Ct.App. 2010) (declining to extend the language in the seatbelt law to the traffic violation of failing to illuminate license plate).

State v. Washington, 898 N.E.2d 1200 (Ind. 2008) (to the extent that Clark holds that Section 11 of Indiana Constitution generally prohibits police from questioning motorists or seeking consent to search following a terminated traffic stop, it is incorrect).