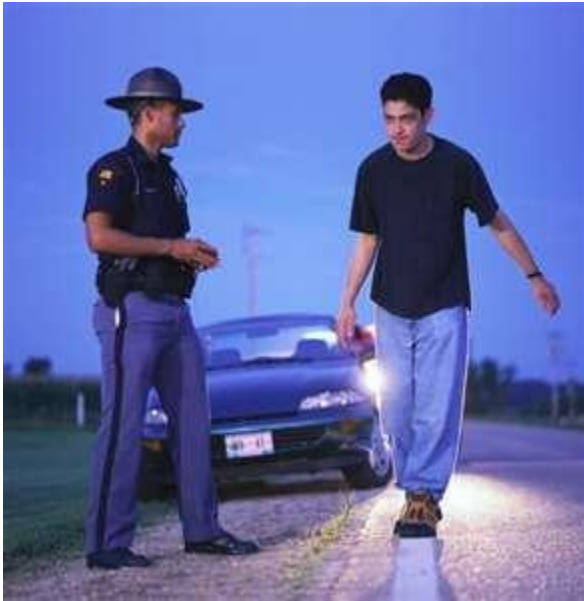


Police Prosecutor Update

Issue No. 229
April 2011

On March 24, 2011, the Indiana Court of Appeals issued a decision in *Cohee v. State*, _____ N.E.2d _____ (Ind. App. 2011), affirming the trial court's denial of a motion to suppress evidence in a drunk driving case.



On April 10, 2010, a Richmond Police Department officer conducted a traffic stop on a vehicle driven by the defendant, Michael Cohee. The officer quickly realized that the defendant was intoxicated. The officer had the defendant perform a number of field sobriety tests, which the defendant failed. The defendant was then arrested for Public Intoxication.

The defendant was advised by the police officers at the scene of the Indiana Implied Consent Law. The officers requested that the defendant submit to a blood draw and the defendant stated that he wanted a lawyer. The police officers advised the defendant that he was not yet entitled to legal counsel and that he needed to respond to the request to submit to a blood draw, and that if he did not consent, his refusal would result in the loss of his driver's license.

The defendant eventually consented to the blood draw, which indicated a blood alcohol content of .236. The Prosecutor charged the defendant with Operating While Intoxicated and the habitual substance offender sentence enhancement.

The defendant, through his counsel, filed a motion to suppress all of the evidence obtained by the police, including the blood draw results, alleging that because the defendant was arrested by the police for Public Intoxication, the police were required to advise the defendant of his rights under *Miranda v. Arizona*, 384 U.S. 436 (1966) and his rights under the Indiana Constitution, pursuant to *Pirtle v. State*, 263 Ind. 16, 323 N.E.2d 634 (1975). The trial court denied the defendant's motion to suppress and the defendant took it up on appeal.

The Indiana Court of Appeals rejected the defendant's arguments on appeal. The Indiana Court of Appeals reaffirmed the long-standing rule that, under the Indiana Implied Consent Law, the police are not required to advise the defendant of his rights and the defendant has no right to consult with an attorney prior to deciding whether or not to submit to a chemical test for intoxication.

The police officers in this case acted properly. The case was sent back to the trial court in Wayne County for trial.

This is a publication of the Prosecutor's Office which will cover various topics of interest to law enforcement officers. Please direct any suggestions you may have for future issues to the Prosecutor's Office.

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On March 30, 2011, the Indiana Court of Appeals issued a decision in *Granger v. State*, _____ N.E.2d _____ (Ind. App. 2011), affirming the defendant's convictions for five counts of Child Molesting (a Class A felony), three counts of Child Molesting (a Class C felony) and one count of Child Seduction (a Class D felony).

This case involved Sheila Granger, who had sexual relations with two 11 and 12 year old boys. The victims told detectives about the sexual contact they had with the defendant and also told detectives that the defendant had introduced them to vibrators and condoms, had discussed getting a sex manual, and had advised each of the boys that she had become pregnant by them. As a part of the investigation, the police obtained a search warrant to search the residence of the defendant. The search warrant authorized the police to search for and seize, "evidence pertaining to the crime of child molesting to wit but not limited to a vibrator, nuva ring contraceptive device and condoms."

During the execution of the search warrant at the defendant's residence, the police discovered and seized a "Manual of Sexual Positions," some handwritten notes, three playing cards depicting nude figures, four vibrators, condoms, an E.P.T. Home Pregnancy Test Kit and an item called a "Tongue Joy Turbo Pack." All of these items were introduced into evidence at the defendant's trial.



On appeal, the defendant claimed that it was not proper to introduce into evidence most of the items seized by police during the execution of the search warrant because those items were not specifically authorized by the search warrant. The Indiana Court of Appeals disagreed, holding that when police seize items during a search pursuant to a search warrant, and those seized items are not specifically listed in the search warrant, the seizure will be valid if:

1. The officer's presence is authorized by the search warrant;
2. The items seized are in plain view; and
3. The incriminating nature of those items is "immediately apparent."

The "immediately apparent" requirement does NOT require that the items seized be drugs or some other contraband. The "immediately apparent" requirement will be met if the police officers seizing the items have probable cause to believe that the seized items will prove useful in solving a crime. It does not even have to be the particular crime that the police are investigating at that time.

The Indiana Court of Appeals upheld the seizure of almost all of the items specified above (except the playing cards – it seems the victims had never seen those before), as they were related, in some fashion to the crimes committed by the defendant, Sheila Granger. You gotta' love plain view.....

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