

Police Prosecutor Update

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In October, 2010, the Indiana Court of Appeals issued a decision holding that an individual who was a passenger in a vehicle and was intoxicated did not commit the offense of Public Intoxication. The Court of Appeals held that the policy behind the public intoxication statute was to prevent intoxicated persons from bothering or threatening the safety of other persons in a public place and that simply being an intoxicated person in a vehicle did not necessarily violate that policy.

This case caused concern among law enforcement agencies about what a police officer was to do with an intoxicated passenger in a vehicle if the driver was also intoxicated or if the vehicle had to be towed.

On January 14, 2011, the Indiana Supreme Court accepted transfer of this case, meaning that the Indiana Court of Appeals decision is no longer valid. It is expected that the Indiana Supreme Court will issue a decision in this case sometime later this year. The Indiana legislature is also considering making some changes to the Public Intoxication statute.

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Another recent decision of the Indiana Court of Appeals dealt with the issue of whether an individual operating a farm tractor could be arrested and prosecuted for Operating While Intoxicated and Driving While Suspended. In this case, police in Franklin County discovered that the defendant had driven his Massey Ferguson farm tractor to a location in an attempt to pull his Lexus out of a ditch. The defendant was allegedly intoxicated and also had a suspended driver's license, with a prior. The defendant was arrested for Operating While Intoxicated (a Class D felony) and Driving While Suspended (a Class A misdemeanor).

The trial court dismissed the charges and the State appealed. On appeal, the Indiana Court of Appeals held that the defendant could be charged with Operating While Intoxicated for operating the farm tractor because a farm tractor was a "vehicle" for purposes of that statute. However, the Indiana Court of Appeals held that the defendant could not be charged with Driving While Suspended because a "motor vehicle" was required for driving while suspended and a farm tractor was specifically excluded from the definition of a "motor vehicle."

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.