

# Police Prosecutor Update

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This month we will look at a couple of recent Court of Appeals cases. The first is a public intoxication case, which addressed the “public place” element. The facts are simple. A police officer received a dispatch concerning suspicious activity near a residence. Upon arriving at the scene, the officer noticed a car parked in a driveway behind a vacant house. The defendant was inside the car, reclining in the front passenger seat and was clearly intoxicated. There was a can of beer and a mostly empty whiskey bottle in the car. The defendant was charged with and convicted of public intoxication. The defendant argued on appeal that there was insufficient evidence she was in a public place when the officer found her intoxicated.

A “public place” does not mean only a place devoted to the use of the public. It also means a place that “is in point of fact public, as distinguished from private, -- a place that is visited by many persons, and usually accessible to the neighboring public.” The court then reviewed case law involving similar facts. With respect to intoxicated persons in private vehicles, it has been held that a conviction for public intoxication may stand where the defendant was a passenger in a car stopped by police on a public road. A conviction also may be supported by evidence that the defendant was seen in a vehicle on a public road moments before pulling into a parking lot. Likewise, a defendant may be convicted of public intoxication for being inside a vehicle parked on the shoulder of a busy highway. By contrast, the Court of Appeals has refused to uphold a public intoxication conviction where the defendant was only observed inside a car parked on a private driveway. The court refused to infer that the defendant must have traveled on a public road in an intoxicated state before arriving at the driveway. Therefore, the court reversed the conviction because nobody observed the defendant in an intoxicated condition except while she was sitting in a vehicle parked on private property.

Of interest is what the court said in a footnote in its opinion. It questioned whether it serves the purpose of the public intoxication statute to convict persons of public intoxication who are passengers in a private vehicle traveling on a public road. A public place must be accessible to the public, and it is difficult to accept the premise that the inside of a closed vehicle traveling on a highway is accessible to members of the public. The court further said it is also difficult to perceive the public policy behind criminalizing riding in (as opposed to driving) a private vehicle in a state of intoxication. In fact, said the court, perhaps the better public policy would be to encourage persons who find themselves intoxicated to ride in a vehicle to a private place without fear of being prosecuted for a crime. It will be interesting to see if this view will lead to a change in the law in this area.

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Although not of earthshaking importance, the Court of Appeals has determined that a driver of an ATV should not be prosecuted for driving under the influence of alcohol on private property pursuant to IC 9-30-5-1 and -2, the statutes governing the offense of operating a vehicle while intoxicated. The State should instead proceed under IC 14-16-1-23 and -29, the statutes governing a defendant’s operating of an off-road vehicle while under the influence of an alcoholic beverage.