

Police Prosecutor Update

Issue No. 219
February 2010

Two recent Court of Appeals cases addressed issues arising in Operating While Intoxicated cases. In both cases, for differing reasons, no breathalyzer results were available.

In both cases, the defendant attacked the State's proof of intoxication. IC 9-13-2-86 defines intoxication in part as being under the influence of alcohol such "that there is an *impaired* condition of thought and action and the loss of normal control of a person's faculties." The State thus must establish that the defendant was impaired regardless of blood alcohol content. Impairment can be established by evidence of: (1) the consumption of a significant amount of alcohol; (2) impaired attention and reflexes; (3) watery or bloodshot eyes; (4) the odor of alcohol on the breath; (5) unsteady balance; (6) failure of field sobriety tests; and (7) slurred speech.

The element that distinguishes Class A misdemeanor OWI from Class C misdemeanor OWI is endangerment. To convict of the Class A misdemeanor, the State has to prove beyond a reasonable doubt that the defendant operated a vehicle while intoxicated "in a manner that endangered a person." The element of endangerment can be established by evidence showing that the defendant's condition or operating manner could have endangered any person, including the public, the police, or the defendant. Endangerment does not require that a person other than the defendant be in the path of the defendant's vehicle or in the same area to obtain a conviction. The effect of 2001 legislative changes was to remove the "endangerment" requirement from the general definition of intoxication and create the new offense of Class C misdemeanor OWI without the endangerment requirement. Class A misdemeanor OWI was retained, which requires the endangerment showing. By definition then, the current statute requires more than intoxication to prove endangerment. Thus, both Court of Appeals cases held that the State is required to present proof of "endangerment" that goes beyond mere intoxication in order for the defendant to be convicted of OWI as a Class A misdemeanor.

In one of the cases, the defendant's vehicle was stopped for a non-illuminated license plate rather than erratic or unlawful driving, and no evidence other than the intoxication suggested that the defendant was operating his vehicle in a manner that endangered anyone. This was not sufficient to convict of the Class A misdemeanor. In the other case, the only independent evidence of endangerment was that the defendant was stopped for driving 51 m.p.h. in a 35 m.p.h. zone. In the court's view, this was sufficient to prove endangerment, although the court stated, "we decline to determine the precise extent of speeding, in the absence of other factors, necessary to show endangerment."

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Another Court of Appeals case provides the opportunity to review the law regarding "in custody" for purposes of *Miranda* warnings.

The requirement that a person be advised of his *Miranda* rights applies only to interrogations conducted in "custodial settings." "Custodial" interrogation may occur without a formal arrest if a reasonable person in the accused's circumstances would believe that he is not free to leave. The warnings are not required simply because the questioning takes place in a police station. A person who goes voluntarily for a police interview, receives assurances that he is not under arrest, and leaves after the interview is completed has generally not been taken into custody.

In this Court of Appeals case, the Court decided on the following facts that the person was not in custody. When the officer approached the defendant at his residence, he identified himself and said that he needed to speak with him regarding an investigation. He did not reveal what the investigation was about and the defendant did not ask. Since he did not want the interview conducted at the residence, the officer gave the defendant the option of riding with him or driving himself to the police station, which was only three blocks away. The defendant chose to ride with the officer. He rode in the front passenger seat and was not handcuffed or restrained in any way. The interview was conducted in the officer's personal office rather than an interrogation room. The officer closed the door but did not lock it. He told the defendant that he was not under arrest, that he was free to leave at any time, and that the officer would take him home after the interview no matter what the defendant said. The interview lasted less than two hours, and the officer did, in fact, take him home.