

# Police Prosecutor Update

Issue No. 262  
April 2014

## PUBLIC INTOXICATION

On March 24, 2014, the Indiana Court of Appeals issued a decision in *Sesay v. State*, \_\_\_\_\_ N.E.2d \_\_\_\_\_ (Ind. Ct. App. 2014), REVERSING the defendant's conviction for Public Intoxication.

At 3:00 a.m. an officer was dispatched to a "no information accident". When the officer arrived, he found a car with its left side tires off the side of the road stuck in a drainage ditch. The defendant was standing next to the car approximately three to five feet away from the roadway. The defendant was covered in mud and it appeared to the officer that he had vomited on himself. He had several other classic signs of intoxication. The defendant told the officer that his girlfriend had been driving but no one else was around. The girlfriend did arrive a short time later. The officer did not see the defendant in the roadway at any point and there was no evidence he was ever in a position such that a car traveling lawfully on the road could hit him where he stood.

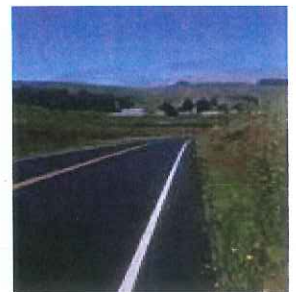


The defendant was arrested for Public Intoxication and found guilty at a bench trial. The Court of Appeals reversed the defendant's conviction holding that the State did not prove that the defendant endangered his own life. The Court of Appeals held that the conduct of the intoxicated person must cause the endangerment. The Court pointed out that even a sober person could have been hit by a car driving erratically or failing to pay attention. Here, the defendant had not and did not try to walk away from the scene, he wasn't in the roadway, and never fell down. There was nothing to indicate that the defendant's intoxication made it more likely that he could be hit by a car, and it is his conduct and not the conduct of a passing motorist that is the relevant consideration. Speculation regarding things that could happen in the future is not sufficient to prove the present crime of Public Intoxication.

## REASONABLE SUSPICION TRAFFIC STOP

On March 25, 2014, the Indiana Supreme Court issued a decision in *Robinson v. State*, \_\_\_\_\_ N.E.2d. \_\_\_\_\_ (Ind. 2014), affirming the trial court's denial of the defendant's motion to suppress.

A deputy observed the defendant twice drive her car across the fog line on the right side of the road and initiated a traffic stop. The defendant was ultimately arrested for operating a vehicle while intoxicated as well as other offenses. The defendant filed a motion to suppress the evidence alleging the deputy lacked reasonable suspicion to stop the car. The motion to suppress was denied by the trial court and the defendant was convicted.



The Court of Appeals reversed the defendant's convictions. The Court of Appeals stated that swerving within a lane or onto the fog line may or may not give

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rise to reasonable suspicion depending on the circumstances and other evidence. The Court of Appeals held that under these facts, the deputy did not have reasonable suspicion to conduct the traffic stop.

The Indiana Supreme Court affirmed the trial court's order denying the defendant's motion to suppress. The Court found that the defendant swerved twice on a relatively straight, flat roadway. Although such movement could have been from driver distraction or some other cause, the law does not require absolute certainty of illegal activity, but rather reasonable suspicion. Based on the facts of this case, the deputy had reasonable suspicion to conduct a traffic stop.