

PUBLIC INTOXICATION

On July 1, 2014, the Indiana Court of Appeals issued a decision in *Brown v. State*, _____ N.E.3d _____ (Ind. 2014), affirming the defendant's conviction for public intoxication.

An officer observed the defendant exit a bar in downtown Indianapolis. When the defendant walked out of the bar, he ran directly into a woman who was standing in the middle of the sidewalk. The woman began to yell at the defendant. The officer approached them to stop the woman from yelling. The officer also told the defendant to stop, but the defendant ignored him and kept walking until he was stopped by another officer just down the sidewalk.

The officer observed the defendant to be extremely intoxicated and arrested him for Public Intoxication. The defendant did not deny that he was intoxicated but argued that the evidence failed to show he was in imminent danger of breaching the peace. The Court of Appeals agreed that the defendant did not breach the peace because our Supreme Court has concluded that breaching the peace requires either actual or threatened violence. However, the Court affirmed the conviction based on the fact that he harassed, annoyed or alarmed another person. After running into the woman, the defendant continued to walk away and ignored the officer's commands to stop. The fact that the defendant was entirely unaware of his surroundings and that the woman "started going berserk" after he walked into her, was enough to infer that the defendant harassed, annoyed, or alarmed the woman by bumping into her in his intoxicated state.

PUBLIC INTOXICATION

On July 17, 2014, the Indiana Court of Appeals issued a decision in *Davis v. State*, _____ N.E.3d _____ (Ind. 2014), REVERSING the defendant's conviction for public intoxication.

An officer responded to an apartment on a disturbance call and found the defendant drinking with a friend. The two men had been fighting. The officer told the defendant to leave or he would be arrested from criminal trespass. The following morning the same officer received a second disturbance call at the same apartment. When the officer approached, he saw the defendant standing outside in a grassy common area of the apartment complex. The defendant was visibly extremely intoxicated and was arrested for Public Intoxication because the officer feared that if he allowed the defendant to walk away, the defendant would be struck by a car.

The court stated that while the statute does not require that actual harm or injury occur, some action by the defendant constituting endangerment of the life of the defendant or another person must be shown. Although it is clear that intoxicated persons might create danger by walking in public places, that danger must have manifested itself for the defendant to be guilty of the crime of Public Intoxication. The Court went on to say that in this case, the State has not shown any such past or present conduct by the

Defendant, that amounted to endangerment of his or another's life. There was no evidence presented that the road within the apartment complex posed a danger to the defendant and the defendant never left the apartment between the two police runs. Therefore, the State may not convict the defendant for what would or could have happened.

SEARCH AND SEIZURE
ODOR OF RAW MARIJUANA

On July 28, 2014, the Indiana Court of Appeals issued a decision in *Bell v. State*, _____ N.E.3d _____ (Ind. 2014), affirming the defendant's conviction for possession of marijuana.

The defendant was the passenger of a car that was stopped for a routine traffic violation. The driver did not have a valid driver's license so all occupants were asked to exit the car. As the defendant got out of the car, the officer smelled raw marijuana coming from both the car and the defendant's person. The officer handcuffed the defendant and conducted a pat down which revealed ten baggies of marijuana.



The Court of Appeals held that like the odor of burnt marijuana, the odor of raw marijuana coming from the car and the defendant's person provided probable cause to arrest the defendant and conduct a search incident to arrest.

I.C. 35-33-1-1: LAW ENFORCEMENT ARREST POWERS
SHOPLIFTING/RETAIL THEFT

In July of 2014, the legislature lowered the penalty for the crime of Theft under seven hundred and fifty dollars from a Class D Felony to a Class A Misdemeanor. There was a corresponding change made to I.C. 35-33-1-1, allowing law enforcement to arrest a person for Theft, a misdemeanor, if they have probable cause.

Therefore, the retail theft/shoplifting scenario may be handled by law enforcement in the same manner as before July 2014. Arrests can be made for theft of an item less than seven hundred and fifty dollars if probable cause exists, regardless of whether the theft is committed in the presence of the law enforcement officer.