

OPERATING WHILE INTOXICATED EVIDENCE SUFFICIENT

On December 24, 2014, the Court of Appeals issued its opinion in *West v. State*, __ N.E.3d __ (Ind. Ct. App. 2014). On July 1, 2013, a motorist saw the defendant sitting in the driver's seat of a parked car and drinking a beer outside the courthouse. The motorist stopped for lunch and while in the restaurant saw the defendant come out of the courthouse with a man and return to the driver's seat of the car. The motorist called 911, and an officer was dispatched. The officer approached the defendant in her vehicle while it was running and blocked her car. He asked her to turn off the car and get out. She got out but did not turn the ignition off. Her speech was slurred; she had trouble getting her license out of her wallet, had to touch the car to maintain her balance, and had trouble following the officer's instructions. She told the officer she was about to drive away, except that the officer had blocked her. She had the odor of alcoholic beverage about her person and she failed all of her sobriety field tests. She tested .23 grams per 210 liters of breath.

The State charged the defendant with Operating While Intoxicated and Operating with a BAC of .15 or More, both Class D felonies (prior conviction). In a bench trial, the court found the defendant guilty of both counts as Class D felonies. The defendant appealed on the grounds that the State failed to prove she was operating the car. The Court of Appeals affirmed the conviction. A court could "reasonably infer from this evidence that [the defendant] was about to drive away in an intoxicated condition" when the officer blocked her car.

PUBLIC INTOXICATION

The Indiana Supreme Court in December issued its opinion in *Morgan v. State*, __ N.E.3d __ (Ind. 2014), over-ruling in part *Morgan v. State*, 4 N.E.3d 751 (Ind. Ct. App. 2014), which we highlighted in Issue No. 261, March 2014. An Indianapolis police officer was working his part-time job for IndyGo bus service when he observed the defendant asleep inside the bus stop shelter. The defendant's brother was yelling at the defendant to get up, but the defendant was not moving. The officer went over and tapped the defendant on the shoulder. The defendant raised his head and said, "Get off me." The officer then told the defendant to leave the bus shelter.

When the defendant got up, the officer could smell alcohol, the defendant's eyes were bloodshot and glassy, and he was swaying from side to side. The defendant was agitated and angry. The officer believed the defendant was intoxicated and that the defendant's behavior was "annoying" and arrested him for public intoxication, disorderly conduct and intimidation. The trial court found him guilty of public intoxication and disorderly conduct.



The defendant appealed his conviction, arguing that the term “annoys” in the public intoxication statute is unconstitutionally vague and that the evidence was not sufficient to convict. The Court of Appeals held that the term “annoys” was unconstitutionally vague and vacated the conviction for public intoxication but upheld his conviction for disorderly conduct. The Supreme Court reversed the Court of Appeals and found that the public intoxication statute was not unconstitutionally vague. However, the Court vacated the conviction for public intoxication, ruling that an individual sleeping while sitting upright on a bus shelter bench with only 2 people in the vicinity is unlikely to annoy a reasonable person.

IDENTITY DECEPTION

On December 19, 2014, the Court of Appeals issued its opinion in *Duncan v. State*, ___ N.E.3d ___ (Ind. Ct. App. 2014). In this case an Indiana State Police trooper stopped a vehicle for a traffic infraction. He detected the odor of burnt marijuana. Neither the driver of the vehicle nor the defendant passenger possessed identification. The defendant identified himself as George F. Walker and later as George Walker, Jr., and gave a birth date of April 6, 1967, but police later identified the defendant as Duncan. Duncan was charged with several felony offenses, including Count 4, identity deception as a Class D felony. A jury convicted the defendant of four of the felonies including Count 4. The defendant appealed.

The crime of identity deception requires proof that the defendant knowingly obtained or used the identifying information of another person, without the other person’s consent with intent to profess to be another person. The Court of Appeals reversed the conviction for identity deception because the state presented no evidence that the information Duncan gave police was the identifying information for “another person,” alive or deceased.

CUSTODIAL INTERROGATION RIGHT TO REMAIN SILENT

On December 29, 2014, the Court of Appeals issued a decision in *State v. Moore*, ___ N.E.3d ___ (Ind. Ct. App. 2014), affirming the decision of the trial court suppressing the defendant’s incriminating statement to police. In that case, the Indiana State Police were investigating two armed burglaries and a homicide. Investigation led the police to Moore, who was arrested in her home in Ohio, where she was babysitting 4 children. Police transported Moore to the local police station where a detective read her the Miranda warning. Moore signed a waiver of rights and answered the detective’s questions. At some point in the interrogation, Moore stated, “If there’s no evidence against me, I really can’t say nothing because I wasn’t in Indiana, so with that being said, I’m done.” The detective then confirmed she wanted to stop the interview, asked her a few more questions about who she was with at the time of the burglaries and then left the room.

After a brief time passed, an Indiana State Police sergeant entered the room, and inquired about the children Moore was babysitting at the time she was arrested. That conversation became heated, and Moore then asked for the detective to return. The detective returned to the room, and he and Moore began to talk at first about the children. Then the detective turned the conversation to the allegations involving the burglaries and the murder. Moore then made statements implicating herself in both burglaries and the murder. She was charged with murder, felony murder, burglary, and conspiracy to commit burglary. Moore filed a motion to suppress her statement. The trial court granted her motion and certified the ruling for interlocutory appeal.

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If a person in custody, after waiving his right to silence, subsequently during questioning indicates in any manner that he wishes to remain silent, the interrogation must cease. However, an interrogation can properly be resumed. In determining whether an interrogation has been properly resumed after the defendant has cut off the interrogation, the Court considers the amount of time between interrogations, the scope of the second interrogation, whether new Miranda warnings were given, and the degree to which police officers pursued further interrogation once the suspect invoked her right to silence.

The Court found that the detective did not “scrupulously honor” Moore’s right to silence because he did not immediately cease questioning her. The state police sergeant’s questions about the children, who would have been the concerns of the Ohio authorities, seemed intended to eventually induce Moore to make incriminating statement. Therefore, both the detective’s and the sergeant’s continued questioning of Moore amounted to further interrogation despite her clearly expressed desire to remain silent.

UNLAWFUL POSSESSION OF A SYRINGE

On December 9, 2014, the Court of Appeals issued its opinion in *Bookwalter v. State*, __ N.E.3d __, (Ind. Ct. App. 2014), reversing in part the defendant’s conviction. Police officers arrested Bookwalter when he and another individual were attempting to inject heroin into themselves. Bookwalter was



convicted of several charges, including Unlawful Possession of a Syringe. In reversing the conviction on that charge, the Court concluded that the statute defining the charge applies only if the syringe is used to ingest a legend drug, but not a controlled substance, such as heroin, that is not also a legend drug.