

PUBLIC INTOXICATION

On August 11, 2014, the Indiana Court of Appeals issued a decision in *Milam v. State*, _____ N.E.3d _____ (Ind. 2014), REVERSING the defendant's conviction for public intoxication.

While completing paperwork, an officer noticed an arm and an object hanging out the passenger's window of a car and then the sound of shattering glass. The officer initiated a traffic stop. He smelled alcohol inside the car. The defendant was the front seat passenger in the car. The defendant and the back seat passenger admitted they had been drinking. The officer collected and ran all identifications. The defendant began to argue loudly with the backseat passenger and with the officer. At one point, a passerby stopped to watch the dispute and was told to leave. The officer described the defendant as loud, boisterous and uncooperative. The officer ultimately arrested the defendant for public intoxication because he was disrupting his investigation, was uncooperative, smelled of alcohol, was unsteady on his feet and had slurred speech.

The Court of Appeals reversed the defendant's conviction for public intoxication because there was no evidence to indicate that the defendant endangered his life or the life of another or disturbed the peace. According to the court, convicting the defendant for being intoxicated in a pulled over car, while arguing with others does not reach the level of disturbing the peace, harassment, annoyance, or alarm.

SEARCH AND SEIZURE TRAFFIC STOP

On August 14, 2014, the Indiana Court of Appeals issued a decision in *Lucas v. State*, _____ N.E.3d _____ (Ind. 2014), REVERSING the trial court's order denying her motion to suppress.

An officer conducted a routine license plate check on a car in front of him and discovered the vehicle's registered owner, the defendant, had an expired driver's license. When the defendant pulled into a gas station parking lot, the officer initiated a traffic stop. The officer approached the driver and observed she was smoking a freshly lit cigarette. The officer explained why he stopped her and she explained that her license must have expired the month prior on her birthday. Within one to two minutes into the traffic stop, the officer requested that the defendant accompany him to his police car to decide what they were going to do.

Once the defendant was seated in the officer's car, they began talking about her expired license. The officer then began to notice the odor of alcohol on her breath. The defendant admitted she had been drinking. While still seated in his car, the officer conducted a few field sobriety tests and a PBT. He then conducted additional field sobriety tests outside his car. Ultimately, the defendant was arrested and her car was towed.

The defendant claimed that the scope of the officer's traffic stop violated her Fourth Amendment rights. The Court of Appeals held that absent reasonable suspicion of another law enforcement purpose, officers may not expand the scope of the investigatory stop if it is going to expose the individual to a more intrusive search. The Court did not endorse a blanket rule that precludes officers from ever detaining a suspect in a police car during a traffic stop. The Court held only that the officer's decision in this case to place the defendant in the police car during this traffic stop was more intrusive than authorized for an investigatory stop because the officer could not articulate a legitimate reason why he could not complete his investigation standing outside the defendant's car.

The officer testified that he did not observe any speeding, improper lane changes or other erratic driving; he did not smell alcohol while talking to the defendant at the side of her car; nor did he notice any of the classic signs of intoxication. Because the officer did not have a reasonable suspicion to investigate the defendant for operating while intoxicated until after she was inside the police car, he did not further any legitimate law enforcement purpose related to her expired driver's license by requiring her to sit in his police car.