



POLICE / PROSECUTOR UPDATE

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This month we will briefly examine a couple of issues raised by recent court decisions.

First, we will look at the "endangerment" element of **Operating a Vehicle While Intoxicated**. IC § 9-13-2-86 defines "intoxicated" in part as "under the influence of (1) alcohol . . . so that there is an impaired condition of thought and action and the loss of normal control of a person's faculties to an extent that *endangers* a person." The court in this case stated that the element of endangerment is proved by evidence that the defendant's condition or manner of operating the vehicle *could have* endangered *any* person, including the public, the police, or the defendant. Proof that the defendant's condition rendered operation of the vehicle unsafe is sufficient to establish endangerment.

Based on this law, the State proved endangerment. A police officer observed defendant's vehicle leaving a parking lot at 2:00 a.m. without the headlights on. The vehicle veered onto the center double yellow line with its front and rear left tires. The vehicle was determined by radar to be traveling 51 m.p.h. in a clearly marked 30 m.p.h. zone. Alcohol was found in the vehicle, and the defendant admitted to having consumed three or four beers earlier. The defendant smelled strongly of alcohol, his eyes were bloodshot, and his speech was very slurred. He failed the horizontal gaze nystagmus sobriety test and the "counting backward" test. This evidence supported the conclusion that the defendant's driving ability was impaired to an extent that endangered himself and/or others.

The next case dealt with **Resisting Law Enforcement**, and the meaning of the terms "force" and "fleeing" as those terms are used in the statute.

The facts reveal that a welfare worker, accompanied by a police officer, went to the defendant's house to investigate a report of child abuse. The defendant met them at the door and spoke with the welfare worker. The officer advised the defendant that he should cooperate, to which the defendant responded that the reason for the visit was unfounded and he would "have to respectfully resist."

The defendant then stated he was going back into the house, and the officer told him not to. The defendant did so anyway and shut and locked the door behind him. The officer twice demanded that he open the door. When he didn't do so, the officer forced open the door, entered the house, and informed the defendant he was under arrest. The defendant stopped at the door and said he was not going, that the officer would "have to physically take me out of this house." He put his hands on the sides of the doorway to hold himself in the doorway, but the officer pushed him outside. The defendant resisted having handcuffs put on him, forcing the officer to move his arms to put on the handcuffs. The defendant then dropped to his knees and told the officer that he would have to drag him to the police car. The defendant was convicted of Resisting by fleeing into the house and by forcibly resisting.

The defendant contended that his act of walking into his house did not constitute fleeing, that all cases dealing with fleeing involved running or jumping or high speed chases. However, the court of appeals stated that whether a "flight" has occurred does not require an inquiry into the speed, mode, and manner of retreat from a law enforcement officer. "Flight" simply means a knowing attempt to escape law enforcement when the defendant is aware that a law enforcement officer has ordered him to stop or to remain in place. The defendant's movement need not be swift.

The defendant also contended he did not forcibly resist. He only passively resisted the officer. He argued that "force" implies acts of strength, power, or violence directed toward a law enforcement officer. The court of appeals said this definition was too restrictive and that Indiana cases in the past have rejected the "passive resistance" argument. Here the defendant physically resisted leaving the house by grabbing the door frame, requiring the officer to shove him through the doorway to get him outside. Once outside, he refused to get up and walk, forcing the officer to lift him to his feet. This evidence was sufficient to prove the defendant acted with the required force in resisting the officer.

Weaver v. State, 702 N.E.2d 750 (Ind. Ct. App. 1998).

Wellman v. State, ___ N.E.2d ___ (Ind. Ct. App. 12/02/98).

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