



POLICE / PROSECUTOR UPDATE

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Last month the Court of Appeals issued an interesting opinion on public indecency under IC 35-45-4-1(a). The issue was whether the defendant's conduct occurred in a "public place." The facts of the case are relatively simple. The defendant was an independent operator who owned a semi-trailer truck equipped with a sleeping berth. He was driving his semi on an interstate when he pulled into a weigh station. A state police motor carrier inspector approached the semi to check whether the driver was wearing a seat belt or in possession of a radar detector, firearms, or drugs. The inspector asked the defendant to open the door to his cab. When he did so, the inspector observed that the defendant was completely nude. When asked why he was nude, the defendant stated he was in too big a hurry to get dressed. He was arrested for and eventually convicted of public indecency.

The statute under which the defendant was charged and convicted provides that: "a person who knowingly or intentionally, in a *public place*, appears in a state of nudity, commits public indecency." The defendant characterized his truck as a "home on wheels" and argued it was not a "public place."

The statute does not define "public place." It would be best if it did because the case law on the issue is confusing. Many years ago, the Indiana Supreme Court defined a public place, for purposes of the public indecency statute, as "any place where the public is invited and are free to go upon special or implied invitation - a place available to all or a certain segment of the public." In another case, the Indiana Court of Appeals defined a public place, again for purposes of public indecency, as "any place where members of the public are free to go without restraint." Under these definitions, it is difficult to see how the cab of a semi tractor could

be a public place.

However, the Court of Appeals looked to cases involving public intoxication. For example, it has been held that a passenger in an automobile on a public highway is in a public place for purposes of public intoxication. Also, a defendant in the cab of a truck that was parked approximately three to four feet off the traveled portion of a highway was in a public place for purposes of the public intoxication statute. In the Court of Appeals' view, there is no significant difference between what constitutes a public place in the context of the public indecency statute and what constitutes a public place for purposes of the public intoxication statute (one of the three judges on the panel strongly disagreed with this conclusion). Therefore, the majority of the Court of Appeals had "no hesitancy" in concluding that a person driving a semi-trailer truck on this state's highways is in a public place, that is, a place where members of the public are free to go without restraint.

In concluding, this is a good time to remind everyone that, for purposes of public intoxication, a private residence, including the grounds surrounding it, is *not a public place*

Whatley v. State, ___ N.E.2d ___ (Ind. App. 04/08/99).