

Police Prosecutor Update

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SUFFICIENCY OF THE EVIDENCE POSSESSION OF NARCOTIC BY CONSUMING IT

On August 8, 2018, the Indiana Court of Appeals issued its decisions in Crittendon v. State, ___ N.E.3d ___ (Ind. Ct. App. 2018). Police responded to an overdose and found Crittendon unresponsive with blue lips. Police found heroin and syringes in a different room of the house, which Crittendon's girlfriend said she had purchase the day before. At the hospital, Crittendon told the officer that he didn't know about the heroin in the other room, but that he used some heroin and what he thought was cocaine with an old friend at a nearby town. In a bench trial, the court found him guilty of possession of a narcotic drug. Crittendon argued on appeal that he cannot be convicted of possessing the heroin he admitted consuming.

The presence of an illegal drug or its metabolites in a person's blood is circumstantial evidence that the person possessed that drug, but additional evidence is needed to convict that person of possession. Other evidence can be the admission that the person had injected the drug and fresh track marks, for example. In this case, the court found the evidence sufficient to convict Crittendon because Crittendon both admitted using heroin before he overdosed, and he showed clear signs of a heroin overdose. The conviction was affirmed.

To reiterate, under prior case law, the presence of an illegal drug in a person's system alone (for example, a positive drug test while on probation) is not sufficient for a conviction. However, coupled with evidence such as an admission, or with tangible evidence such as drugs, paraphernalia, track marks, or physical signs of an overdose, evidence of consumption can be sufficient for conviction for possession of the drug.

Finally, the court stated, "Although Crittendon argues that there is a 'public policy argument to be made against equating consumption . . . with possession' because it discourages people from seeking medical assistance, public policy arguments should be made to the General Assembly." Expect legislation to limit law enforcement ability to criminally charge persons involved with an overdose to be introduced in the coming legislative session.