

SEARCH AND SEIZURE TERRY STOP – REASONABLE SUSPICION

On December 7, 2012, the Indiana Court of Appeals issued a decision in *Billingsley v. State*, ___ N.E.2d ___ (Ind.Ct. App. 2012), affirming the defendant's conviction for possession of marijuana.



At 2:34 a.m., 911 received a call from a woman, who when asked, identified herself by name. The woman said there was a young man at the VFW who had held her hostage a few weeks prior and she wanted the police to come and lock him up. She said he was leaving and she didn't want him to leave because he was also involved with a shooting. She said he had a gun and gave 911 the name of the defendant. She said that he was sitting as a passenger in a newer, "tan-brown" or "tan-gray" Dodge Durango with tinted windows. She also stated that the man in the driver's seat also had a gun.

The officer who responded knew the VFW was "not the most friendly environment" and also knew the defendant from prior arrests, including possession of a handgun by a felon. He also knew the defendant used to "hang around with" two people who have since been convicted of murder.



When the officer arrived he saw a Chevy Trailblazer that was a similar color to that described by the 911 caller. The officer saw the defendant in the passenger seat, parked his patrol car in front of the SUV and called for backup. The officer got out of his car, approached the SUV with his gun drawn, ordered the defendant to place his hands on the roof and waited for backup to arrive. When backup officers arrived, the officer put his gun away, ordered the defendant to exit the car and patted him down for weapons. The officer smelled raw marijuana and then saw a clear plastic bag on the passenger seat filled with what he immediately recognized to be marijuana.

The defendant first argued that the officer's use of his gun to detain the defendant until backup arrived turned the investigatory stop into an arrest. The Court held that in this case the officer had a specific and articulable belief that the suspect might be armed with a weapon and therefore the circumstances described an investigatory stop under *Terry* and not an arrest.

The defendant next argued that the officer did not have reasonable suspicion to conduct an investigatory stop based on the 911 call from the woman. The defendant argued that the 911 caller was an anonymous tipster, requiring the establishment of reliability, rather than a concerned citizen, because she did not provide any personal information other than her name and was never able to be located as a witness. The Court held that the 911 caller was a concerned citizen. The Court went on to say that some of the information provided by the caller was corroborated by the officer upon his arrival on the scene.

Based on the totality of the circumstances known to the officer at the time he detained the defendant, the Court concluded that the officer had a reasonable and articulable suspicion that the defendant may have been involved in criminal activity.

SEARCH AND SEIZURE

On December 21, 2012, the Indiana Court of Appeals issued a decision in *Austin v. State*, _____ N.E.2d _____ (Ind. Ct. App. 2012), affirming the defendant's convictions for possession of cocaine, class A felonies.

The defendant was driving a semi-tractor and trailer on the Indiana Toll Road when he was stopped by an ISP trooper for an inspection because he thought a trailer like the defendant's would normally be pulled by a pickup truck and not a semi-tractor. After the trooper examined the defendant's trucking records and asked several questions he became suspicious. The trooper asked the defendant for consent to search the truck. The defendant declined and was told he was free to go.

The trooper then called a detective who told another trooper to wait for the defendant's vehicle. This second trooper then stopped the defendant after he observed two traffic violations. He also noted suspicious information in the defendant's records. This trooper had his canine with him and the dog indicated on the trailer. The troopers located two cars inside the trailer, got warrants for the cars and eventually searched them. They found a number of vacuum-sealed "bricks" of cocaine in both cars.



The burden is on the State to show that, under the totality of the circumstances, the search was reasonable. The Court stated that a determination of the reasonableness of a search or seizure under the Indiana Constitution often turns on a balance of 1) the degree of concern, suspicion, or knowledge that a violation had occurred, 2) the degree of intrusion the method of the search or seizure imposes on the citizen's ordinary activities, and 3) the extent of law enforcement needs. The Court held that the stop and seizure in this case was reasonable under the Indiana Constitution (the defendant did not challenge the search under the Fourth Amendment). The trooper saw the defendant commit two traffic violations. He knew about the irregularities in the defendant's paperwork the other trooper had noted, and he had noted some additional inconsistencies in the defendant's trucking records. The Court went on to say that the stop was not unduly prolonged before probable cause was established because the canine was with the trooper at the time of the stop. Therefore, there was no violation of the defendant's rights.