

SEARCH AND SEIZURE TERRY STOP

On January 23, 2014, the Indiana Court of Appeals issued a decision in *Aslinger v. State*, _____ N.E.2d _____ (Ind. Ct. App. 2014), REVERSING the defendant's conviction for Possession of Methamphetamine, a Class D Felony, and one of the defendant's habitual offender sentence enhancements.

Police got a dispatch about two juveniles breaking into cars. An officer went to the area and found the defendant and another man in the area. As the officer approached the two, they began to walk away. The officer asked them to stop and talk to him but they continued to walk away. When the officer asked a second time and identified himself as a canine officer, the men stopped.

As the officer was talking to the defendant, he noticed the defendant had a rolled cigarette/joint tucked behind his ear. When questioned by the officer, the defendant said it was a rolled joint of B2. The officer then took the joint from behind the defendant's ear and examined it. Based on the smell and appearance, the officer believed it was marijuana. A field test confirmed that.



The officer also noticed a knife in the defendant's pocket. The defendant was asked to remove all contents from his pockets. He has a glass pipe, a pen barrel, and electronic scale. During a further search the officer removed a small amount of methamphetamine.

The defendant was arrested again for meth related offenses while out on bond. We will only discuss the search and seizure issues relating to the *Terry* stop in the above set of facts.

The Court of Appeals held that the officer properly initially stopped the defendant and his friend based on the dispatch. However, because it quickly became apparent that the defendant and his friend were not the subject of that call, the officer should've completed the *Terry* stop. Instead the officer continued the investigation of the joint behind the defendant's ear and conducted a search of the pockets. The Court pointed out that "a hand-rolled cigarette is not per se illegal." The officer had to take the joint out from behind the defendant's ear, examine it and smell it to conclude it was a marijuana joint. Because it was not immediately apparent to the officer that it was contraband, the seizure of the hand-rolled cigarette was unrelated to the purpose justifying the *Terry* stop and not subject to seizure under the plain view doctrine. Therefore, the officer did not have probable cause to make an arrest and conduct a search incident to arrest.

CONFESSIONS
MIRANDA

On January 23, 2014, the Indiana Court of Appeals issued a decision in *State v. Banks*, _____ N.E.2d _____ (Ind. Ct. App. 2014), affirming the trial court's order suppressing the defendant's confession to two murders.

The defendant was serving a 63 year sentence at the Indiana Department of Corrections for various sex crimes convictions. The defendant had been previously diagnosed with schizo affective disorder and was placed in the psychiatric ward at the DOC.

Meanwhile, Indianapolis detectives were investigating the rape and murder of a woman. A month after the defendant was settled in at the DOC, the detectives went to talk to the defendant to follow up on a DNA lead. The detective had never had any previous contact with the defendant and did not know he was housed in the psychiatric ward and was medicated. The detective simply made an appointment to meet with the defendant and was placed in a room with him.

The detective began the taped interview by orally advising the defendant of his rights. The detective did not read the written waiver of rights verbatim to the defendant. At one point, he advised the defendant "Okay. If you cannot afford a lawyer, one will be appointed before you for any further questioning if you stop answering, okay?" The defendant was very cooperative and confessed to the murder they were investigating along with another rape and murder that occurred a few years earlier.

The trial court granted the defendant's motion to suppress the confessions of the defendant and the State appealed the ruling.

The Court of Appeals held that the *Miranda* warnings provided orally to the defendant were inadequate because it did not adequately inform the defendant that he had the right to have counsel present during questioning. The Court went on to say that prior cases have held that *Miranda* warnings must clearly advise an individual that he/she has the right to consult with a lawyer and have that lawyer with him/her during the interrogation.

The Court also held that the defendant's confessions were not voluntary given all of the circumstances in this case. The Court pointed out that the mere fact that a defendant is mentally ill does not automatically render his confession inadmissible. Rather, mental illness is one of the factors a court must consider to determine if a waiver of *Miranda* rights and confession are voluntary. The trial judge in this case considered the evidence of the defendant's mental illness and concluded the confession was not voluntary. The Court of Appeals further stated that they were required to give the trial court's determination deference.