

CONFESSIONS

On May 13, 2014, the Indiana Supreme Court issued a decision in *Bond v. State*, _____ N.E.2d _____ (Ind. 2014), reversing the court's order denying the defendant's motion to suppress his confession.

A detective was investigating a cold case murder from 2007. The detective learned that the suspect was in custody on outstanding warrants. The detective brought the defendant into an interrogation room to question the defendant about the 2007 murder. The detective read the defendant his *Miranda* rights, which he waived.

For three hours the defendant adamantly denied being involved in the murder. The detective used several interrogation techniques in an attempt to get the defendant to confess. A little after two hours into the interrogation, the detective told the defendant, who was African American, that he wasn't going to get a jury of his peers, that white people would be judging him and that he wouldn't get a fair trial because of that. After three hours, the defendant confessed to the murder.

The trial court denied the defendant's motion to suppress the confession and the defendant sought an interlocutory appeal. The Indiana Court of Appeals affirmed the trial court's ruling in an unpublished decision. The Indiana Supreme Court **reversed** the trial court's denial of the motion to suppress. The Supreme Court held that the detective's statements implying that a confession would aid the defendant's case did not themselves render the confession involuntary. On several occasions, the detective reiterated to the defendant that he could not guarantee a particular outcome or make any specific promise of a result, but he wanted the defendant to know that cooperation could be a factor in his case and could influence how the case progressed. The Court went on to say that the detective's promises to put the defendant in contact with his family if he confessed did not render the confession involuntary. The detective did not threaten the defendant's family with physical harm or legal jeopardy and followed through with his promises by allowing the defendant to speak with his family.

However, the Supreme Court held that with respect to the detective's statement that the defendant might not receive a fair trial because of his race and the likely composition of a prospective jury was improper and led to an involuntary confession from the defendant. The detective's comment intentionally played on the fear that the defendant could not receive a fair trial because of his race. The defendant was intentionally deceived as to the fairness of the criminal justice system itself because of the color of his skin. The defendant was left with the unequivocal impression that because he was African American he would spend the rest of his life in jail unless he confessed. The Indiana Supreme Court drew a firm line and stated that intentionally misleading a suspect as to his constitutionally guaranteed rights to a fair trial and an impartial jury because of his race sits squarely on the wrong side of that line.

RESISTING LAW ENFORCEMENT
“FORCE”

On May 22, 2014, the Indiana Court of Appeals issued a decision in *Macy. v. State*, _____ N.E.2d _____ (Ind. Ct. App. 2014), REVERSING the defendant’s conviction for Resisting Law Enforcement by Force.

The defendant’s neighbor reported she had been bitten by two dogs owned by the defendant. An officer and animal control officers went to the defendant’s home. When the officers arrived, the defendant was uncooperative and aloof. The two animal control officers went to the neighbor’s house to speak with her about the incident. When the officers left for the neighbor’s house, the defendant began yelling at the police officer demanding answers and claiming her dogs had not bitten anyone. The officer threatened to arrest her if she did not calm down. The defendant calmed down temporarily. The defendant then walked down the sidewalk near the neighbor’s house and started yelling at the officers again that her dogs did not bite anyone. The officer again told the defendant that she would be arrested if she did not calm down and go back to her house. She continued yelling and the officer placed her under arrest.

The defendant was cuffed and placed in the front seat of the police car. Somehow she was able to open the door, get out of the car and begin yelling again. The officer told her to get back in the car but the defendant refused. The officer had to force the defendant into the car because she sat down but kept her feet on the ground outside the car. The officer had to pick her feet up, put her feet into the car and shut the door.

The defendant was charged with resisting law enforcement by force and disorderly conduct. She was convicted of both at a bench trial and the defendant appealed the resisting charge only.

The Court of Appeals held that neither the act of opening the police car door nor the defendant’s act of resting her feet outside the police car requiring the officer to pick them up and place them inside the vehicle constituted an act of forcible resistance. Forcible resistance requires conduct directed *toward* an officer and must be something more than mere action. The defendant’s act of opening the car door did not involve any interaction with the officer, nor was it directed toward him or did it present a threat to him. In addition, the defendant’s refusal to place her feet inside the car was an act of passive resistance not punishable as resisting law enforcement. Finally, the officer’s use of force does not establish that the defendant forcibly resisted. The officer testified that the defendant resisted his *commands* only and the officer used some degree of force in response. The defendant’s conviction for resisting law enforcement was reversed.