POLICE / PROSECUTOR
UPDATE

The Indiana Court of Appeals recently handed down an opinion which involved a bad search occurring during a *Terry* investigative detention.

A Department of Child Services (DCS) caseworker received an anonymous tip that at a specific residence there were children who had sores on their bodies and that there might be a meth lab in the basement. Police officers accompanied the caseworker to the residence. When they arrived at the residence, they were greeted by the mother of the children. She claimed to be the only adult present in the house. The caseworker asked to see the basement to ensure that the children's living area was safe. After securing a dog, the mother allowed the caseworker and police to enter the basement.

About a minute after entering the basement, the caseworker saw the defendant hiding, and a police officer detained him. The officer told him he was not under arrest, but placed him in handcuffs for protection. The officer then asked him whether he had any weapons on him. He responded that he had a pocketknife in his right front pocket. The officer patted the defendant's right front pocket and felt "bulky, metallic objects." The officer then removed a knife, a large key ring, and a blue plastic pill bottle. The defendant was cooperative and did not make any furtive movements or attempt to flee.

The officer shined a flashlight through the bottle and saw "a silhouette of a baggie . . . and maybe a powdery-looking substance in there." His prior training and experience led him to believe the bottle contained a controlled substance. He then removed the lid to see the substance inside the bottle. After searching inside the bottle, the officer confirmed that the defendant had an outstanding arrest warrant and placed him under arrest. The substance was determined to be methamphetamine.

The sole justification for a *Terry* search "is the protection of the police officer and others nearby, and it must therefore be confined in scope to an intrusion reasonably designed to [weapons] for the assault of the police officer." The purpose of the search is not to discover evidence of a crime. If the protective search goes beyond what is necessary to determine if the suspect is armed, it is no longer valid under *Terry*.

In this case, the officer testified that he removed the items from the defendant's pocket because he "needed to know what it was to ensure it wasn't a weapon." In order to preserve officer safety, police may remove an item whose identity is not immediately apparent by touch and that might be used as a weapon. Here, the officer needed to ensure he removed all potentially dangerous items. Thus, the removal of the pill bottle from the defendant's pocket was permissible.

However, the officer's warrantless search inside the pill bottle went beyond the scope permitted by *Terry*. A two-part test governs the admissibility of contraband seized during a *Terry* search: (1) whether the contraband was detected during an initial patdown for weapons rather than during a further search; and (2) whether the identity of the contraband was immediately apparent to the officer. Here, the contraband was detected only after he shined the light into the bottle and opened it. Also, the officer never testified he thought the bottle might contain a weapon.

The reasonable suspicion that gives authority to a *Terry* stop does not authorize examination of the contents of items carried by the suspicious person. The Court of Appeals held that the opening of the pill bottle and the testing of the substance inside were impermissible. Harris v. State, 878 N.E.2d 534 (Ind. Ct. App. 2007).