



POLICE / PROSECUTOR UPDATE

Issue No. 131

October 2002

A recent Indiana Court of Appeals case contains an excellent review of the three levels of **police/citizen contacts**. There are three such levels: **an arrest, an investigatory stop, and a consensual encounter**. The first two of these implicate the Fourth Amendment's prohibition against unreasonable searches and seizures. A consensual encounter does not.

The law is as follows: First, the Fourth Amendment requires that an arrest or a detention for more than a short period be justified by probable cause. **Probable cause** exists where the facts and circumstances within the knowledge of the police officer or officers are sufficient to warrant a belief by a person of reasonable caution that an offense has been committed and that the person to be arrested has committed it. Second, the police may, without a warrant or probable cause, briefly detain an individual for investigatory purposes if, based on specific and articulable facts, the officer has a **reasonable suspicion** that criminal activity may be afoot. Accordingly, limited investigatory stops and seizures on the street involving a few brief questions and a possible frisk for weapons can be justified by mere reasonable suspicion. Finally, the third level of investigation occurs when a law enforcement officer makes a casual and brief inquiry of a citizen which involves neither an arrest nor a stop and implicates no Fourth Amendment interest.

In a consensual encounter, the individual remains free to disregard the police officer and to walk away. Only when an individual is no longer free to leave does an investigatory stop begin.

Thus, what begins as a consensual encounter may evolve into an investigatory stop. Whether this has occurred requires a consideration of all the circumstances surrounding the encounter. This is an objective test. The proper inquiry is not whether the

individual believed that he was being ordered to restrict his movement but whether the officer's words and actions would have conveyed that to a reasonable person. Examples of circumstances under which a reasonable person would have believed he was not free to leave include the presence of several officers, the display of a weapon by an officer, some physical touching of the person of the individual, or the use of language or tone of voice indicating that compliance with the officer's request might be compelled.

In the case we're looking at, a police officer was dispatched to a specific intersection based upon a concerned citizen's report of a suspicious car at that location. He observed a car parked at the curb at the intersection and testified, "I activated my emergency equipment being that this is at an intersection and approached the vehicle to ascertain if I could offer any assistance." This was clearly a consensual encounter. The defendant and another person were in the vehicle. After obtaining their identification, the officer returned to his police cruiser and ran a license check and warrant check, both of which came back negative. But instead of returning the identifications, the officer kept them.

At this point, the encounter became a detention without reasonable suspicion. The Court of Appeals held that a consensual encounter becomes an investigatory stop when a law enforcement officer retains an individual's driver's license or other identification.

Finger v. State, 769 N.E.2d 207 (Ind. Ct. 2002).