



POLICE / PROSECUTOR UPDATE

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A recent Indiana Court of Appeals case dealt with the concept of **abandonment** in the context of a Fourth Amendment **investigatory stop** and seizure of a person on a bicycle.

Two police officers were patrolling a high drug-trafficking area. At an intersection in that area, they observed an individual (the defendant) on a bicycle leaning inside a vehicle. The officers suspected the defendant was trying to sell drugs so they circled around to speak with him. As the officers approached the intersection, the driver of the vehicle drove off. The defendant also rode off. The officers exited their vehicle and asked the defendant to stop. But the defendant continued to ride away and dropped a black bag under a parked car. The officers again ordered the defendant to stop, but he refused. The officers then removed him from the bicycle and handcuffed him. The bag was recovered, and it contained cocaine.

The defendant argued the cocaine should be suppressed because it was obtained as a result of an illegal investigatory stop. However, the court didn't address this issue because it said that the defendant had abandoned the bag. The law is that abandoned property is not subject to Fourth Amendment protection. However, if property is abandoned *after* a person is improperly seized, the evidence is not admissible.

The court looked to a United States Supreme Court case on this subject. In that case, the defendant threw away crack cocaine as he fled from a police officer. The officer did not have reasonable suspicion to justify stopping the defendant, so the only issue was whether, at the time the defendant discarded the cocaine, he had been "seized." The Supreme Court held that a seizure does not occur if the subject does not yield to a show of authority or an application of physical force. "Assuming the officer's pursuit constituted a show of authority enjoining the defendant to halt, since the defendant did not comply, he was not seized until he was tackled. The cocaine abandoned while he was running was not the fruit of a seizure."

In the Indiana case, the defendant dropped the bag underneath the parked car while riding his bicycle away from the officers. He had not complied with their request to stop. Only after he had dropped the bag did the officers use force to remove him from the bicycle.

When he threw the bag to the ground, it was subject to lawful seizure by the police. The defendant had not been "seized" at the time he dropped the bag. Wilson v. State, 825 N.E.2d 49 (Ind. Ct. App. 2005).

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The May issue of the PPU discussed **trash searches**. Our Supreme Court held that a search of trash recovered from the place where it is left for collection is permissible only if the investigating officials have an articulable basis justifying reasonable suspicion that the subject of the search has engaged in violation of law that might reasonably lead to evidence in the trash. This requirement of articulable individualized suspicion is essentially the same as is required for a "Terry stop."

In a recent Court of Appeals case, based on an anonymous telephone call concerning illegal drug activity, a state trooper was directed to collect trash bags from the defendant's residence. The trooper removed several trash bags from the defendant's trash receptacles located in front of his residence between the sidewalk and the street. Evidence of marijuana was found in the bags.

The Court of Appeals stated that, as a general rule, an anonymous tip *ALONE* is not enough to constitute the reasonable suspicion necessary for a valid *Terry* stop. Here, the trooper's superior officer received information that, according to an anonymous caller, illegal drug activity was occurring at the defendant's residence. However, there was no other information establishing the reliability of the telephone call. Thus, because an anonymous tip alone is not enough to constitute the reasonable suspicion necessary for a valid trash search, the search was illegal. Crook v. State, 827 N.E.2d 643 (Ind. Ct. App. 2005).