



# POLICE / PROSECUTOR UPDATE

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The Court of Appeals recently issued an opinion in which it found that an investigatory stop and frisk conducted by a police officer was unlawful. The facts recited by the court indicate that a plainclothes police officer entered a fast food restaurant. As he entered, he observed four individuals standing in line and recognized one of them as the defendant, whom he knew to have a prior cocaine conviction. The officer observed the defendant turn in the officer's direction as he entered the restaurant and then turn back toward the counter. The defendant then placed his right hand in his coat pocket. Seconds later, he turned and walked with "long steps" toward the door the officer had entered. He bumped into the officer's partner and then exited the restaurant. The officer followed the defendant outside and observed him walk toward a car. As the defendant reached the car, the officer came up behind him and reached around and patted the right pocket of the defendant's coat. The officer felt what he believed to be a gun. He then pulled the defendant's hand from the pocket and retrieved the gun and arrested the defendant.

A valid investigatory stop and frisk is an exception to the constitutional requirement of a search warrant. Under this exception, 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* of criminal activity. Reasonable suspicion must be based on more than an officer's general hunches or unparticularized suspicions. Generally, the reasonable suspicion requirement is satisfied where the facts known to the officer, together with the reasonable inferences arising from those facts, would cause an ordinarily prudent person to believe that criminal activity has or is about to occur.

The State argued that the defendant was fleeing the police officer, and that this was sufficient to justify an investigatory stop. It is true that flight from properly identified law enforcement officers is sufficient to justify an investigatory stop. However, the court stated that here there was not sufficient evidence to support the conclusion that the defendant fled from the officer. The officer testified only that the defendant took "long steps." This could not be characterized as fleeing. Additionally, the officer was wearing plain clothes, did not identify himself, did not show the defendant a badge, and did not yell halt or a similar command. He could not recall if he made eye contact with the defendant. He followed the defendant outside and approached him from behind. Therefore, in the court's view, the evidence simply did not demonstrate that the defendant was in flight.

The officer also testified that he became suspicious when the defendant put his hand in his coat pocket. Because of the defendant's criminal record, the officer suspected that the pocket contained a gun or other weapon. However the officer's mere knowledge of the defendant and his prior record was not sufficient to justify the stop. In fact, even if an officer has previously arrested an individual and the arrest had led to convictions, that would not have amounted to reasonable suspicion to stop the individual.

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In April, the Court of Appeals decided that the constitution imposed no specific duty on law enforcement officers to record or preserve custodial interrogations conducted in places of detention. Nevertheless, the court further stated that in light of the slight inconvenience and expense associated with recording custodial interrogations in their entirety, it strongly recommended, as a matter of sound policy, that law enforcement officers adopt this procedure.

Carter v. State, 692 N.E.2d 464 (Ind. App. 1997).

Stoker v. State, 692 N.E.2d 1386 (Ind. App. 1998).

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