



# POLICE / PROSECUTOR UPDATE

Issue No. 100

March 2000

The first case we will look at considered whether information reported directly to a police officer by a concerned citizen that a driver "may be intoxicated" rises to the level of a reasonable suspicion warranting an initial stop of the driver. The facts of the case indicate that late one evening several police officers were eating at a fast food restaurant. At some point during the meal, a man approached one of the officers and informed him that a person (later identified as the defendant) had just left the restaurant and drove away in a white semi truck and "may be intoxicated." The officer immediately left the restaurant and entered his patrol car. As he began to follow the white semi, the defendant drove the truck into a shopping center parking lot. The officer then activated his emergency lights. For purposes of this discussion, the defendant exhibited signs of intoxication, was tested, and his blood alcohol content exceeded .10%.

Of course, the main issue in the case was the defendant's contention that the stop was not justified because it was based only on the tip of an unidentified individual who told the officer he thought the defendant may have been intoxicated. It should be noted up front that the court of appeals stressed that in situations such as this, and where circumstances permit, the police officer should obtain the name, address, and phone number of the individual and inquire about the basis for the individual's determination as to the defendant's condition.

The law on this issue has been discussed in many PPU's. To be proper, an investigatory stop must be based on an officer's reasonable articulable suspicion of criminal activity. Reasonable suspicion necessitates some minimum level of objective justification for making a stop, something more than a generalized suspicion or hunch. As a general proposition, in situations such as this, a tip may be deemed reliable and supply the necessary reasonable suspicion when the individual provides specific information to police officers, such as a vehicle description and direction of travel, which can be verified.

In this case it would have been preferable for the officer to briefly question the concerned citizen for identification information and to test or verify the accuracy of his information. On the other hand, the

circumstances clearly warranted a quick response by the officer. The citizen gave the officer specific information regarding the vehicle the defendant was driving, and the officer verified the correctness of this information by his immediate response to the report. Thus, the officer's actions were not based on a mere hunch, and the stop was reasonable. (Note: This case probably pushes the envelope to the limit. In all probability, the facts just do reach a minimum level of objective justification for making a stop).

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It is unlawful for an individual to carry a handgun without a proper license. Just what is "carrying" a handgun. The relevant statute states that the handgun must be carried "on or about his person." Thus, the statute "encompasses more than moving about with a firearm attached to one's body." "On" refers to actual possession, which occurs when a person has direct physical control over the gun. "About" involves constructive possession, which occurs when a person has the intent and capability to maintain dominion and control over the gun. Knowledge is a key element in proving intent. When constructive possession is relied on, the State must show the defendant's knowledge, which can be inferred from either the exclusive dominion and control over the premises containing the item or, if control is non-exclusive, evidence of additional circumstances pointing to the defendant's knowledge of the presence of the item. Such additional circumstances include: (1) incriminating statements by the defendant; (2) attempted flight or furtive gestures; (3) proximity of the item to the defendant; (4) the location of the item in the defendant's plain view; and (5) the mingling or proximity of the item with other items belonging to the defendant.

Citizen Tip:

Bogetti v. State, \_\_\_ N.E.2d \_\_\_ (Ind. Ct. App. 2000).

Carrying a Handgun:

Henderson v. State, 715 N.E.2d 833 (Ind. 1999).

Winters v. State, 719 N.E.2d 1279 (Ind. Ct. App. 1999).

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