



POLICE / PROSECUTOR UPDATE

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We will again look at a case involving an **investigatory stop and pat down**. An officer was dispatched to the location of a **domestic disturbance call**. He was alone, largely unaware of the circumstances, and knocked on the front door. He did not hear anything inside the house and no one answered the front door, but soon after he knocked, he heard a rear door slam. He then proceeded around the side of the house, where encountered the defendant walking toward him on the defendant's property. The defendant was carrying a jacket, which obstructed the officer's view of the defendant's hands. The officer ordered him to kneel on the ground, drop the jacket, and put his hands behind his head. The defendant complied.

When the officer said he was going to perform a pat down search for weapons, the defendant said he had a handgun in his beltline. The officer seized the gun and asked the defendant if he had a permit, to which the defendant said he did not. The officer then asked if he had ever been convicted of a felony, to which the defendant said he had a conviction for voluntary manslaughter. The defendant was arrested and charged with unlawful possession of a firearm by a serious violent felon. The trial court granted the defendant's motion to suppress.

The issue was whether the officer had reasonable suspicion to conduct an investigatory stop and pat down. The Indiana Court of Appeals first noted that the reasonable suspicion analysis did not apply in this case because the *Terry* stop and frisk rule applies to cases involving a brief encounter between a citizen and police officer on a *public street or way*. Here, the defendant was on his own property, in a place where he had a right to be. However, since the State and defendant both argued the investigatory stop issue, the Court of Appeals addressed it.

The law is that a police officer may briefly detain a

person for investigatory purposes without a warrant or probable cause if, based upon specific and articulable facts together with rational inferences from those facts, the officer has a reasonable suspicion that criminal activity may be afoot. This requirement is met where the facts known to the officer at the moment of the stop, along with the reasonable inferences, would cause an ordinarily prudent person to believe criminal activity has occurred or is about to occur.

Here, the defendant did not attempt to flee or even turn away from the officer but continued to walk in the officer's direction. When the officer told the defendant to drop his jacket, he did so without hesitation, and his hands were empty. When the officer told him to kneel and put his hands behind his head, he did so immediately. These were simply insufficient facts to give rise to a reasonable suspicion. And a lawful stop, based on objective facts and reasonable suspicion, is a condition precedent to a pat down.

The State argued that "the uncertain nature of the domestic disturbance call, along with the fact that the officer had no back up, gave the officer reason to be concerned for his safety. At that precise moment, the officer did not know if the defendant was or had been violent or if he intended to challenge the solitary officer in some way." However, while officer safety is always a legitimate concern, officer safety, standing alone, cannot form the basis for a valid investigatory stop and frisk.

The Court of Appeals did note that the case might have been different if the defendant had fled, engaged in furtive activity, and was uncooperative, or if the officer had a description of the suspect that was corroborated on seeing the defendant.

State v. Atkins, 834 N.E.2d 1028 (Ind. App. 2005).

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