



POLICE / PROSECUTOR UPDATE

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A recent case involved a bad **investigatory stop**. A police officer was dispatched to a specific street address on a narcotics complaint. An anonymous caller reported that drugs were being sold from a “black car with nice rims” which was parked in front of an apartment building at that address. When the officer arrived at the location, she observed a black car with shiny rims parked in front of the building. She activated her vehicle’s rear flashers and then shined a spotlight at the vehicle so she could see inside. The officer then approached the car and initiated contact with the driver (who was the defendant) who had already gathered his license and registration.

The officer asked the defendant what he was doing there and how long he had been there. He responded that he had just dropped off a person and that he had been sitting there for about five minutes. The officer returned to her cruiser to run a license and warrant check, which revealed no outstanding warrants or other issues. She returned to the defendant’s car, gave him his license and registration, and informed him that she was there investigating a narcotics complaint. She asked the defendant if he had anything illegal in the car, to which he answered no. She then asked him if she could search the car, and he repeated that he did not have anything illegal in the car. She then asked him, “Do you mind if I search it and he said no.” He then opened the car door and exited the vehicle. The officer testified that his “body language indicated that she had permission to search the car.”

In searching the vehicle, she discovered in the center console a large amount of money divided into bundles according to denomination and a plastic bag containing suspected marijuana. She arrested the defendant for possession of marijuana. In the meantime, another officer arrived with his drug-sniffing dog, which indicated additional contraband was in the car. Cocaine in excess of three grams was found.

The Court of Appeals concluded that the initial encounter between the defendant and the officer was a consensual encounter even though the officer was responding to an anonymous tip concerning narcotics activity. No seizure occurs from the simple act of an officer approaching the occupant of a parked car to

ask a question. However, this consensual encounter escalated into an investigatory stop. When the officer returned the defendant’s license and registration, he should have been free to leave but was told by the officer that she was investigating a narcotics complaint. She then asked him an incriminating question – whether he had anything illegal in the car. When he responded that he did not, the officer continued with her investigation, this time asking him if she could search his car, to which he repeated that he did not have anything illegal in the car. She then asked if he minded if she searched the car, to which he gave the ambiguous response of “no.” The officer’s conduct would communicate to a reasonable person that he was not free to leave. The consensual encounter had turned into a detention for investigatory purposes.

The Court concluded that this investigatory detention was without the required reasonable suspicion. The facts supporting reasonable suspicion must rise to “some minimum level of objective justification.” All that was known to the officer was general information provided by an anonymous tip regarding drug activity from a car described only by color and the appearance of the rims. The tip, however, lacked any information which would have permitted police to corroborate the caller’s claim that criminal activity was afoot. Given the totality of the circumstances, the officer lacked reasonable suspicion to detain the defendant for investigatory purposes, and the detention of the defendant was thus illegal.

Since the evidence seized during the search was directly connected to the illegal detention, it should have been excluded. And even assuming that the defendant’s ambiguous response to the officer’s question whether he would mind if she searched the car could be viewed as consent, it was not voluntary. In the court’s view, it was merely submission to police authority.

Clarke v. State, 854 N.E.2d 423 (Ind. Ct. App. 2006).

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