



POLICE / PROSECUTOR UPDATE

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We will examine in this issue two recent cases dealing with frisks. The first was decided by the Indiana Supreme Court. Very briefly, the facts so far as important here indicate that the defendant killed his parents and grandmother in Indiana and later went to Illinois. There the defendant had an encounter with local police who were unaware of his identity or that a warrant had been issued for his arrest.

Following a report of a person picking through trash cans at a grocery store, an Illinois town police officer found the defendant sleeping under some bushes on a drizzly night. When asked what he was doing there, the defendant said he had wrecked his motorcycle on the outskirts of town. He could not produce a driver's license, and the name and address he gave did not check out. A deputy sheriff unsuccessfully looked for the motorcycle and then joined the officer and defendant. The deputy suggested that she and the defendant go in her patrol car to look for the motorcycle together. She picked up a backpack on which the defendant had been sitting and found it to be very heavy. She placed it on the car and "it clunked as if something metal were in it." She then searched both the defendant and the backpack "for officer protection." She testified it was the policy of her department to search everyone who is placed in their vehicles for whatever reason. In the backpack were a gun and ammunition. The admissibility of this evidence was at issue.

The court stated that "we generally believe that circumstances that justify a *Terry* stop and search of a person for a weapon do not, without more, authorize examination of the contents of items carried by that person such as purses, backpacks or briefcases," because police can generally protect themselves from any risk that the item might contain a weapon by simply putting it out of the person's reach. But where, as in this case, either the suspicion that criminal activity may be afoot or a concern over the possibility of harm is reasonably heightened during the stop, the police are authorized to search such items within the suspicious person's immediate control.

In the second case a police officer stopped the defendant's vehicle for speeding and improper

passing. After the officer stopped the vehicle, the defendant immediately got out. The officer exited his patrol car and ordered the defendant back into his vehicle, and the defendant immediately complied. He then asked the defendant to exit the vehicle and performed a patdown search for officer safety. The officer felt something hard in a pocket and observed a cigarette package with a plastic bag sticking out of it. He then removed the package which contained marijuana.

Under the law, an officer may not frisk an individual stopped for a traffic violation unless the officer holds a reasonable belief that *the particular individual* is armed and dangerous. The patdown is reasonable if the facts are such that a reasonably prudent person in the same circumstances would be warranted in believing that the officer was in danger. The officer is entitled to draw reasonable inferences in light of his experience.

The officer testified that although exiting a vehicle before an officer approaches does not necessarily mean that the individual is dangerous, "generally, it can be seen as a sign of hostility That the individual can get out of the car and rush an officer sitting in his car and we are trained for that at the firearms range." He further testified that "there was nothing indicating that the defendant was armed, it just . . . the . . . for officer's safety anyone and everyone can be armed."

However, this type of *generalized* suspicion does not authorize a patdown search. The court concluded that a reasonable person in the officer's circumstances would not have reasonable suspicion to believe that this *particular* defendant was dangerous. The officer testified that the defendant did not attempt to rush him, but immediately complied with the officer's order to get back in his vehicle. After reentering, the defendant made no furtive or threatening movements and remained in the vehicle until the officer ordered him out for the patdown search. Thus, any fear for his safety that the officer may have felt based on the defendant's initial exit of his vehicle was alleviated by his subsequent behavior.

Berry v. State, 704 N.E.2d 462 (Ind. 1998).

Jett v. State, 716 N.E.2d 69 (Ind. App. 1999).