POLICE / PROSECUTOR UPDATE

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This month will continue an examination of recent search and seizure cases. The first case deals with the scope of a search under a search warrant (although the law is also generally applicable to warrantless searches). The relevant facts are simple. Police obtained a warrant to search the defendant's apartment "for the following described property (person), to wit: Dante Adams." Utilizing the search warrant for Adams, the police searched the apartment. During the search, an officer found some cocaine in the pocket of a coat located in a closet. This led to the defendant's arrest and charges.

The law with respect to search warrants contains a "particularity requirement," which *restricts* the scope of the search, authorizing seizure of only those things described in the warrant. A warrant which leaves the executing officer with discretion is invalid. However, a warrant that authorizes an officer to search for particular items also provides authority to open closets, chests, drawers, and containers *in which the items may be found.*

A search warrant for a person only allows a police officer to search areas which would be big enough to hide that person. In this case, the police officers would have been justified in opening the closet door and looking in to see if Adams was hiding there. However, they were not justified in searching the pocket of a coat for a grown man. The search leading to discovery of the cocaine was beyond the scope authorized by the warrant. The cocaine was suppressed.

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Next, we will look at searches and seizures pursuant to a *Terry* investigatory stop and frisk; more specifically, the reasonableness of a police officer's suspicion that criminal activity may be afoot. This case deals with "furtive gestures" by an individual.

About midnight on a summer night, a police officer was on patrol when he observed the defendant standing next to a car parked in the parking area of an apartment complex. When the defendant saw the officer, he "turned his body away" and appeared to be "putting something down his pants." The officer testified that this occurred in a very high crime area. He immediately exited his patrol car, "handcuffed the defendant for officer safety reasons, thinking there might be a weapon," and "patted him down." The patdown revealed the defendant possessed marijuana and cocaine (the court did not address the plain feel doctrine). At the suppression hearing, the officer testified he had not seen the defendant commit any criminal act. Rather, the officer's search was based on the defendant's furtive movements of turning his back on the officer and attempting to hide something and also the officer's knowledge that "gun crimes," "murders," "reports of shots fired," and "drug activity" occurred in the area.

In these situations the law allows police to stop an individual for investigatory purposes if, based upon *specific, articulable facts*, the officer has a reasonable suspicion that criminal activity may be afoot. The officer's suspicion must be based on more than the officer's general hunches or unparticularized suspicions. The court distinguished Indiana cases which have held that evasive action or flight by a person together with his presence in a high crime area might support a reasonable suspicion of criminal activity. The court held no such evasive action occurred here. The court simply stated that the fact that a person turns away from police in a high crime neighborhood is not sufficient, individually or collectively, to establish a reasonable suspicion of criminal activity. This result is not changed by the fact the person appeared to be putting something down his pants or that the police officer knew the suspect and his prior alleged criminal activities.

In short, the mere turning away from a police officer, even in a high crime area, does not constitute reasonable suspicion for a *Terry* stop.*Lee v. State*, 715 N.E.2d 1289 (Ind. Ct. App. 09/20/99).

Webb v. State, 714 N.E.2d 787 (Ind. Ct. App. 1999);

Stalling v. State, 713 N.E.2d 922 (Ind. Ct. App. 1999).

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