

INVESTIGATORY STOPS - REASONABLE SUSPICION

Gregory Finger v. State of Indiana, No. 49A02-0106-CR-389 (June 4, 2002, 13 pages).

_____ This opinion contains an excellent discussion on investigatory stops and the reasonable suspicion necessary to justify such a stop.

In September of 2002, the Defendant was parked near the intersection of 56th and Meridian Street in Indianapolis. A Butler University Police Officer received a dispatch stating that a concerned citizen had reported a suspicious vehicle located near that intersection. The officer drove to the location, noticed the vehicle, and activated his emergency equipment. He later testified at trial that he approached the vehicle to ascertain if he could offer any assistance. The Defendant and his passenger told the officer that they had run out of gas and were waiting for a passerby to return. The officer obtain identification from each occupant. However, instead of returning the identification cards, the police officer retained them.

As other officers arrived, the occupants apparently gave inconsistent stories. The officers also noticed a knife on the backseat and some ammunition on the front seat. The occupants replied that they “did not know” what the knife and ammunition were doing in the car. The officer also said that he had noticed the gas needle showed that there was approximately one-eighth (1/8) of a tank of gas remaining in the car.

Approximately fifteen (15) minutes later, the officers overheard a call from the Indianapolis Police Department that a robbery had just occurred at a liquor store approximately one block away. The robbery victims were brought to the intersection, and identified the passenger as having been involved in the robbery. Both men were subsequently arrested, and the Defendant was charged with conspiracy to commit robbery, robbery, and criminal confinement. The Defendant, through counsel, filed a motion to suppress all evidence obtained through what he alleged was an illegal

investigatory stop and detention due to a lack of reasonable suspicion that criminal activity was afoot.

The Trial Court denied the Motion to Suppress, and in its ruling found that the officers' initial approach of the car was not an investigatory stop, but rather a simple attempt to assist a motorist who might be having car trouble. The Trial Court certified its order for interlocutory appeal, and the Court of Appeals accepted jurisdiction.

In reviewing the denial of a Motion to Suppress, the Appellate Court does not reweigh the evidence, but rather considers conflicting evidence most favorable to the Trial Court's ruling. However, the Court must also consider the uncontested evidence that is favorable to the Defendant.

The "Fruit of the Poisonous Tree" doctrine is one facet of the exclusionary rule of evidence which bars the admissibility in a criminal proceeding of evidence obtained in the course of unlawful searches and seizures. The doctrine operates to bar not only evidence directly obtained, but also evidence derivatively gained as a result of information learned or leads obtained during an unlawful search or seizure.

The Court's opinion sets forth an excellent discussion of the "three (3) levels of police investigation". Two (2) of those, the "investigatory stop" and the "arrest or detention" implicate the Fourth Amendment's prohibition against unreasonable searches and seizures. The third such investigation, noted as a "consensual encounter", does not.

The Court explained that an arrest or detention typically requires probable cause in order to justify the police action. Investigatory stops, on the other hand require only "reasonable suspicion". The Court explained that what begins as a consensual encounter may evolve into an investigatory stop. Indeed, in the consensual encounter the individual remains free to disregard the police officer and walk away. Only when an individual no longer remains free to leave does an investigatory stop begin. The Court stated that the proper inquiry is an objective test - whether the officer's words and actions would have

conveyed to a reasonable person that he was being ordered to remain in the presence of the police officer.

In the instant appeal, the reviewing court focused on the retention of the Defendant's identification card. Even though the officer learned that the license was valid and that there were no outstanding warrants, the officer retained the card. The inquiry thus became whether, in light of all the circumstances, a reasonable person would feel free to leave when a police officer retains his license.

The Court reviewed caselaw from across the United States discussing similar scenarios. Most courts agree that the retention of an I.D. card has been a crucial factor in finding that a seizure has indeed occurred. In essence, the cited authorities establish that a consensual encounter becomes an investigatory stop under the Fourth Amendment when a law enforcement officer retains an individual's drivers license or other identification. Under the facts of this case, the Court did not need to determine the precise moment at which the encounter was transformed into an investigatory stop. Since the record was clear that the officer had retained the identification long before any reasonable suspicion developed that would allow a legal investigatory stop to occur. The Court therefore reversed the Trial Court's order denying the Defendant's Motion to Suppress.