



POLICE / PROSECUTOR UPDATE

Issue No. 122

January 2002

In the November issue, the PPU discussed the concept of a "seizure" for purposes of the law of search and seizure. To briefly review, a "seizure" occurs for constitutional purposes only when there is a *governmental termination of freedom of movement* through some means intentionally applied. In short, for a "seizure" to have occurred, there must be either the application of physical force, however slight, or where force is absent, submission to an officer's "show of authority" to restrain the subject's liberty. We will now examine a Court of Appeals case in which this law was applied.

The facts indicate that several police officers were conducting a saturation patrol of a high crime area. Particular attention was paid to a location containing a public pay telephone because drug dealers, prostitutes, and pimps in the area were known to use that telephone. At this time, the officers spotted the defendant walking down the street. Although it was hot and humid, the defendant was walking with his hands inside the pockets of the jacket he was wearing. When the defendant saw the police cruisers, he changed direction and did not make eye contact with the officers as he continued to walk away. One officer rolled down his car window and asked the defendant, "How are you doing? Can you step over here?" The defendant responded, "I didn't do anything." The officer opened his door and the defendant took off running. The officer ordered him to stop, but the defendant ran. The officer saw two objects fall from defendant's pockets as he ran. The officers apprehended the defendant after a brief chase. The objects which fell from the defendant's pocket were a handgun and an ammunition magazine. On defendant's motion, the trial court suppressed the gun and magazine because the observations made by the officers "were insufficient to justify an investigatory stop." The Court of Appeals reversed the trial court.

While flight from a police officer may be sufficient to justify an investigatory stop, there is no

seizure if the defendant refuses to stop on the officer's command. That is, there can be no constitutional violation *until a physical seizure of the person* has been accomplished. In this case the defendant ran away and did not heed the officer's command to stop. Thus, for purposes of search and seizure law, the seizure did not occur until the defendant was apprehended following the brief chase. The defendant let the gun and magazine drop from his pocket onto a public street as he ran from police and *before he was seized*. And it is well-settled law that police need not obtain a warrant to lawfully seize *abandoned property*. Here the defendant left the gun and the magazine in a place where he had no expectation of privacy. Therefore, he had abandoned the items, and they could lawfully be seized.

Also, although not necessary to its decision, the Court of Appeals noted that the defendant had been subjected to a lawful investigatory stop. In such cases, the argument usually centers on the question whether law enforcement officers had a reasonable suspicion to initiate the stop, which requires at least a minimal level of objective justification for making the stop. Flight is a proper consideration in a *Terry*-stop analysis. "Nervous, evasive behavior is a pertinent factor in determining reasonable suspicion. Headlong flight, wherever it occurs, is the consummate act of evasion. It is not necessarily indicative of wrongdoing, but it is certainly suggestive of such."

Thus, the facts mentioned at the beginning of this issue, when considered by themselves, would not give rise to a reasonable suspicion. However, the defendant's flight, combined with these facts, presented the police officers with a reasonable suspicion of criminal activity.

State v. Belcher, 725 N.E.2d 92 (Ind. Ct. 2000).