



# POLICE / PROSECUTOR UPDATE

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In October 2002 (#131 PPU), we examined a Court of Appeals case in which the Court held that a consensual encounter between an individual and a law enforcement officer becomes an **investigatory stop (a seizure) when the officer retains an individual's driver's license or other identification**. It reversed the defendant's conviction because it felt the officer did not have the necessary reasonable suspicion for an investigatory stop. Since then, the State appealed to the Indiana Supreme Court, which viewed the evidence as sufficient to establish reasonable suspicion, reversing the Court of Appeals. However, the Supreme Court also stated, ". . . we agree with the Court of Appeals that the [officer's] retention of the driver's license converted a consensual encounter into an investigatory stop." Finger v. State, \_\_\_ N.E.2d \_\_\_ (Ind. 11/02/03).

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A recent Court of Appeals case involved the issue of trustworthiness of **hearsay for purposes of establishing probable cause for a search warrant**. Armed with a search warrant, police searched a woman's house and found a sizable quantity of marijuana, cash and drug paraphernalia. The woman identified the defendant as the person who provided her the marijuana to sell, and she provided the location and description of his residence. She described an extensive history of her dealings with the defendant, from initially buying it by the ounce to "getting the marijuana by the pound and selling it for" the defendant. She gave details about two levels of quantity and corresponding prices. She admitted she had delivered marijuana from the defendant to a man the night the man was killed. She described being present at defendant's residence around four months earlier and witnessing the delivery of crates that contained twenty pound bricks of marijuana and that she made \$2,000 delivering just one of the bricks. She further explained that when she was out of marijuana to sell, she would call defendant and he would either bring her a pound of marijuana to sell or she would go to his residence and get it.

Based upon this information from the woman, the police obtained a search warrant for the defendant's residence and property. The defendant filed a motion to suppress, alleging that the probable cause affidavit for the warrant consisted almost entirely of uncorroborated hearsay from the woman.

Under our search warrant statute (IC 35-33-5-2), hearsay must exhibit some hallmarks of reliability. The trustworthiness of hearsay for purposes of providing probable cause can be established in a number of ways, including a showing of *some basis for the informant's knowledge*. The Court found that the woman's statements indicated a long-term relationship with the defendant, that the defendant provided marijuana to her and allowed her to pay for it after she sold it to others, and that the price she would pay the defendant for the marijuana varied based upon its quality. This indicated "some basis" for the woman's knowledge, tending to show the trustworthiness of her statements.

Further, the *amount of detail* provided by an informant may allow the issuing judge to "reasonably infer that the informant had gained his information in a reliable way." The Court felt that there was a great deal of detail in the information supplied by the woman. Specifically, the statements indicated the price and payment arrangements between her and the defendant, their delivery arrangements, the date and time of his most recent delivery to her, how she originally met the defendant and the frequency of their contact, and the detailed account of the truck's delivery of crates containing bricks of marijuana to the defendant's residence.

Finally, *declarations against penal interest* can furnish sufficient basis for establishing the credibility of an informant. Here, the woman implicated herself in the commission of dealing marijuana as well as conspiracy to deal marijuana. Under the law, this established a basis for concluding that the woman was a credible source and that the information she provided was reliable. Leicht v. State, 798 N.E.2d 204 (Ind. Ct. App. 2003).