

Police Prosecutor Update

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SEARCH AND SEIZURE TERRY STOP

On January 31, 2018, the Indiana Court of Appeals issued its decision in J.G. v. State, ___ N.E.3d ___ (Ind. Ct. App. 2018). Officers received a dispatch at 1:30 a.m. about suspicious persons “pacing back and forth in front of” a restaurant, which had been the victim of several attempted robberies. When officers arrived, the owner indicated that “two black males wearing black jackets had run behind the strip mall.” One officer spotted J.G. and O.D., both wearing black jackets. He “told them to stop and held them at gunpoint.” The area was a high crime area, and there had been numerous robberies in the area. Other officers arrived, and J.G. and O.D. were patted down. Both of them were juveniles (J.G. was 15), and after police determined that their actions “didn’t rise to the level of robbery,” officers decided to take them home. When O.D. was returned home, the officer spoke to his parents, and as a result of that conversation they returned to the site of the arrest where the officer found a loaded semiautomatic handgun under a bush. The officer then contacted the officer who drove J.G. home, and J.G. was brought back to the arrest site with his mother. There they signed a waiver of rights form, and J.G. ultimately admitted that he had possessed the gun and given it to O.D., who threw it under the bush. The State alleged J.G. committed the acts of dangerous possession of a firearm and carrying a handgun without a license. At trial J.G. objected to admission of the handgun and the recording of his admission to police on the grounds that his detention was unconstitutional.

J.G.’s encounter with the police was not consensual. Instead the question was whether officers had reasonable suspicion to detain J.G. for investigatory purposes and used reasonable force in doing so. The reasonable suspicion requirement is satisfied “where the facts known to the officer, together with the reasonable inferences arising from such facts, would cause and ordinarily prudent person to believe that criminal activity has occurred or is about to occur.” The Court noted, “[N]ot only did J.G. and O.D. pace back and forth in front of a restaurant in a high-crime area at closing time, . . . but they also ran away when police officers arrived. All of this conduct was by itself lawful, but it also suggested that J.G. and O.D. were casing the restaurant for a planned robbery, which would not have been the first attempted at that location.” The Court further concluded, given the totality of the circumstances, it was reasonable for the officer to hold J.G. at gunpoint until backup arrived. The officer was by himself when he saw two subjects matching the description of the person seen running behind the strip mall, away from a restaurant that had been the target of robbery attempts in a high crime area. Determining that J.G., due to his age, was in violation of curfew, officers had probable cause to further detain him. There was no Fourth Amendment violation.

Likewise, the Court did not find a violation of Article I, Section 11 of the Indiana constitution. Concluding that the degree of suspicion in the 3-part Litchfield test includes future criminal activity, the degree of concern or suspicion that J.G. and O.D. about to rob the restaurant was high. The degree of intrusion, being detained for three hours, was not unreasonable, given that as a juvenile, J.G. should not have been roaming the streets at 1:30 a.m. The officer was initially alone when he confronted the

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juveniles, and because of the rash of robberies in the area, he “didn’t know if weapons were involved.” Finally, the Court concluded that “the officers’ need to use force to detain the fleeing J.G. for investigatory purposes was substantial.”

SUFFICIENCY OF THE EVIDENCE ESCAPE

On January 11, 2018, the Indiana Court of Appeals issued its decision in Keith v. State, ___ N.E.3d ___ (Ind. Ct. App. 2018). On March 1, 2017, a court ordered Keith to serve 180 days on home detention. The order indicated she was to remain in her home except to attend probation appointments and to have her monitoring device maintained. On March 6, 2017, she was fitted for the device and was instructed on the use of the device and on the other conditions of home detention. When she left the probation office, she went to several other places before going home. Then she left again. Her probation officer sent several text messages, instructing her to return home. She did not comply. The state charged her with failure to return to lawful detention, I.C. 35-44.1-3-4(c). She was convicted and the trial court ordered her to serve 180 days of incarceration.

On appeal, Keith argued that her home does not qualify as a place of lawful detention. The Court found that Keith was ordered to remain in her home “similar to any prisoner in a formal jail or prison.” Therefore, her escape was effectuated by being absent from her home. Her conviction was affirmed.