

Police Prosecutor Update

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A recent case examines what constitutes an investigatory stop. Just before midnight, a police officer was patrolling in a marked car when he responded to a dispatch reporting a suspicious white vehicle with four males inside it parked in front of the caller's residence. The caller informed dispatch that she did not recognize the vehicle and was fearful that there was something going on. The officer proceeded to the location and parked. He observed "a white four door vehicle with occupants inside" parked on the street. However, he could not see what the occupants were doing. He activated his emergency lights because "it was dark that night and he wanted to be visible to" other vehicles.

The officer approached the vehicle, observed heavy smoke inside the vehicle, and knocked on the rear right passenger window. "A large amount of smoke came billowing out" as the window rolled down. The officer immediately recognized the smell of burnt marijuana. Four males were in the vehicle, including the defendant who was in the driver's seat. The officer had the occupants exit the vehicle and read them their *Miranda* warnings. The officer observed "what was left of a burnt marijuana cigarette" in the front console's ashtray and also in plain view two bags containing what appeared to be marijuana in the front passenger footwall.

The defendant claimed that the seizure of the marijuana was unconstitutional because the officer lacked reasonable suspicion to conduct an investigatory stop. Constitutional protection governs "seizures" of the person. Generally, whether a seizure has occurred turns on an evaluation, under all the circumstances, of whether a reasonable person would feel free to disregard the police and go about his or her business. A seizure does not occur, for example, "simply because a police officer approaches a person, ask questions, or requests identification. Instead, a person is seized when, considering all the surrounding circumstances, the police conduct would have communicated to a reasonable person that the person was not free to decline the officer's requests or otherwise terminate the encounter."

The defendant argued that the officer initiated an investigatory stop when he parked behind the defendant's vehicle and activated his emergency lights – this was significant show of authority that would convey to any reasonable person that he was not free to leave the officer's presence. The court disagreed. The officer received a dispatch late at night from a concerned citizen regarding a report of a suspicious vehicle parked on the street in front of the nervous 911-caller's residence. Arriving at the location, he observed a vehicle matching the description given already stopped and parked. He then proceeded to park his police vehicle and activate his emergency lights in order to alert other of his presence. He then approached the vehicle to ask the occupants some questions or request their identification. These are all procedures that an officer would be expected to do upon finding an occupied vehicle parked on the street late at night, and do not indicate to a reasonable motorist that the officer intends to detain him. In fact, given that the officer was investigating a concerned citizen's call at a late hour, he or any other officer would be negligent in not activating his emergency lights. To fail to do so would put other driver at risk. In addition, it clearly would put the officer at risk to approach a vehicle late at night without first alerting the unknown occupants that he is a law enforcement officer.

While the officer did activate his emergency lights, he in no way blocked or hindered traffic or the defendant's vehicle, displayed no force, and no other officers were present. Therefore, the officer's contact with the defendant did not amount to a "seizure," and thus was not an investigatory stop.

It must be remembered that this type of case is very fact sensitive, and a change of even one fact could lead to a different result.